

OPINION NO. 66-147

Syllabus:

1. A Regional Planning Commission may not delegate to a committee the authority to make decisions on behalf of the commission.
2. A Regional Planning Commission cannot be changed into an advisory board by an amendment of the by-laws of the commission, making the full commission an advisory board which could then elect a commission to handle the approval of subdivisions and act on other matters the Regional Planning Commission is required to approve.
3. When the area of jurisdiction of a Regional Planning Commission is composed in whole or in part of a county in which are situated less than five cities, the commission has no authority to adopt subdivision regulations for the area within three miles of such cities, if the city or cities have adopted a plan covering such three mile area.
4. A Regional Planning Commission must adopt subdivision regulation for its entire area of jurisdiction.

To: F. P. Neuenschwander, Director, Department of Development, Columbus, Ohio
By: William B. Saxbe, Attorney General, August 31, 1966

Your request letter reads, in part, as follows:

"In administering the Urban Planning Assistance Program, we have encountered difficulties with several Regional Planning Commissions in their ability of assuming jurisdiction over the approval of subdivisions within three miles of cities located within the Regional Planning areas.

"For instance, the Tri-County Regional Planning Commission with seventy-five (75) members has a very difficult time examining and discussing matters pertaining to approval or disapproval of subdivisions in detail necessary for intelligent decisions. Consequently, the Regional Planning Commission has to rely heavily on sub-committees to take care of these matters.

"Since we at this Department are aware of this problem in many areas, we would appreciate your investigating and rendering an opinion on the following:

"(1) Can the Regional Planning Commission delegate approval authority to a sub-committee to make decisions on their behalf?

"(2) In the event that this is not possible, can the Regional Planning Commission be changed into an advisory board by an amendment of the By-Laws of said Commission, making the full Commission an advisory board which could then elect a Commission of such number that could effectively handle the approval of subdivisions, and act on the other matters the Regional Planning Commission is required to approve?

"(3) If a particular Regional Planning Commission is composed of three counties and if one county does not have the required five or more communities, can the Regional Planning Commission adopt subdivision regulations for just the area within three miles of cities and villages within that one county or, must the subdivision regulations be adopted for the entire area served by the Regional Planning Commission?"

Your inquiry necessitates the consideration of applicable enabling statutes. Section 713.21, Revised Code, provides, in part:

"The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the

limits of a municipal corporation not having a planning commission.

"The number of members of such regional planning commission, their method of appointment, and the proportion of the costs of such regional planning to be borne respectively by the various municipal corporations, townships, and counties in the region shall be such as is determined by the planning commissions and boards."

The powers and duties of a regional planning commission are defined by Section 713.23, Revised Code, as being:

"The regional or county planning commission shall make studies, maps, plans, and other reports of the region or county respectively, which may include adjoining areas, showing the commission's recommendation for systems of transportation, highways, park and recreational facilities, the water supply, sewerage and sewage disposal, garbage disposal, civic centers, and other public improvements and land uses which affect the development of the region or county respectively, as a whole or as more than one political unit within the region or county, and which do not begin and terminate within the boundaries of any single municipal corporation."

The necessity for the approval of subdivision plats by the regional planning commission is established by Section 711.10, Revised Code.

"Whenever a county planning commission or a regional planning commission adopts a plan for the major streets or highways of the county or region, then no plat of a subdivision of land within such county or region, other than land within a municipal corporation or land within three miles of a city as provided in section 711.09 of the Revised Code, shall be recorded until it is approved by such county or regional planning commission and such approval is indorsed in writing on the plat. The approval of the planning commission or the refusal to approve shall be endorsed on the plat within thirty days after the submission of the plat for approval, or within such further time as the applying party may agree to; otherwise such plat is deemed approved, and the certificate of the planning commission as to the date of the submission of the plat for approval and the failure to take action thereon within such time shall be sufficient in lieu of the written indorsement or evidence of approval required by this section. The ground of refusal of approval of any plat submitted, including citation of or reference to the rule or

regulation violated by the plat, shall be stated upon the record of the commission. Within sixty days after such refusal the person submitting any plat which the county or regional planning commission refuses to approve may file a petition in the court of common pleas of the proper county and the proceedings thereon shall be governed by the provisions of section 711.09 of the Revised Code as in the case of the refusal of a planning authority to approve a plat."

The language of Section 711.10, supra, when applicable, is explicit in requiring the approval of the regional planning commission before a plat of a subdivision may be recorded and such approval must be indorsed in writing on the plat.

Further, if the regional planning commission refuses to approve a plat, the reason for such refusal must be stated upon the record of the commission.

When called upon to interpret the certificate provision of Section 713.21, supra, I stated in Opinion No. 1207, Opinions of the Attorney General for 1964, page 259, paragraph 3 of the syllabus:

"A regional planning commission may delegate authority to certain members to carry on the current operations of the commission, including the authority to approve and sign the 'certificates' required by Section 713.21, Revised Code."

I am still in complete accord with the pronouncement I made in Opinion No. 1207, as it applies to the factual question presented, but I do not believe that a regional planning commission can delegate to a committee the very function for which it exists.

The general rule relating to the delegation of power is expressed in Rapp et al. v. The City and the Storrs and Sedamsville R. R. Co., 12 W.L.B. 119, as being:

"There is one exception to the maxim, 'Qui facit per alium, facit per se,' which is founded in justice and in reason, and which is, though not of as extensive application as the other, as certain in the application, and its limitations are as well understood as the maxim first spoken of, and that is that a delegated power cannot be re-delegated."

