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PLANNING COMMISSION, COUNTY—ORGANIZED UNDER SECTION 713.22 RC—CEASED TO FUNCTION FOR MORE THAN TWENTY-FIVE YEARS—NO NEW MEMBERS APPOINTED TO FILL VACANCIES—COUNTY COMMISSIONERS MAY REACTIVATE COMMISSION AND PROCEED FOR ORGANIZATION AND MAINTENANCE OF COUNTY PLANNING COMMISSION.

SYLLABUS:

Where a county planning commission organized pursuant to Section 436-14, General Code, now 713.22 R. C., has ceased to function for more than twenty-five years, and no new members have been appointed to fill the vacancies theretofore occurring, the county commissioners may, for the purpose of reactivating such commission, proceed to provide for the organization and maintenance of a county planning commission as provided in Section 713.22, Revised Code.

Columbus, Ohio, April 30, 1956

Hon. Oliver R. Marshall, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“In the year 1927, the County Commissioners for Lake County, Ohio, established a ‘County Planning Commission,’ and provided for a membership of eleven (11) members, eight (8) of which were to be appointed from the citizens of Lake County and three of which were to be the County Commissioners of Lake County, Ohio. Terms of membership were staggered and the County Commissioners filled expiring vacancies until the year 1931. During the year 1931, there were several resignations from the Board and terms expiring. In the meeting of the Board of County Commissioners held on the 2nd day of March, 1931, a motion was made for the filling of vacancies on the Planning Commission, which motion failed for lack of a second, and thereafter no vacancies have been filled. The Lake County Planning Commission ceased its operations on March 23, 1931. However, the members of the Board of County Commissioners are technically still members of this Lake County Planning Commission and no formal action has ever been taken to dissolve

the Commission. We have been unable to find any provision in the law for the dissolution of a Planning Commission and desire to know the status of our Planning Commission. Specifically, I would like your opinion on the following questions:

“1.) Is the Lake County Planning Commission still operative?

“2.) Can the Commissioners of Lake County now reactivate the Planning Commission by filling vacancies?

“3.) Can the Commissioners of Lake County now organize a new Planning Commission?”

Section 713.22, Revised Code, in so far as pertinent, reads as follows:

“The board of county commissioners of any county may, and on petition of the planning commissions of a majority of the *municipal corporations* in the county having such planning commission, shall provide for the organization and maintenance of a county planning commission. Such county planning commission shall consist of eight citizens of the county appointed by the board, together with the members of the board. If the population of any city in the county exceeds fifty per cent of the total population of the county, then at least three of the appointive members shall be selected from persons nominated by the planning commission of such city. The appointive members shall be appointed for terms of three years, except that of the eight members first appointed three shall be appointed for terms of two years and two shall be appointed for a term of one year. The members shall serve without pay.” * * *

(Emphasis added.)

The above quoted matter is substantially identical with the language of original Section 4366-16, General Code, as enacted in 1923, 110 O. L., 310, the only material change being the substitution in the Revised Code of the italicized words “municipal corporations” for “cities,” as the General Code section read.

I note that in your county a planning commission was established in 1927 and that in 1931 there were several resignations, and the terms of some other members expired. Further, that on March 2, 1931, the board of county commissioners in effect refused to make new appointments and the commission ceased its operations and no further action has since been taken looking to its revival. Thus, for a period of twenty-five years there has in effect been no commission.

Under these circumstances, the question may arise whether the planning commission originally established, is dead or merely in a state

of suspended animation. It does not appear whether the planning commission was originally organized by the voluntary action of the county commissioners or whether its appointment was pursuant to a demand made by a majority of the municipalities in the county, as provided in the statute. If it were the latter I should doubt the power of the county commissioners to abolish the commission. If, on the contrary, the appointment was made by their own volition, it would seem clear that they would have a right to repeal their action and thereby abolish the commission. It is said in 42 American Jurisprudence, page 905:

“A county empowered by the legislature to create an office may, if unrestricted, abolish it, and the same is true of a township or a city.”

This same principle was announced in *State ex rel. Attorney General v. Jennings*, 50 Ohio St., 415, where it was held:

“An office created by an ordinance is abolished by the repeal of the ordinance and the incumbent thereby ceases to be an officer.”

The question then remains whether the county commissioners by refusing to fill vacancies, in 1931, and continuing in that policy thereafter for a period of more than twenty-five years, have in effect terminated the life of the original planning commission. I do not consider it of vital importance to determine this question. If it is the desire of the county commissioners to reactivate the commission they may very properly resolve all doubts by proceeding as the statute prescribes, to “provide for the organization and maintenance of a county planning commission,” and pursuant to that purpose appoint eight citizens of the county, who together with the members of the board will constitute the planning commission.

In specific answer to your questions, it is my opinion that where a county planning commission organized pursuant to Section 436-14, General Code, now 713.22 RC., has ceased to function for more than twenty-five years, and no new members have been appointed to fill the vacancies theretofore occurring, the county commissioners may, for the purpose of reactivating such commission, proceed to provide for the organization and maintenance of a county planning commission as provided in Section 713.22, Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General