

OPINION NO. 74-078

Syllabus:

1. A board of county commissioners must hold a public hearing before it adopts the plan or rules and regulations certified to it by a regional planning commission.

2. A board of county commissioners has no authority to modify the plan or rules and regulations certified to it by a regional planning commission, pursuant to R.C. Chapters 711. and 713. However, if the board rejects the certified plan or rules and regulations, the commission may certify a modified plan or rules and regulations.

To: Norman P. Smith, Shelby County Pros. Atty., Sidney, Ohio

By: William J. Brown, Attorney General, September 26, 1974

I have before me your request for my opinion, which reads as follows:

"The Shelby County Board of County Commissioners assisted in creating a Regional Planning Commission several years ago. The Regional Planning Commission has county-wide jurisdiction.

"Recently the Regional Planning Commission adopted general rules and regulations governing the plats and subdivisions of land falling within its jurisdiction pursuant to Section 711.10 of the Ohio Revised Code. Before the adoption of its rules and regulations, the Regional Planning Commission held a public hearing and adopted rules and regulations on February 19, 1974. Following the adoption of subdivision rules and regulations the Board of County Commissioners of Shelby County by resolution adopted a schedule of fees and appointed an Enforcement Officer.

"Recently we questioned the validity of these rules and regulations as Section 711.132 of the Ohio Revised Code provides that these regulations do not become effective until approved by the Board of County Commissioners after public hearing and have requested that I seek your opinion on the following questions:

1. Is it necessary for the Board of County Commissioners to hold a public hearing to implement the subdivision rules and regulations as adopted by the Regional Planning Commission?

2. Are the subdivision rules and regulations as adopted by the Regional Planning Commission binding upon the Commissioners or may they make some modification or amendment of the same after public hearing, and if they are permitted to make modification or amendment, does such modification or amendment require the unanimous vote of the Commissioners?"

The answer to your first question is clearly affirmative. R.C. 711.132, mentioned in your letter, reads as follows:

"No rule or regulation of a planning commission adopted pursuant to the provisions of this chapter, shall become effective until the same shall have been approved, after public hearing, by the legislative authority of the municipal corporation in the case of a municipal planning commission or by the board of county commissioners in the case of a regional or county planning commission."

(Emphasis added.)

The underscored language, by its plain terms, requires a public hearing by the board of county commissioners before the approval of rules and regulations of a planning commission. See also, R.C. 711.10.

Your second question, however, is not specifically answered by any statutory language. It may be well to begin the discussion with a quotation from State, ex rel. Kearns v. Ohio Power Co., 163 Ohio St. 451 (1955), relative to the definition of "planning". The Court states at 460 as follows:

"Although they are sometimes used interchangeably the terms, 'zoning' and 'planning' are not synonymous. Zoning is concerned chiefly with the use and regulation of buildings and structures, whereas planning is of broader scope and significance and embraces the systematic and orderly development of a community with particular regard for streets, parks, industrial, and commercial undertakings, civic beauty and other kindred matters properly included within the police power.
* * *"

The authority of a regional planning commission is set forth in R.C. 711.10, which reads as follows:

"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 or one and one-half miles of a village 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. * * *

"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, to secure and provide for the proper arrangement of streets or other highways in relation to existing or planned streets or highways or to the county or regional plan, for adequate and convenient open spaces for traffic, utilities, access of fire fighting apparatus, recreation, light, air, and for the avoidance of congestion of population. Such rules and regulations may provide for the modification thereof by such county or regional planning commission in specific cases where unusual topographical and other exceptional conditions require such modification.

"Before adoption of its rules and regulations or amendment thereof a public hearing shall be held thereon by the commission. However, no county or regional planning commission shall adopt any rules or regulations requiring actual construction of streets or other improvements or facilities or assurance of such construction as a condition precedent to the approval of a plat of a subdivision unless such requirements have first been adopted by the board of county commissioners after a public hearing. A copy of such rules and regulations shall be certified by the planning commission to the county recorders of the appropriate counties. After a county or regional street or highway plan has been adopted as provided in this section, the approval of plats and subdivisions provided for in this section shall be in lieu of any approvals provided for in other sections of the Revised Code, so far as the territory within the approving jurisdiction of the county or regional planning commission, as provided in this section, is concerned. * * *"

