

OPINION NO. 91-02

TO: Bill Hudson, Chairman, Peoria Planning and Zoning Commission

FROM: Stephen M. Kemp, City Attorney

DATE: June 17, 1991

SUBJECT: Opinion on Definition of Public Health, Safety and Welfare.

QUESTION:

What is the meaning of the term "Public Health, Safety and Welfare" as its used in the review of prospective land use matters.

OPINION:

Generally, the actions of a municipality in zoning are an exercise of its police power. Westwood Meat Market, Inc. v. McLucas, 146 Colo. 435, 361 P.2d 776 (1961). The term "police power" has been defined as "the right of people through organized government to protect their health, life, limb, individual liberty of action, and property and to provide for public order, peace, safety and welfare." McQuillin Municipal Corporations, 3d ed., 24.10 at 39. The definition is constantly changing and accommodating to the complexities of modern society. Transamerica Title Insurance Co. v. City of Tucson, 23 Ariz.App. 385, 533 P.2d 693 (1975).

The police power does not extend to disregard or impair constitutional rights. For example, the City may not compel donations of right of way without compensation unless a reasonable relationship can be demonstrated between the use of the property and the impact upon the City's streets. Transamerica v. City of Tucson.

The courts accord municipal authorities wide discretion in the reasonable and nondiscriminatory exercise in good faith of the police power in the public interest. [emphasis added] This authority is designed to protect the health, morals, peace and good order of the community; to promote its welfare in trade, commerce, industry and manufacture and to carry out the objects implied in the city's creation. Hobbs v. Biswell, 81 NM 778, 473 P2d 917 (Ct.App. 1970)

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Therefore, it is our opinion that health, safety and welfare as defined in the Peoria Zoning Ordinance involves exercise of the police power and includes review of the impacts on the health, morals, peace and good order of the community; whether the act promotes its welfare in trade, commerce, industry and manufacture and whether the act carries out the objects implied in the city's creation. Additionally this term implies taking into account the specific guidelines contained in the City's Zoning Ordinance.

If you should have any further questions, please do not hesitate to contact me.

SMK:jf:ei

cc: Planning and Zoning Commission
Phil Bloom, Planning and Zoning Director

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