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PLANNING COMMISSION, COUNTY—POWERS AND DUTIES CONFERRED BY SECTION 4366-16 G.C.—DO NOT INCLUDE MAKING OF PLANS AND RECOMMENDATIONS FOR COUNTY COURT HOUSE TO BE CONSTRUCTED BY COUNTY COMMISSIONERS AND BUILDING COMMISSION UNDER SECTION 2333 ET SEQ., G.C.

SYLLABUS:

The powers and duties conferred upon a county planning commission by Section 4366-15, General Code, do not include the making of plans and recommendations for a county court house to be constructed by the county commissioners and building commission under Section 2333, et seq., General Code.

Columbus, Ohio, July 10, 1945

Hon. D. Deane McLaughlin, Prosecuting Attorney
Canton, Ohio

Dear Sir :

This will acknowledge receipt of your letter in which you state that the county commissioners of Stark county are considering the construction of a new court house, and inquiring if a county planning commission organized under Section 4366-14, General Code, would have the power and authority to make plans and recommendations therefor.

As stated in your letter, county commissioners are empowered to provide a court house when in their judgment one is needed, and also to acquire a site therefor. Sections 2419 and 2433, General Code.

There are two statutory methods of procedure applicable to the construction of county court houses, each depending upon the cost to the county. If the cost is to exceed \$25,000, the procedure would be that prescribed by Sections 2333, et seq., General Code. If the cost is to be \$25.00 or less, the procedure would be that provided for in Section 2343, et seq., General Code. For the purpose of this opinion I am assuming that your proposed court house is to cost in excess of \$25,000, in which case the Section 2333, et seq. group of statutes would apply. The statutes forming this group will be briefly summarized.

Section 2333 provides that when the county commissioners have determined to erect a court house at a cost to exceed \$25,000, they shall submit the question of issuing bonds therefor to the electors of the county. If the bond issue is approved by the electors, the judge of the court of common pleas, on application of the county commissioners, is required to appoint four freehold electors of the county, who shall in connection with the commissioners constitute a building commission to serve until the completion of the building.

Sections 2339 and 2340 authorize the building commission to employ architects, and after plans for the building have been approved by that commission, it is required that they be filed with the county auditor. These plans may not be altered without the approval of the commission.

Section 2341 provides that resolutions for the adoption or alteration of plans shall be in writing and require for their adoption the votes of five members of the building commission, taken by yeas and nays recorded on the journal of the county commissioners.

Section 2338 provides that after adopting plans, specifications and estimates, the building commission shall invite bids and award contracts for the building, and that until the building is completed and accepted by the commission, it may determine all questions connected therewith.

Inasmuch as the statutes hereinabove referred to not only empower the county commissioners to determine the necessity for the construction of a county court house and to acquire a site therefor, but specifically and in much detail prescribe the procedure to be followed by the commissioners and building commission, particularly with respect to the making, adoption, alteration and carrying out of plans, it seems to me that the commissioners and the commission should not be subjected to the control and direction of a planning commission in such matters, in the absence of a clear statutory provision or declaration to that effect.

County planning commissions, being creatures of statute, have only such powers and authority as are expressly conferred upon them by the law of their creation, and such as are clearly implied from those so granted. This general rule of law has been stated on many occasions by the Ohio courts with respect to statutory boards and commissions, and also in former opinions of this office. See Opinions of the Attorney General for 1943, No. 5846; and for 1945, No. 97, citing the Ohio court cases.

The organization of county planning commissions is provided for in Section 4366-14, General Code. The powers and duties of these commissions, and also of regional planning commissions organized under Section 4366-13, General Code, are set forth in Section 4366-15, General Code, as follows:

“The powers and duties respectively of a regional or county planning commission shall be to make plans and maps of the region or county respectively, showing the commission’s recommendation for systems of transportation, highways, parks and recreational facilities, the water supply, sewerage and sewage disposal, garbage disposal, civic centers and other public improvements which effect the development of the region or county re-

spectively as a whole or more than one political unit within the region or county and which do not begin and terminate within the boundaries of any single municipality.”

It will be noted that Section 4366-15 does not include “court houses” in its specific enumeration of improvements. As I construe this statute, it contains its own definition or description of the other improvements which are referred to in the general clause, “other public improvements”, as used therein. That is, the “other public improvements” referred to are those public improvements which not only affect the development of the county as a whole, but which also “do not begin and terminate in a single municipality.” A county court house, located at the county seat, would not answer to such description.

You are therefore advised that the powers and duties conferred upon a county planning commission by Section 4366-15, General Code, do not include the making of plans and recommendations for a county court house to be constructed by the county commissioners and building commission under Section 2333, et seq., General Code.

Respectfully,

HUGH S. JENKINS

Attorney General