The creation of regional planning commissions is authorized by R.C. 713.21. Under R.C. 713.24, a copy of a regional planning commission's plan is certified to the board of county commissioners of each county or part thereof included in the plan, as well as to other planning commissions. The board may adopt the plan, pursuant to R.C. 713.25, which reads as follows:

"The planning commission of any municipal corporation to which a regional or county plan is certified under section 713.24 of the Revised Code, may adopt such plan, and it shall thereupon have the same force within such municipal corporation as is provided by law or charter for plans prepared and adopted by the local planning commission. The board of county commissioners may adopt such plan so far as it relates to non-municipal territory. Thereafter no public building, roadway, bridge, viaduct, or other public improvement or utility, publicly or privately owned, whose construction or location would constitute a departure from the plan, shall be constructed or authorized by the board except by unanimous vote. Such plans shall not designate the specific lots or parcels

of land upon which such system, facilities, buildings, and improvements are proposed to be placed, but only the general site or location thereof. The effect of the adoption of such plan by the board shall cease as regards the location of any sewage or garbage disposal plant, and no official action of the board shall be controlled thereby in such respect, unless the site shown on the plan as the location of such plant is purchased within six months after the adoption of the plan by the board, or unless proceedings for the appropriation of the necessary property are commenced within a period of six months and such property is then or thereafter appropriated in such proceedings."

The plan adopted by a regional planning commission takes effect, with respect to nonmunicipal territory, upon adoption by the board of county commissioners. State, ex rel. Kearns v. Ohio Power Co., supra, syllabus 2. Similarly, the rules and regulations of the commission are of no effect until adopted by the board of county commissioners, R.C. 711.132; Opinion No. 73-040, Opinions of the Attorney General for 1973. See also, Opinion No. 72-020, Opinions of the Attorney General for 1972.

There is no mention of a board of county commissioners' power to modify a plan, or rules and regulations, certified by a regional planning commission. Its only specified power is to "adopt" (or, by implication, reject) such plan or rules. In contrast, a board of township trustees, for example, has authority to modify a text or maps certified by the township zoning commission. However, if the modification is not approved by the zoning commission, it can be effected, at a second public hearing, only by unanimous vote of the board of township trustees. R.C. 519.09. In the case of amendments or supplements to the zoning resolution, a unanimous vote of the board of township trustees is required to deny or modify the recommendation of the township zoning commission. R.C. 519.12. (Under this Section, the recommendation of a regional or county planning commission is also considered by the township zoning commission, but the latter is not bound by that recommendation in any respect.)

Similarly, R.C. 713.25 authorizes the construction of a public improvement or utility, which would be a departure from the adopted plan, only if approved by unanimous vote of the board of county commissioners. In contrast with these provisions, R.C. Chapters 711. and 713. do not expressly authorize the board to modify the plan certified by the regional planning commission, whether by unanimous vote or otherwise.

It is well settled in Ohio law that a board of county commissioners has only those powers which are expressly granted by statute or necessarily implied by those expressly granted. See Opinion No. 74-073, Opinions of the Attorney General for 1974. No power to modify the certified plan having been granted, in contrast to R.C. Chapter 519., the board has no such power. Comparison is possible with the case of State, ex rel. Barbuto v. Ohio Edison Co., 16 Ohio App. 2d 55 (1968), affirmed 16 Ohio St. 2d 54 (1968). In that case, it was held that the recommended plan must be certified to the board of county commissioners by the regional planning commission, not by a subordinate body of the commission. By implication, the plan must be approved by

the regional planning commission. The board of county commissioners has no authority to originate, and recommend to itself, modifications in the plan. Such power lies with the planning commission. However, should the board find a plan unacceptable, the commission could always certify a modified plan.

Upon consideration, it can be seen why the General Assembly did not choose to empower a board of county commissioners to modify a recommended plan. Their modification would apply only to the unincorporated area of the county. Instead of a regional or county plan, there would be different, uncoordinated plans covering different parts of the county. The whole purpose of a unified regional plan (see R.C. 713.23) would be defeated.

In specific answer to your questions, it is my opinion and you are so advised that:

1. A board of county commissioners must hold a public hearing before it adopts the plan or rules and regulations certified to it by a regional planning commission.
2. A board of county commissioners has no authority to modify the plan or rules and regulations certified to it by a regional planning commission, pursuant to R.C. Chapters 711. and 713. However, if the board rejects the certified plan or rules and regulations, the commission may certify a modified plan or rules and regulations.