

JUNE 10, 1955.

HON. JOSEPH E. McLEAN, *Commissioner,*
Department of Conservation and Economic Development,
State House Annex,
Trenton, New Jersey.

MEMORANDUM OPINION P-16.

DEAR DR. McLEAN :

You have asked our opinion as to whether or not a county planning board created pursuant to R. S. 40:27-1 qualifies as a "regional planning agency" under section 701 of Title VII of the Federal Housing Act of 1954.

Section 701 of Title VII of the Federal Housing Act of 1954 provides for two types of Federal planning grants. The Administrator is empowered to make grants to State planning agencies "to facilitate urban planning for smaller communities (under 25,000 population) lacking adequate planning resources" by providing "planning assistance (including surveys, land use studies, urban renewal plans, technical services and other planning work, but excluding plans for specific public works)." Further, "The Administrator is further authorized to make planning grants for similar planning work in metropolitan and regional areas to official State, metropolitan, or regional planning agencies empowered under State or local laws to perform such planning."

As is set forth in section 2.3 of the Regulations issued by the Administrator of the Housing and Home Finance Agency relating to grants under section 701:

"In general, metropolitan planning is construed to mean planning for the urbanized or related area surrounding, and including, a major city or group of cities." * * *

"Metropolitan planning is not limited to the area *outside* of the central city or cities. Its purposes is to secure coordinated planning of the entire area and this may well involve general land use plans, major thoroughfare plans, uniform platting controls and other measures dealing both with the central city and its environs. However, metropolitan planning, as used in Section 701 of the Act, is not intended to include items which are the exclusive concern of individual cities, such as, for example, plans for the development of the central business district, civic center plans or a detailed zoning code." * * *

"Regional planning may also include areas that are not metropolitan, in the sense of being centered in a major city, but which are characterized by other types of urban development."

Section 2. 4 of those Regulations provides in part:

"The Act states that grants may be made 'to official State, metropolitan, or regional planning agencies empowered under State or local laws to perform such planning.' The applicant agency may be an official State agency which is authorized to plan for metropolitan or regional areas within the State, or it may be an official metropolitan or regional planning agency empowered by State or local laws to do planning work for metropolitan or regional areas." * * *

"Furthermore, there are many county planning agencies which, by virtue of the size, location and urban character of the county, are actually engaged in planning of a metropolitan nature. Finally, there are various

authorizations in State and local laws for joint action by a city and county, or by several adjoining jurisdictions so that they may conduct planning work on a metropolitan or regional basis.

It is not possible to lay down a precise rule as to what types of agency can qualify under Section 701 of the Housing Act. A final determination of eligibility can be made only after submission of documentation establishing the legal basis for the applicant's claim to eligibility and an application describing the work which it proposes to do with the aid of Federal funds." Finally, section 2. 5 of the Regulations provides :

"In order to qualify for grants for metropolitan or regional planning, applicant agencies must be :

- a. Legally created as an official State, metropolitan or regional planning agency empowered under State or local laws to perform planning work in metropolitan or regional areas.
- b. Legally empowered to receive and expend Federal funds and expend other funds for the purpose stated in a. above, and to contract with the United States with respect thereto.
- c. In position to provide non-Federal funds in an amount at least equal to one-half the estimated cost of the planning work for which the Federal grant is requested.
- d. Technically qualified to perform the planning work, either with their own staffs or through acceptable contractual arrangements with other qualified agencies or private professional organizations or individuals."

The formation of county planning boards by action of the governing body of the respective counties in this state was authorized by chapter 251 of the Laws of 1935, now R. S. 40:27-1 et. seq.

The duties of the county planning board are set forth in R. S. 40:27-2 which provides :

"The county planning board shall make and adopt a master plan for the physical development of the county. The master plan of a county, with the accompanying maps, plats, charts, and descriptive and explanatory matter, shall show the county planning board's recommendations for the development of the territory covered by the plan, and may include, among other things, the general location, character, and extent of streets or roads, viaducts, bridges, waterway and waterfront developments, parkways, playgrounds, forests, reservations, parks, airports, and other public ways, grounds, places and spaces; the general location and extent of forests, agricultural areas, and open-development areas for purposes of conservation, food and water supply, sanitary and drainage facilities, or the protection of urban development, and such other features as may be important to the development of the county.

The county planning board shall encourage the co-operation of the local municipalities within the county in any matters whatsoever which may concern the integrity of the county master plan and to advise the board of chosen freeholders with respect to the formulation of development programs and budgets for capital expenditures."

The county planning board is authorized to employ experts, with moneys which are appropriated to it by the county, or which are "placed at its disposal through gift" (R. S. 40:27-3). A public hearing is required before adoption of the master

plan, with provision being made for the co-ordination of municipal plans with the county master plan (R. S. 40:27-4).

That a planning board set up under the New Jersey Act for a county, which has been defined "as a political organization of certain territory, within the State, particularly defined by geographical limits." (14 Am. Jur. 185) constitutes a "regional planning agency" within the meaning of Section 701 of Title VII of the Federal Housing Act of 1954 is, in our opinion, clear.

However, we understand that some question has been raised as to whether a county planning board can constitute a "regional planning agency" under the Federal Act because the same act which authorizes creation of county planning boards also authorizes, by R. S. 40:27-9, the creation of regional planning boards; this even though in fact no regional planning board has been created in this State.

So, R. S. 40:27-9 provides in part as follows.

"The councils or corresponding administrative bodies of any group of municipalities, independently or together with the board or boards of freeholders of any county or counties in which such group of municipalities is located or of any adjoining county or counties; or the council or corresponding administrative body of any municipality together with the board of freeholders in which such municipality is located; or the boards of freeholders of any two or more adjoining counties, may co-operate in the creation of a regional planning board for any region defined as may be agreed upon by said co-operating councils and board or boards or by said co-operating boards."

Such regional planning board is required to make a master plan applicable to its region (R. S. 40:27-10); its member municipalities may delegate to it the powers and duties of municipal planning boards under R. S. 40:55-1 et. seq., and its member counties may delegate to it "any and all of the powers and duties of a county planning board as provided by sections 40:27-1 to 40:27-8 * * * for the territory of the county so resolving" (R. S. 40:27-11).

A reading of the quoted section authorizing the creation of regional planning boards makes it clear, however, that the legislative intent was not to destroy the status of county planning boards as "regional planning agencies," but rather to authorize the creation of planning boards other than county planning boards, by groups of municipalities, or counties, or both, to deal with an area other than the geographical limits of a particular county.

The region dealt with by a county planning board formed under R. S. 40:27-1 is the county; that dealt with by the regional planning board formed pursuant to R. S. 40:27-9 may be more or less than a county. The statutory authorization for the formation of a "regional planning board" does not destroy the qualification and standing of a "county planning board" as a "regional planning agency" within the meaning of Section 701 of Title VII of the Federal Housing Act of 1954.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: STANLEY COHEN,
Deputy Attorney General.