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PLANNING COMMISSION—DESIGNATED CERTAIN AREAS FOR LOCATION OF SCHOOL BUILDINGS—BOARD OF EDUCATION OF MUNICIPALITY—HAS POWER BY TWO-THIRDS VOTE OF ENTIRE MEMBERSHIP TO OVERRULE DETERMINATION OF ZONING COMMISSION AND TO SELECT SITE IT DEEMS NECESSARY AND PROPER—SECTION 713.02 RC.

## SYLLABUS:

Where a planning commission has under authority of Section 713.02, Revised Code, designated certain areas for the location of school buildings, the board of education of such municipality has the power by a two-thirds vote of its entire membership, to overrule such determination of said zoning commission and to select such site as it deems necessary and proper for the location of a school building.

Columbus, Ohio, April 11, 1956

Hon. Marvin E. Young, Prosecuting Attorney  
Warren County, Lebanon, Ohio

Dear Sir:

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

"I respectfully request your opinion regarding an interpretation of Section 713.02 of the Revised Code of Ohio insofar as it affects the right of our Board of Education. The facts are as follows:

"The Village of Lebanon has a Planning Commission as authorized under Section 713.02 and the Board of Education of the Lebanon Exempted Village School District wishes to build a new school building on certain property in the Village of Lebanon. The question involved is whether or not from the facts I will give you and the records of both boards, the Board of Education can build a building upon a site which they chose last year.

"Prior to June 13th the Lebanon Planning Commission on May 31st discussed the matter of a school site and decided to and did invite the school board to meet with them.

"On June 13, 1955, the Board of Education decided it wished to purchase ground inside the Village of Lebanon, and construct a new building on the ground. Word of this intention was received unofficially by the Planning Commission of the Village of Lebanon, and there was certain opposition to the use of the proposed site for school purposes. The Planning Commission of the Village of Lebanon decided it should inform the school board that in their opinion the Planning Commission had certain control over the location of any public building in the Village of Lebanon, and as a result of this notification there were two meetings in which the Planning Commission and the Board of Education met together. At the first meeting of the two boards on June 27th, the Board of Education expressed its reasons why it wanted to build a building upon the proposed property, which I will call 'the Hufford tract', and no definite

decision was reached by the Planning Commission as to whether or not they approved this site. At the end of the second meeting, on July 25th the school board departed with a final request that definite action be taken by the Planning Commission as to whether or not they would approve the building of the school on the Hufford site.

"The Planning Commission met alone on August 22nd at which time after considerable discussion the Planning Commission approved three possible sites out of a total of seven proposed sites in the Village of Lebanon for new school buildings, and the Hufford tract in question was not one of the three tracts approved. There was no definite disapproval of the Hufford tract, but this would be implied from the fact that although it was discussed and informally requested by the Board of Education, it was not specifically approved. The approval of the three tracts which did not include the Hufford property, was put in the form of a letter and sent by the Mayor of the Village on behalf of the Planning Commission to the Board of Education on August 23, 1955. At the meeting on August 22nd a map of the master plan in so far as school buildings were concerned was adopted.

"On October 10, 1955, I had been requested, as the Prosecuting Attorney, to furnish my opinion to the Board of Education as to whether or not they could overrule the decision of the Planning Board in not approving the Hufford site, and I advised them that under Section 713.02 of the Revised Code, they could by a two-thirds vote, or a four out of five vote of the board overrule the action of the Planning Commission, and immediately following the receipt of my letter on October 10th the Board of Education passed a resolution in which they resolved to buy the Hufford property, and further resolved to build a school building on the Hufford tract.

"It was felt by the Board of Education that they had taken action to overrule the veto of the Hufford property by the Planning Commission, and I believe that the Planning Commission felt that it had considered the Hufford tract and had turned it down as a possible school site, although they did not definitely say so in their minutes.

"Because the master plan of the Village was adopted on August 22nd at which time three possible school sites were approved and because the school board was so informed, the Village solicitor is of the opinion that no request for the Hufford tract was made after August 22nd and no rejection therefor could have been made by the Planning Commission, and therefore anything done up until the adoption of the master plan was a nullity. The bond issue mentioned in the minutes of the meeting of May 31st was not passed until the November election and until that time no funds were available for building a school house.

"Now since the action last Fall, two of the school board members have been replaced by newly elected members, and it is apparent that the two new members are committed to other sites, so that it would no longer be possible to get a four out of five vote to overrule the Planning Commission if the question was put to them anew.

"I think it would be apparent from a practical standpoint that the Planning Commission thought they had ruled on the matter and the school board thought that they had overruled the Planning Commission so that it would be safe for them to build a building. I will appreciate your decision as to whether or not the Lebanon Board of Education may now proceed to erect a building on the Hufford tract. I am enclosing to you excerpts of the minutes of both boards that pertain to this question, in the event that they are any help to you."

