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COUNTIES: Zoning.

ZONING: Counties.

The county board of commissioners has authority to enact amendments and supplements to a county zoning ordinance upon solicitation of the advice or suggestion of the county zoning commission; however, the county board of commissioners need not follow the advice or suggestions of the county zoning commission.

Opinion No. 4889

August 27, 1975.

Mr. Gerald D. Lostracco
Shiawassee County Prosecutor
310 North Shiawassee
Corunna, Michigan 48817

You have requested my opinion as to whether the County Board of Commissioners has the authority to grant a rezoning request where the County Zoning Commission has previously denied such a request.

1943 PA 183; MCLA 125.201 *et seq*; MSA 5.2961(1) *et seq*, is an enabling statute that authorizes counties to provide by ordinance for the establishing of a zoning plan. 1943 PA 183, *supra*, § 10 provides:

"Following the hearing, the county zoning commission shall submit the proposed zoning ordinance, including any zoning maps, to the board of supervisors [commissioners]. After receiving the recommended zoning plan, the board of supervisors [commissioners], at any regular meeting or at any special meeting called for the purpose, shall consider such recommendations and vote upon the adoption of a zoning ordinance for the county. The board shall make no change or departure from the plans, text or maps as certified by the zoning commission unless such proposed change or departure shall first be submitted to the zoning commission for its advice or suggestions. The zoning commission shall have 30 days from and after receipt of such submission within which to send its report to the board of supervisors [commissioners]."

Additionally, 1943 PA 183, *supra*, § 14 requires amendments or supplements to a zoning ordinance to be made "in the same manner provided in this act for the enactment of the original ordinance."

It is, therefore, my opinion that if a county board of commissioners desires to amend or supplement an existing zoning ordinance, it may do so by following the same procedure required to enact the original ordinance.

If, in compliance with 1943 PA 183, § 10, *supra*, the board of commissioners submits the change to the zoning commission which then responds negatively, the meaning of the words "advice or suggestions" as found in 1943 PA 183, § 10, *supra*, becomes crucial.

In *Commonwealth v Mercer*, 190 Pa 144; 42 A 525 (1899), the Court defined "advice" as:

“ . . . optional with the giver; that is, he can advise or remain silent. It is optional with him to whom it is directed; that is, he can accept or decline it.”

And in *Artificial Ice & Cold Storage Co v Martin*, 102 Ind App 74; 198 NE 446 (1935), “suggestion” is defined as:

“ . . . presentation of an idea especially indirectly, as through association of ideas, bringing before the mind for consideration, action, solution or the like.”

Thus, the language of 1943 PA 183, § 10, *supra*, cannot be construed as a directive which would require the county board of commissioners to accept the advice or suggestion of the county zoning commission regarding the proposed supplementation or amendment of an existing zoning ordinance.

In summary, the County Board of Commissioners has authority to enact amendments and supplements to county zoning ordinances and may do so upon soliciting the advice or suggestion of the county zoning commission. However, such advice or suggestions are not conclusive upon the board.

FRANK J. KELLEY,
Attorney General.

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HOME RULE CITIES: Revenue Bond Act.

WATER SUPPLY: Revenue Bond Act.

Inasmuch as the revenue bond act provides that water rates shall be fixed and revised by the governing body of a city that has resorted to its provisions for issuance of bonds, the legislative body of a home rule city has final authority for fixing such rates despite a provision in its charter stating that a charter-created Department of Water Supply shall periodically establish such rates.

Opinion No. 4886

September 5, 1975.

Honorable John Bennett, Chairman
Special Committee to Study City
of Detroit Water Rate Structure
House of Representatives
Lansing, Michigan

You have requested that I consider whether in the City of Detroit the authority to set water and sewerage rates rests with the City Council or the Board of Water Commissioners. In this regard, you forwarded a copy of the opinion of the Detroit Department of Law on that question. That opinion held:

“ . . . that when the city resorted to using the Revenue Bond Act as a means for financing the construction of water and sewerage systems, approval of . . . [the City Council] became required for any increase in rates. . . .” Opinion, Detroit Dept of Law, April 15, 1975.