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ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

August 13, 1974

No. S-801

COUNTIES:
Zoning Within 1 1/2
Miles of a City

Honorable John G. Satter, Jr.
State's Attorney, Livingston County
Pontiac Savings & Loan Building
Suite B-2
Pontiac, Illinois 61764

Dear Mr. Satter:

This responds to your request for an opinion concern-
ing the relationship of county and city zoning ordinances as
they apply to real estate located within 1 1/2 miles of the city
boundary. Your request arises out of the following fact
situation as stated in your letter.

"The Livingston County Board recently
passed a Zoning Ordinance which became
effective February 1, 1974. Prior to that
date, an owner of real estate located within
1 1/2 miles of a city having a zoning ordinance
which took jurisdiction over the zoning classi-
fication of said real estate, filed a petition

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for variance with the city planning commission. Since the real estate was not properly subdivided and platted, the hearing on his petition was continued, during which intervening time the Livingston County Zoning Ordinance went into effect."

Your question is whether the city planning commissioner or the county zoning administrator has jurisdiction over the matter.

It is my understanding that the city involved is not a home rule unit. Non-home rule cities and kindred municipalities have no inherent powers, but have only those powers specifically provided by the Illinois Constitution of 1970 or statute and those which can be reasonably implied therefrom. In determining whether a given power has been conferred upon a municipality by statute, the act is to be strictly construed. City of Geneseo v. Ill. N. Utilities Co., 336 Ill. 89.

The specific authority of a municipality to zone within 1 1/2 miles beyond its corporate limits is set forth in section 11-13-1 of the Municipal Code of 1961 (Ill. Rev. Stat. 1973, ch. 24, par. 11-13-1), which provides in part as follows:

"* * * The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one and one-half miles beyond the corporate limits and not included within any municipality * * * No municipality shall exercise any power set forth in this Division 13

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outside the corporate limits thereof, if the county in which such municipality is situated has adopted 'An Act in relation to county zoning', approved June 12, 1935, as amended. If a municipality adopts a zoning plan covering an area outside its corporate limits, the plan adopted shall be reasonable with respect to the area outside the corporate limits so that future development will not be hindered or impaired. If all or any part of the area outside the corporate limits of a municipality which has been zoned in accordance with the provisions of this Division 13 is annexed to another municipality or municipalities, the annexing unit shall thereafter exercise all zoning powers and regulations over the annexed area. * * * "

The general authority of cities and municipalities to zone in the defined contiguous area has been summarized in City of Canton v. County of Fulton, 11 Ill. App. 3d 171 at 175, as follows:

"It is clear from [an analysis of the zoning ordinances and the nature of the authority and power granted in the state Acts relating to counties and municipalities] that municipalities were given the right to control proposed zoning problems within the 1 1/2 mile radius prior to the adoption of county zoning ordinances, and that after the adoption of the county zoning ordinances, the county zoning authority was paramount within such area, subject, however, to the right of the municipality by appropriate protest to require that any such change or adoption of zoning authority was required to be legislatively enacted by not less than 3/4 of the members of the county board. It was thus obviously the legislative plan to vest in the county the right to control zoning within the 1 1/2 mile radius of the city boundaries, subject only to the specific limitation granting the municipality power by adequate protest to require the 3/4 vote referred to. This pattern

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of vesting power in the county to control zoning in the 1 1/2 mile area surrounding the municipality is carried out in the provisions of ch. 34, sec. 3158 (Ill. Rev. Stat. 1971, ch. 34, sec. 3158), where it is specifically provided that the municipality can protest any rezoning attempt and thereby require that any such rezoning be passed only by a 3/4 vote of the county board. * * *

A municipality has no specific or general authority to exercise continuing jurisdiction over petitions for variance by a city, once the county has adopted a zoning ordinance. The only authority a municipality has after a county has adopted a zoning ordinance is to protest any proposed variance before the county zoning authority.

I therefore am of the opinion that once the county has adopted a zoning ordinance, a city or village no longer has jurisdiction over the granting of variances within 1 1/2 miles of its corporate boundaries. For the city to continue to consider the petition for variance would be a useless act. However, there is no explicit authority for the county zoning administrator to assert jurisdiction in the matter. Rather, it would appear that the person seeking the variance should file a new petition with, or if provided by ordinance, transfer the proceeding to the county zoning authority.

Very truly yours,

A T T O R N E Y G E N E R A L