

VOLUME NO. 43

OPINION NO. 18

COUNTIES - Inability of county planning board to serve as county zoning commission;

COUNTY GOVERNMENT - Inability of county planning board to serve as county zoning commission;

MONTANA CODE ANNOTATED - Sections 76-1-104, 76-1-106, 76-1-211(1), (2), 76-1-212(1), 76-1-501, 76-2-202, 76-2-220;

OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 75 (1982).

HELD: A county planning board may not be designated to serve as the county zoning commission. However, members of one board may serve as members of the other so long as they meet the statutory requirements for membership of each board.

June 1, 1989

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You requested my opinion on the following question:

May the county planning board be designated to serve as the county zoning commission?

Both the planning board and the zoning commission are creatures of statute. A county planning board is created at the discretion of the county commissioners, upon a resolution and public hearing. § 76-1-104, MCA. Its function is to serve in an advisory capacity to the county with regard to subdivision plats, development of roads, public buildings, utilities, and improvement location permits. § 76-1-106, MCA. The planning board consists of not less than five members, one of whom must be a member of the governing board of an existing conservation district or state cooperative district, if officers of either reside in the county. § 76-1-211(1), MCA. The citizen members must be resident freeholders in the jurisdictional area of the planning board. § 76-1-212(1), MCA. The planning board's jurisdictional area may include any or all of the area within the county boundaries. § 76-1-501, MCA. In the event a city or town is included in the jurisdictional area, at least one person appointed by the city or town council must serve on the board. § 76-1-211(2), MCA.

A zoning commission is also established at the discretion of the county commissioners. The members are appointed by the county commissioners and serve for the purpose of recommending amendments to zoning regulations and classifications. § 76-2-220, MCA. The commission is composed of at least five citizen members appointed "at large" from the zoning district. § 76-2-220, MCA. The zoning district may include any or all of the jurisdictional area established for the county planning board, except it may not include incorporated cities or towns. § 76-2-202, MCA.

It is evident that the jurisdictional areas of zoning commissions and planning boards are not necessarily the same. Nor are the requirements for membership of each board. The most obvious difference between the two is the permitted inclusion of incorporated cities and towns in a planning board jurisdiction and their exclusion from zoning district. Thus, a zoning commission would be statutorily inadequate to serve as a planning board whose jurisdictional area includes an incorporated city or town.

As I previously mentioned, the creation of planning boards and zoning commissions is within the discretion of the county commissioners. Once created, however, the statutory mandates as to each board must be followed. 39 Op. Att'y Gen. No. 75 at 285 (1982). Therefore, the county may not avoid the membership requirements of each board. Since the membership requirements and jurisdictional areas of the boards are not statutorily identical, the county may not designate one board to serve as the other. That is not to say, however, that a given member of one board may not serve on the other. There is no statute prohibiting an individual from serving on both boards. In order to do so, he or she must qualify for membership according to the statutory requirements for each board.

THEREFORE, IT IS MY OPINION:

A county planning board may not be designated to serve as the county zoning commission. However, members of one board may serve as members of the other so long as they meet the statutory requirements for membership of each board.

Sincerely,

MARC RACICOT
Attorney General