

OPINION
63-71

April 1, 1963 (OPINION)

COUNTIES

RE: County and Township Zoning Commissions - Precedence of Township

Your letter requesting an opinion on township and county zoning commissions has been received.

You state that several years ago a zoning commission was established in Burleigh County in accordance with chapter 11-33 of the North Dakota Century Code. The districts designated by the county commissioners included Apple Creek Township located near the city of Bismarck. This commission functions for approximately three years with the representative from Apple Creek Township serving as one of the nine members of the county zoning commission. In the fall of 1962, in connection with the proposed establishment of rifle range in Apple Creek Township, a county zoning commission meeting and hearing were held. At this meeting the representative from apple Creek Township took the position for the first time that Apple Creek Township was not subject to the county zoning commission rulings and gave oral notice that they were "pulling out" of the Burleigh County Zoning Commission.

Your questions basically ask us to decide the priorities between the county and township as regards to the establishment of zoning commissions based on the foregoing facts.

The first section of the county zoning law, section 11-33-01 of the North Dakota Century Code, provides that the county commissioners of any county are empowered to make zoning regulations within the county subject to the provisions of section 11-33-20. Section 11-33-20 provides that the provisions of chapter 11-33 shall in no way prevent the townships from making regulations as provided in sections 58-03-11 to 58-03-15, but such townships may relinquish their power to enact zoning regulations to the county by resolution of the board of township supervisors. Thus, even though the county has a zoning commission in operation, the township is at liberty to begin their own zoning operation provided they have not previously relinquished their authority to the county as set out in the statute, namely, adopting the resolution by the board of township supervisors specifically relinquishing such power. If such a resolution has not been adopted the township has not relinquished such power even though they have taken part in the county zoning commission operation.

It is our opinion that the regulations established by the township zoning commission, if they are in accordance with the statutes take precedence over any contrary previous zoning regulation enacted by the county zoning commission. While the establishment of a township zoning commission would not invalidate all previous county zoning commission regulations, it would invalidate all inconsistent previous county zoning commission regulations.

You also ask what legal liability may be imposed upon the county zoning commission, its individual members, or the county commissioner, by a property owner who was adversely affected by a county zoning commission ruling when such commission was partly composed of representatives from townships who had not formally relinquished their power to enact zoning regulations to the county. It would appear that there would be no legal liability resulting to any party working under these statutes allowing county zoning commissions. If the county zoning commission enacted an invalid ordinance, the property owner need not abide by it.

This opinion supersedes any previous correspondence containing statements inconsistent with this opinion.

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