

OFFICIAL OPINION NO. 74-40, Delegation of zoning authority by county commissioners to township board of organized township

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

September 16, 1974

Mr. Dennis Hogarth
State's Attorney
Lawrence County
Deadwood, South Dakota 57732

OFFICIAL OPINION NO. 74-40

Delegation of zoning authority by county commissioners to township board of organized township

Dear Mr. Hogarth:

You have asked for an opinion based on the following factual situation:

Pursuant to SDCL (1967) 11-2, the Board of County Commissioners of Lawrence County has the authority to appoint a zoning commission to prepare a comprehensive county plan. Within Lawrence County is the organized township of St. Onge. At the present time the township board of St. Onge township makes recommendations to the county zoning commission concerning desired official controls relating to zoning. The county commissioners would like to give the township full zoning powers as opposed to mere fact finding powers, and have inquired as to whether the county has the authority to delegate such powers to the township board of an organized township.

SDCL 8-2-10 says:

No organized township shall possess or exercise any powers except such as are enumerated in this chapter, or are especially given by law or are necessary to the exercise of the powers so enumerated or granted.

SDCL 8-2-9 gives the specific instances as to when a township may pass zoning ordinances. St. Onge does not qualify under SDCL 8-2-9. (The township must be within a certain distance of a city of 50,000 people or more.) SDCL 11-2 delegates to counties broad overall zoning power.

It is my opinion based on the above statutes, that the St. Onge township does not have zoning authority, and cannot be given that authority by the county commissioners, because of SDCL 8-2-10.

Respectfully submitted,

Kermit A. Sande
Attorney General

KAS:FRM:sk