

Opinion No. 25**City-County Planning Boards—County Commissioners, Powers of—
City Council, Powers of**

Held: Sections 11-3801 through 11-3858, RCM, 1947, (Enacted as Chapter 246, Laws of 1957) empower city-county planning boards formed pursuant to those sections to fulfill the requirements of Section 701 of the Housing Act of 1954, and thereby become eligible for planning assistance from the Federal Government under said section 701.

August 22, 1957

Mr. Joseph Buley
Yellowstone County Attorney
Billings, Montana

Dear Mr. Buley:

You ask whether the City-County Planning Board for Billings and Yellowstone County is eligible to obtain planning assistance from the Federal Government under Section 701 of the Housing Act of 1954.

The answer to this depends on examination of the state statutes to see whether organization of the board conforms to state requirements and to see whether the state law empowers the board to fulfill the Federal requirements.

The planning board by express authority of Section 11-3824 (8), RCM, 1947, is granted the power to sue and be sued collectively, by

its legal name. Section 11-3822 enables it to contract for special, temporary, and professional services. Section 11-3827 empowers this board to contract with the Federal government with respect to funds, grants and services, and in addition authorizes the board to accept gifts and donations for planning board purposes and expend any moneys given it as designated by the donor.

Next, the Federal Government requires that an applicant planning board be empowered to perform planning work under State or local laws in metropolitan or regional areas.

In the legislative act, the county resolution and city ordinance referred to above I find ample authority allowed to effectuate such planning and to carry out the legislative intent which Section 11-3801, RCM, 1947, in part states to be:

“ . . . It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.”

The Federal law contemplates surveys, land use studies, urban renewal plans and technical services. Section 11-3830, RCM, 1947, requires the adoption of a master plan by the planning board. Section 11-3831, RCM, 1947, enumerates what this plan may contain. The items are numerous and recitation of them would be tedious. Suffice it to say that they amply permit the planning objects required by the Federal government. When we collate this provision for a master plan with the legislative intent noted above regarding the planning agencies there is no doubt that the planning board is empowered to perform planning work within the purview of the Federal law. And we should observe that Section 11-3852 expressly preserves the zoning power of cities authorized by Sections 11-2701 to Sections 11-2709, RCM, 1947, as an integral part of the planning authority.

Then the Federal government requires that the planning agency be empowered to fulfill the obligations, terms and conditions of the grant contract which will be entered into.

The City-County planning board can adequately do that. As discussed above, it is a legal entity with the power to sue, be sued, and contract in its name. Particularly under Section 11-3827 where it may receive and expend funds, grants, and services from the Federal government it may contract respecting them. It is self evident that if it may contract with the Federal government that it may agree to

terms and conditions conditioning the grant. Without terms and conditions there would be no contract and the power to contract would be meaningless.

The last Federal requirement pertains to local financing of that portion of the cost of the planning work not covered by the Federal grant.

Section 11-3825, RCM, 1947, empowers the city to levy a property tax not to exceed one-half mill for planning board purposes. By this statute the county commissioners may levy up to one-half mill upon property outside of incorporated cities and towns but inside a district encompassed by the master plan. Each of these governing bodies may then budget and appropriate such funds as are needed and as they have previously agreed upon as the proportion of expenditures to be borne by each unit. Considering these provisions and the fact that donations and gifts can be accepted I find that appropriate provision exists in the law to allow the planning agency to finance its duties and match Federal grants as may be required.

Under the Federal law cited above it is necessary that the applicant be an official state planning agency. Chapter 246, Laws of 1957, now Sections 11-3801 to 11-3851 of the Revised Code of Montana provides for City or City-County Planning Boards. The City-County Planning Board was established by means of a resolution passed by the Yellowstone County Board of Commissioners and an ordinance regularly passed and approved by the City of Billings.

I have examined the procedural steps taken, the resolution ordinance and related letters and find that the creation of this joint Board has been effectuated as required by law.

Expressly I find that the city council of Billings notified the county commissioners of Yellowstone County in writing of their intention to form a city planning board, and that the Yellowstone Board of County Commissioners adopted and passed a resolution electing a joint City-County Planning Board and notified the Billings city council of its election within thirty days from receipt of the notice of the city's intention. I find that these acts and notifications comply with the requirements of Section 11-3805, RCM, 1947.

The agreement represented by these acts and these instruments I find to be in accord with law. The powers, functions, and territorial jurisdiction have been set forth in the agreement as being those authorized by the act on City-County Planning.

For these reasons I believe that the City-County Planning Board for the City of Billings and Yellowstone County has conformed to the statutory requirements and that it is empowered by the state statutes to fulfill the requirements imposed by the Federal government necessary to obtaining Federal planning assistance.

Very truly yours,
FORREST H. ANDERSON
Attorney General