1089

RURAL ZONING, AMENDMENT TO RESOLUTIONS, NOTICE OF PURPOSE OF, AND CONTENTS—§§303.12/RC.; AM SB NO. 112, 103 GA.

SYLLABUS:

The provision of Section 303.12, Revised Code, as amended by Amended Senate Bill No. 112 of the 103rd General Assembly, effective June 18, 1959, reading, "The published and mailed notices shall set forth the time and place of the public hearing, the nature of the proposed amendment or supplement and a statement that after the conclusion of such hearing the matter will be referred for further determination to the county or regional planning commission and to the board of county commissioners as the case may be," does not refer to procedure, as such, but merely directs that such published and mailed notices should contain such facts as are applicable in a given situation.

Columbus, Ohio, January 18, 1960

Hon Earl W. Allison
Prosecuting Attorney, Franklin County,
Columbus, Ohio

Dear Sir:

Your letter of recent date requesting my opinion reads as follows:

"The Franklin County Rural Zoning Board has requested our opinion as to what procedure it should follow in processing applications for changes of zoning which involve ten or less parcels of land.

"The 103rd General Assembly on June 11, 1959, passed Amended Senate Bill No. 112, under which Sections 303.12, 519.12 and 713.12 of the Revised Code were amended. Section 303.12 of the Revised Code reads in pertinent part, as follows:

" '* * * If the proposed amendment or supplement intends to re-zone or re-district ten or less parcels of land as listed on the tax duplicate, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least twenty days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be rezoned or re-districted to the addresses of such owners appearing on the county auditor's current tax list or the treasurer's mailing list and to such other list or lists that may

> be specified by the board of county commissioners. The failure of delivery of such notice shall not invalidate any such amendment or supplement. The published and mailed notices shall set forth the time and place of the public hearing, the nature of the proposed amendment or supplement and a statement that after the conclusion of such hearing *the matter will be referred for further determination to the county or regional planning commission and to the board of county commissioners as the case may be.'* (Emphasis added)
>
> "Inasmuch as we are in doubt as to the interpretation of the emphasized language in the above quoted statute and are unable to reconcile such provision with other portions of the statute, we respectfully request your opinion as to the procedure to be followed under the amended statute."

Section 303.12, Revised Code, sets forth the procedure to be followed in the consideration of amendments or supplements to a county zoning resolution adopted pursuant to Section 303.02 *et seq.*, Revised Code. As noted in your letter, Section 303.12, Revised Code, was amended by Amended Senate Bill No. 112 of the 103rd General Assembly, effective June 18, 1959.

Under the provisions of said Section 303.12, amendments or supplements to a zoning resolution may be initiated by motion of the county zoning commission, by the passage of a resolution therefor by the county commissioners or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment or supplement with the county rural zoning commission.

After the requirements as to the initiation of amendments or supplements to a zoning resolution in any of the three mentioned ways have been complied with, the county zoning commission sets the date for a public hearing on the question. Certain notice of such hearing must be given by the commission. Also, within five days after the requirement regarding initiation have been met, the county rural zoning commission must transmit a copy of the proceedings to the county or regional planning commission, if there is such a commission. The planning commission then recommends approval or denial of the proposal, which recommendation is to be considered at the public hearing held by the county rural zoning commission on the question.

Within thirty days after the public hearing, the county rural zoning commission must recommend either approval or denial of the proposal and must submit such recommendation, along with the recommendation of county or regional planning commission, to the board of county commissioners.

Upon receipt of such recommendations the board of county commissioners sets a time for public hearing on the question. Notice of such hearing must be given at least fifteen days before the date of the public hearing. The board must either adopt, deny or modify the recommendation of the zoning commission.

Further provision for submission of the question to the electors of the area involved is made in the section here under consideration.