(Emphasis added)

The statutes permitting the formation of a regional planning commission also establish the powers and duties of such commission. One of these functions is the approval or disapproval of certain subdivision plats by the commission. If the commission disapproves a plat the reason must be entered

on the record of the commission. The refusal by such commission may be appealed to the Court of Common Pleas.

The legal intent expressed by the statute is that this commission is delegated the responsibility of establishing a master plan for the area within its jurisdiction and to ascertain whether proposed plats for subdivisions conform to this plan. This plan is adopted by the entire commission composed of representatives of various political subdivisions.

To permit the commission to delegate to a committee the power to make final determinations on accepting or refusing subdivision plats would not only deprive the other members of the commission of their statutory powers and duties, but would remove the need for the commission.

While the commission can delegate to a committee the power to gather facts and make recommendations, it is my opinion, as substantiated by Rapp v. City and the Storrs and Sedamsville R. R. Co., supra, that the statutory duties of the commission cannot be delegated to a committee.

Regarding your second question, a regional planning commission is strictly a creature of statutes. Although the actual membership of such a commission is left to the determination of the participating political units, the possible existence of such a commission is statutory. Once such a commission is formed, its operation and existence is dependent upon the statutes of Ohio.

As previously stated, the commission cannot delegate its power to pass on subdivision plats to a committee. Further, there is no statutory authority for the commission to form a commission to which such powers can be delegated, and there is no statutory authority for the regional planning commission to be an advisory board.

Regardless of how expedient other plans might be, the legislature has provided for the creation of regional planning commissions and has granted to such commissions certain powers and duties by statute. Any plans, duties or delegation of authority not in conformity within the statutes of Ohio are prohibited.

While it is possible for a regional planning commission to reorganize into a smaller workable group, the commission has no power to make itself a mere advisory board to a commission of its own creation.

In answer to your third question, the three mile limitation is established by Section 711.09, Revised Code, which provided, in part:

"Whenever a city planning commission adopts a plan for the major streets or thoroughfares and for the parks and other open public grounds of a city or any part thereof, or for the unincorporated territory within three miles of the corporate limits thereof or any part thereof, then no plat of a subdivision of land

within such city or territory shall be recorded until it has been approved by the city planning commission and such approval indorsed in writing on the plat. If such land lies within three miles of more than one city, then this section shall apply to the approval of the planning commission of the city whose boundary is nearest to the land."

The authority of a regional planning commission to assume jurisdiction within three miles of cities is provided by the last paragraph of Section 711.09, supra, as being:

"This section does not apply to unincorporated territory in any county having five or more cities and having a regional planning commission or county planning commission not included within the geographic boundaries of a regional planning commission, where such regional or county planning commission has determined, by resolution, to exercise the authority granted under section 711.10 of the Revised Code for the unincorporated territory within three miles of cities within such a county."

I note that the three mile limitation created by Section 711.09, supra, applies only to cities and not to villages.

Further, the exception granted by the last paragraph of Section 711.09, supra, to regional planning commissions applies only to a county having five or more cities. Also, the regional planning commission must adopt a resolution stating that it will exercise its authority over the unincorporated territory within three miles of cities within such county.

Under the provisions of Section 713.21, supra, the area of jurisdiction of a regional planning commission may encompass more than one county, but under the provisions of Section 711.09, supra, such commission has no authority within three miles of any city when there are less than five cities in the county if such city or cities has assumed jurisdiction over such area beyond its territorial boundaries.

Conversely, the regional planning commission would have jurisdiction over subdivision plats within three miles of a city located in a county containing fewer than five cities, if such city has not adopted a plan encompassing the three mile area adjacent to such city.

Furthermore, the function of planning is to provide a pattern for the future development of a community.

This pattern is referred to as a "comprehensive plan" which has been defined by the court in East Fairfield Coal Co. v. Miller, 71 Ohio Law Abs. 490, as being:

"A 'comprehensive plan', therefore, is the sum total of the considered opinion

of the planning commission or board as to the future development of the entire community from the standpoint of general welfare, health, safety and morals."
(Emphasis added)

The necessity of a comprehensive plan is discussed in Grant v. Washington Twp., 1 Ohio App. 2d 84, as being:

"Zoning classifications must be based on a comprehensive plan for the development of a governmental unit. Such a plan requires the gathering and analysis of data on existing land uses and the reasonably foreseeable needs based upon population, economics, living and transportation patterns, and all the many factors that do, or may in the future, affect the unit's physical development."

Also, under the provisions of Section 711.10, supra, the regional planning commission acquires the power to regulate subdivision plats by the adoption of a plan for the major streets or highways of the region.

Furthermore, it is provided by Section 711.10, supra, that:

"Any such county or regional planning commission shall adopt general rules and regulations, of uniform application, governing plats and subdivisions of land falling within its jurisdiction, * * *"

Therefore, it is my opinion that a regional planning commission must adopt subdivision regulations for the entire area served by the commission and not for just one county that is a portion of that area.

Therefore, it is my opinion and you are hereby advised that:

1. A Regional Planning Commission may not delegate to a committee the authority to make decisions on behalf of the commission.
2. A Regional Planning Commission cannot be changed into an advisory board by an amendment of the by-laws of the commission, making the full commission an advisory board which could then elect a commission to handle the approval of subdivisions and act on other matters the Regional Planning Commission is required to approve.
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