

September 7, 2000
OPINION NUMBER 00-226

Ms. Jessie McCrory LeBlanc
Assistant District Attorney
Twenty-Third Judicial District
430 South Burnside Ave.
Gonzales, Louisiana 70737

84 PARISHES
88 POLICE JURIES
174 ZONING
LSA-R.S. 33:101.1, 33:102, 33:106, 33:107, 33:110, 33:113
Ascension Parish Charter Section 4-18

“The Ascension Parish Planning Commissions concerns over increased traffic, flooding, and other health, safety, and general welfare issues, if well founded, provide adequate reason for denial of certain plats pending review/revision of the current plans and completion of those presently being drafted.”

Dear Ms. LeBlanc,

This office is in receipt of your opinion request wherein you question the legality of enacting a moratorium on subdivision development. You state that as Ascension Parish is experiencing tremendous population growth, the Planning Commission has begun denying some requests for subdivision plat approval founded upon concerns over increased traffic, flooding, and other issues of public health, safety, and welfare. Furthermore, you indicate that various Plans concomitant with the Parish Master Plan are currently being drafted.

LSA-R.S. 33:102 grants parishes authority to create planning commissions by ordinance. Section 4-18 of the Ascension Parish Charter mandates that the Parish Council act upon this authority to wit:

The parish governing authority shall make and adopt and shall be authorized to amend, extend and add to an official plan for the physical development of the unincorporated areas of the parish, and *shall create by ordinance a planning commission* with the powers and duties set forth in state law, and shall appropriate funds for the commission as it deems necessary and fiscally prudent. (emphasis added)

The general powers and duties of the parish planning commission are such that the

.....commission shall adopt a master plan for the physical development of the unincorporated territory of a parish.

* * * *

Such plan, with the accompanying maps, plats, charts, and descriptive matter shall show a commission's recommendation's for the development of the parish or municipality, as the case may be, including, among other things, the general location, character, and extent of railroads, highways, streets, viaducts, subways, bus, street car and other transportation routes, bridges, waterways, lakes, water fronts,

boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces; As the work of making the whole master plan progresses, a commission may from time to time adopt and publish a part or parts thereof, any such part to cover one or more major sections or divisions of the parish or municipality, as the case may be, or one or more of the aforesaid or other functional matters to be included in the plan. A commission may from time to time amend, extend, or add to the plan.

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LSA-R.S. 33:106

The purpose of a planning commission created under authority of LSA-R.S. 33:102 and Ascension Parish Charter Section 4-18 is that of

* * * *

..... guiding and accomplishing a coordinated, adjusted, and harmonious development of the parish or municipality, as the case may be, and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, the adequate provision of public utilities and other public requirements, and in the case of a municipal planning commission, vehicular parking. LSA-R.S. 33: 107

In general, a commission shall have such powers as may be necessary to enable it to fulfill its functions, promote planning, *and in all respects carry out the purposes of this Sub-part.* (emphasis added) LSA-R.S. 33:110.

With particular respect to your inquiry, planning commissions have a duty to approve or disapprove plats submitted to them. LSA-R.S. 33:113. The act of approving or disapproving a subdivision plat is a legislative function involving the exercise of legislative discretion by the planning commission, based upon data presented to it. LSA-R.S. 33:101.1

In summary, the Ascension Parish Planning Commission was created under authority of LSA-R.S. 33:102 and the mandate of Section 4-18 of the Ascension Parish Charter. The ordinance creating the planning commission, according to the mandate of Section 4-18 of the Parish Charter, vests in the Commission those powers and duties pronounced in state law. Those powers and duties are to be exercised for purposes as set forth in LSA-R.S. 33:107.

In the opinion of this office, the action taken by the Ascension Parish Planning Commission in denying certain plat approvals is a legislative function involving the exercise of legislative

discretion and is thus, allowable within the intent of the law. It is presumed that the exercise of this discretion was founded upon the presentation of unbiased, accurate information and data. Moreover, it is the duty of the planning commission to consider the present and future needs of the parish and to act in a manner that best promotes health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development. LSA-R.S 33:107 The Commissions concerns over increased traffic, flooding, and other public health, safety, and general welfare issues, if well founded, provide adequate reason for denial of certain plats pending review/revision of the current Plans and completion of those presently being drafted.

We hope this opinion sufficiently addresses your concerns and if we may be of any further assistance in this regard, please do not hesitate to contact this office.

With kindest personal regards, I am

Sincerely,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY:

KEVIN L. HANCHEY
Assistant Attorney General

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SYLLABUS

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Ascension Parish Charter Section 4-18

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Author: Kevin L. Hanchey

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Date Requested: September 7, 2000