The procedure involved in this matter is found in Section 713.02, Revised Code, which, so far as pertinent, reads as follows:

"The planning commission established under section 713.01 of the Revised Code shall make plans and maps of the whole or any portion of the municipal corporation, and of any land outside thereof, which, in the opinion of the commission, is related to the planning of the municipal corporation, and make changes in such plans or maps when it deems it advisable. Such maps or plans shall show the *commission's recommendations* for the general location, character, and extent of streets, \* \* \* and other public grounds, ways, and open spaces; the general location of public buildings and other public property; \* \* \*.

"Whenever the commission makes a plan of the municipal corporation, or any portion thereof, no public building or structure \* \* \* shall be constructed or authorized to be constructed in the municipal corporation or planned portion thereof unless the location, character, and extent thereof is approved by the commission. \* \* \* If such public way, ground, works, building, structure, or utility is one the authorization or financing of which does not, under the law or charter provisions governing it, fall within the province of a municipal legislative authority or other municipal body or official, the submission to the commission shall be by the state, *school*, county, district, or township official, board, commission, or body having such jurisdiction, and the commission's disapproval may be overruled by such official, board, commission or body by a vote of not less than two thirds of its membership." \* \* \* (Emphasis added.)

In connection with your letter you have furnished transcripts of the minutes of several meetings of the zoning commission. In the minutes

of May 31, 1955, there appears the following statement relative to school sites :

“Inasmuch as the Planning Commission is responsible for approving all public buildings erected within the village, it was deemed advisable that the City Solicitor be instructed to acquaint members of the Board of Education of the Lebanon Exempted Village School District with this law and to invite them to meet in joint session with the commissioners to discuss desirable sites, or site, in anticipation of approval of the proposed bond issue for additional school class rooms, which is to be submitted to the voters this fall.”

In the minutes for June 27, 1955, I note the following :

“On invitation of the Commission, four members of the Board of Education of the Lebanon Exempted Village School District: William Marr, Mrs. Alice Zecker, Ray Meyers, and Harvey Miller were present to discuss school sites in anticipation of expansion of the much needed school housing facilities of the district. Member Edward Ullum, on vacation and Supt. Oscar Musgrave, in Columbus on business, were unable to attend this meeting.

“During the discussion it was pointed out that the law requires the Planning Commission to designate school sites and the school board has authority to build on any or all approved sites, as they wish.

“President Marr, of the school board, stated that they were not aware of this law, and for that reason had anticipated taking an option on acreage near the present high school building, and were proceeding accordingly.

“A frank discussion of this, and two or three other sites, followed, but no definite action was taken at this meeting pending further consideration.”

In the minutes of the meeting of July 25, 1955 the following appears :

“Pending the arrival of the five members of the board of education of the Lebanon Exempted Village School District and Supt. Oscar Musgrave, a general discussion of three or four proposed school sites was had.

“Following the arrival of the School Board Members, Supt. Musgrave on their behalf, presented voluminous typed material and arguments in behalf of a proposed school site adjacent to the high school, being a part of the Wm. Hufford farm.

“Each of the five school board members assured the Planning Commission that they unanimously approved this site as

the best and most desirable of all those proposed to date, to meet immediate requirements. However, they did approve other proposed sites for future needs.

"A very lengthy discussion followed after which the school board departed with a final request that definite action be taken soon.

"Inasmuch as A. C. Brant and Russell Carr were absent, it was thought best to defer action. A special meeting was suggested to expedite the decision."

In the minutes of August 22, 1955, the following appears:

"Prior to this meeting all the members had visited proposed school sites to get first hand information on topography, accessibility and other data on the terrain being considered.

"After the chairman officially opened the meeting, a frank discussion of various sites was had.

"Considerable time was spent in this discussion before Harold Rosencrans moved, and J. Ray Law seconded the motion giving approval of three sites for public schools; 'County Home Farm, south of the driveway, the tract north of State Route 123, opposite Fairview Avenue, and a portion of the area bounded on the south by Summit St. on the east by Summit St. extended, and on the west and north by Oak St.' Unanimous approval was given the motion as soon as City Engineer Roy E. Miller, had indicated these selections on the plat."

A letter dated August 23rd from the mayor to the president of the board of education, reads as follows:

"At a special meeting of the Lebanon Planning Commission held last night, a Resolution was adopted approving three sites for public schools, as follows:

'County Home Farm, south of the driveway, the tract, north of State Route 123, opposite Fairview Avenue; and a portion of the area bounded on the south by Summit St., on the east by Summit St. extended, and on the west and North by Oak St.'"

