

Date Issued: April 2, 1981 (AGO 81-36)

Requested by: Robert E. Alexander, Zap City Attorney

- QUESTIONS PRESENTED -

I.

Whether it is mandatory for a city to have a zoning commission.

II.

Whether a city council may appoint its own members to serve as members of the zoning commission.

III.

Whether cities may compensate members of planning and zoning commissions for their attendance at meetings.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that it is not mandatory for a city to have a zoning commission.

II.

It is my further opinion that city council members may not also serve on the city zoning commission pursuant to section 40-08-09 of the North Dakota Century Code.

III.

It is my further opinion that members of planning and zoning commissions may be compensated for their services.

- ANALYSIS -

I.

Section 40-47-06, N.D.C.C., reads in part:

. . . The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. . . .

Under this statute, it is only necessary to appoint a zoning commission if the governing body of a city desires to exercise the powers given to the municipality by chapter 40-47, N.D.C.C.

II.

City council members are prohibited from appointing themselves as members of a city zoning commission. Section 40-08-09, N.D.C.C., states as follows:

40-08-09. RESTRICTIONS ON MEMBERS OF COUNCIL. No member of the city council shall:

1. Be eligible to any other office the salary of which is payable out of the city treasury;
2. Hold any other office under the city government; or
3. Hold a position of remuneration in the employment of the city.

It must be noted that this is also applicable to the governing body in commission cities under section 40-09-17, N.D.C.C.

III.

City planning and zoning commissioners may be compensated for functioning as members of the commission under section 40-13-04, N.D.C.C., which states:

40-13-04. SALARIES OF OFFICERS FIXED BY ORDINANCE - DIMINUTION DURING TERM PROHIBITED. Except where otherwise provided in this code, any officer or employee of a municipality shall receive the salary, fees, or other compensation fixed by ordinance or resolution, and after having been once fixed, the same shall not be diminished to take effect during the term for which the officer was elected or appointed.

In addition, under section 40-48-05, N.D.C.C., members of a city planning commission may receive traveling expenses for attendance at planning conferences or meetings of planning institutes or hearings upon pending legislation. Before the 1979 amendment, section 40-48-05, N.D.C.C., specifically provided that a planning commission would serve without compensation. However, that prohibition no longer exists in section 40-48-05, N.D.C.C.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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