Your question is concerned with the notice of public hearing required to be given by the county rural zoning commission. In this regard, Section 303.12, Revised Code, as amended by the 103rd General Assembly, reads in part:

> "* * * Notice of such hearing shall be given by the county rural zoning commission by one publication in one or more newspapers of general circulation in each township affected by such proposed amendment or supplement at least fifteen days before the date of such hearing.
>
> "If the proposed amendment or supplement intends to rezone or re-district ten or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least twenty days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be re-zoned or re-districted to the addresses of such owners appearing on the county auditor's current tax list or the treasurer's mailing list and to such other list or lists that may be specified by the board of county commissioners. The failure of delivery of such notice shall not invalidate any such amendment or supplement. The published and mailed notices shall set forth the time and place of the public hearing, the nature of the proposed amendment or supplement and a statement that after the conclusion of such hearing the matter will be referred for further determination to the county or regional planning commission and to the board of county commissioners as the case may be.
>
> "* * *"

The statement that "after the conclusion of such hearing the matter will be referred for further determination to the county or regional planning commission and to the board of county commissioners as the case may be," is made a requirement of the published and mailed notices. It is apparently not intended to specify a procedure to be followed in connection with the consideration of a proposal for a change or addition to an existing zoning resolution, nor to affect the procedure as outlined above.

It is further apparent that the provision regarding the required statement does not give a true picture of the actual procedure that must be followed under Section 303.12, Revised Code. First, the matter is not referred to the county or regional planning commission after the conclusion of the hearing; the matter is referred to such commission *before* the hearing. Second, the county or regional planning commission does not make a determination in regard to the question but merely gives its recommendation as to such question. The matter is, however, referred to the board of county commissioners for determination, as correctly noted in the statement with which we are concerned.

While there is an obvious disparity between the statement of procedure required to be contained in the notice of hearing and the actual procedure, I do not believe that such disparity should have any effect on the procedure as required by the statute. I am reassured in this belief due to the fact that the Legislature left Section 303.12, Revised Code, completely intact except for the amendments which deal exclusively with the manner and method of notice and nothing else. Furthermore, the statement regarding the referral to the county or regional planning commission is unequivocal; in other words, it assumes the existence of one or the other of the two commissions, whereas such commissions may or may not exist, since their creation is a discretionary voluntary act of the political subdivisions of a county, which fact is clearly spelled out in the section here involved, in the phrase "if there is such a commission," at the end of the fifth paragraph of said section.

Accordingly, I must assume that what the Legislature intended to say was that the statement required in published and mailed notices shall inform owners of the land in question that the matter was or will be transmitted (depending on the use the zoning commission makes of the flexible provisions as to the time of notice and of public hearing) to the county or regional planning commission, if there is such a commission, and that after

the conclusion of the public hearing the zoning commission will make a recommendation and the matter will be referred to the board of county commissioners for its determination.

Such interpretation of the provision under discussion is clearly warranted in the light of the law of statutory construction. In 37 Ohio Jurisprudence, Statutes, Section 272, page 502, it is stated that where a mistake in the use of words or phrases in a statute is self-evident, it may be corrected by supplying the proper words. Likewise, a statute will be construed according to its obvious intention, although the collocation of the different branches of the provision is so arranged by mistake as to lead to a different conclusion. In other words, the strict letter of the statute must yield to the obvious intent. The succinct statement of Justice Cardozo in *Outlet Embroidery v. Dervent,* 254 N. Y., 179, 183, while a member of the high court of New York, is applicable here:

> "If literalness is sheer absurdity, we are to seek some other meaning whereby reason will be instilled and absurdity avoided."

Accordingly, in answer to your specific question, I am of the opinion and you are advised that the provision of Section 303.12, Revised Code, as amended by Amended Senate Bill No. 112 of the 103rd General Assembly, effective June 18, 1959, reading, "The published and mailed notices shall set forth the time and place of the public hearing, the nature of the proposed amendment or supplement and a statement that after the conclusion of such hearing the matter will be referred for further determination to the county or regional planning commission and to the board of county commissioners as the case may be," does not refer to procedure, as such, but merely directs that such published and mailed notices shall contain such facts as are applicable in a given situation.

Respectfully,
MARK MCELROY
Attorney General