"Please to advise your board of this action so that they may proceed accordingly. We sincerely trust that something satisfactory can be provided by the selections made.

"If I can be of any further service, command me."

There is also forwarded with your letter a transcript of the minutes of certain meetings of the board of education. The minutes of the meeting held June 13, 1955, read in part as follows:

"It was moved by Meyers and seconded by Zecker that this Board enters into a contract with Mr. Hufford, to hold this property under option for us, and pay him \$5,000.00 now, to hold same for us, with the balance to be paid March 1st, 1956, and the President and the Clerk are hereby authorized and directed to enter into such contract with Mr. Hufford.

The vote: Zecker-aye, Miller-aye, Meyers-aye, Marr-aye."

The minutes of the meeting of said board of education of October 10, 1955, read in part as follows:

"Passed October 10, 1955.

"Whereas, this Board of Education desires to acquire a site for an elementary school building, and erect an elementary school building upon such site, Now, therefore, Be it Resolved that this Board of Education enter into a contract with Mr. Wm. Hufford, Sr. for the purchase of approximately 15.3 acres of ground, which said property is adjacent to the north end of our present school property, at the sum of \$1,000.00 per measured acre, \$5,000.00 to be paid to Mr. Hufford as soon as he presents a contract for same, and as soon as legal approval can be secured by the Board as to the legality of the contract, the balance to be paid to Mr. Hufford March 1st, 1956, and that the President and Clerk are hereby directed and authorized to sign said contract and pay said money upon the terms mentioned.

"Mr. Harvey F. Miller seconded the motion of the foregoing resolution and upon roll call the vote resulted as follows:

"Mr. Edward S. Ullum-aye, Mrs. Alice Zecker-aye, Mr. Harvey F. Miller-aye, Mr. Ray G. Meyers-aye, Mr. Wm. S. Marr-aye."

These records disclose considerable informality in the action both of the zoning commission and the board of education. It will be observed that the board of education attended two meetings of the zoning commission by request, and that at the second meeting all of the members of such board were present, and that they voiced their unanimous approval of the selection of what was known as the Hufford site, for their school building. It further appears that at the next meeting of the planning commission it considered and adopted a motion approving *three other sites*, no reference being made to the Hufford site, and no express action being taken refusing to approve it. The mayor advised the board of education of this action. Therefore, the board of education, at a meeting held October 10, 1955, by unanimous vote determined to purchase the Hufford site, and authorized its president and clerk to execute

a contract therefor, and to make the payment called for by the contract.

I am informed by you that the planning commission had not prior to its approval of the three sites referred to, made any general plan as contemplated by Section 713.02 supra, indicating any approved sites for school buildings, but it appears from their action as disclosed by their minutes, that they dealt with that proposition directly and exclusively by adopting a resolution approving three sites. In view of the conclusion which I shall later indicate, I do not deem it necessary to consider whether the planning commission had complied with the law as to the general plan, so as to give it the right to deny a decision of the board of education as to choice of location for its proposed school building. For the purpose of this opinion, I am assuming that the commission had fully performed its duty in that respect.

While all of the proceedings above referred to appear to have been quite informal, it appears to me that the board of education had a right to regard the action of the planning commission as a disapproval of their proposal to locate their building on the Hufford site. If that action did amount to such disapproval, then the action of the board taken thereafter, in determining to purchase the Hufford site, passed by vote of more than two-thirds of the membership of the board, to wit, the unanimous vote, amounted to an overruling of the action of the planning commission.

No evidence is presented as to the communication of their action to the planning commission, but since the statute does not require any notice to be given to the planning commission under such circumstances, and *since the planning commission would have no further authority in the matter*, I can not consider that the omission to give such notice would have any bearing on the situation. I think it should be borne in mind that the management of the school system of the state is committed both by the Constitution and the statutes to have exclusive control of the state board of education and the local boards, who are charged with complete administration of the schools. The municipality not only has no voice in their control, but, as such, contributes nothing to their support.

Section 713.02, to which I have called attention, requires a municipal zoning commission to lay out a general plat of the territory in the municipality, and the territory immediately surrounding it, with a view of developing a general plan for the future location of public highways and



public buildings, but gives such commission only a limited power to *recommend* the following of such plan. In my opinion we are justified in constructing this statute strictly, in so far as it invades the complete independence and authority of the school authorities.

It is accordingly my opinion and you are advised that where a planning commission has under authority of Section 713.02, Revised Code, designated certain areas for the location of school buildings, the board of education of such municipality has the power by a two-thirds vote of its entire membership, to overrule such determination of said zoning commission and to select such site as it deems necessary and proper for the location of a school building.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General