

SHERIFFS: It is not mandatory upon the sheriff to appoint  
STATE PARK BOARD: park superintendents as deputy sheriffs.

September 29, 1941

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Dear Sir:

This will acknowledge receipt of your request for an opinion under date of September 17, which is quoted herewith:

"A park superintendent of this county has received notice from the State Park Board that on August 22nd that board determined that all park superintendents should be made deputy sheriffs in their respective counties.

"Although the sheriff of this county would have no objection to appointing our particular park superintendent a deputy sheriff, he would like to know whether or not this is compulsory or discretionary, and whether or not it serves any substantial purpose."

Section 13133 R. S. Missouri 1939, provides that sheriffs in such counties as Clinton County may appoint one or more deputies with the approbation of the judge of the circuit court.

"Any sheriff may appoint one or more deputies, with the approbation of the judge of the circuit court; and every such appointment, with the oath of office indorsed thereon, shall be filed in the office of the clerk of the circuit court of the county."

Section 13134, R. S. Missouri 1939, further provides that the sheriff's deputies shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff.

"Every deputy sheriff shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff."

The word "may" has been construed as "shall" and "mandatory" where the public interest is concerned. The public or third persons have a claim de jure that the power conferred should be exercised whenever something is directed to be done for the sake of justice. Thus in *Kansas City, Mo., v. J. I. Case Threshing Machine Co.*, 87 S. W. (2d) 195, 1. c. 205, the court said:

"The words 'may, must and shall' are constantly used interchangeably in statutes and without regard to their literal meaning; and in each case are to be given that effect which is necessary to carry out the intention of the Legislature as determined by ordinary rules of construction. 59 C. J. 1081, Sec. 635; 25 R. C. L. 768, Sec. 12; 2 Lewis-Sutherland (2d Ed.) 1153, Sec. 640; Maxwell on Interpretation of Statutes (5th Ed.) 389; Endlich on Interpretation of Statutes, 416-419,

306, 307. 'A mandatory construction will usually be given to the word "may" where public interests are concerned and the public or third persons have a claim de jure that the power conferred should be exercised or whenever something is directed to be done for the sake of justice or the public good.' 59 C. J. 1083, Sec. 635. Of course, all of these rules of construction are auxiliary rules. 'The primary rule of construction of statutes or ordinances is to ascertain and give effect to the lawmakers' intent.' *Meyering v. Miller*, 330 Mo. 885, 51 S. W. (2d) 65, 68. We, therefore, must decide (with the aid of these rules) the original question of whether the Legislature intended that cities of 300,000 should follow the sales method of levying occupation taxes upon merchants and manufacturers."

However, as hereinabove stated by the court, the fundamental rule of construction is to determine the intention of the legislature. It has also been held that where a statute merely requires things to be done, and nowhere prescribes the result that shall follow if such things are not done, then the statute should be held to be directory. In *State v. Bird*, 295 Mo., 344, l. c. 351-52, the court said:

"Under a more general rule this construction may be sustained in that if a statute merely requires certain things to be done and nowhere prescribes the result that shall follow if such things are not done, then the statute should be held to be directory. The rule thus stated is in harmony with that other well-recognized canon that statutes directing the mode of proceedings by public officers are to be held to be direc-

tory and are not to be regarded as essential to the validity of a proceeding unless it be so declared by the law. (State v. Cook, 14 Barb. 259.) By this we mean that if a fair consideration of the statute shows that unless the Legislature intended compliance with the proviso to be essential to the validity of the proceeding, which nowhere appears, then it is to be regarded as merely directory. (People v. Thompson, 67 Cal. 627; Kenfield v. Irwin, 52 Cal. 164; Westbrook v. Rosborough, 14 Cal. 180; Jones v. State, 1 Kan. 273.)"

In Section 13133, supra, there is no provision prescribing the results if such park superintendents are not deputized as sheriffs.

Therefore, under the foregoing provisions and authorities, unquestionably a sheriff may appoint a park superintendent within his county as a deputy sheriff upon securing the approval of the circuit court.

You inquire if such an appointment is compulsory or discretionary with the sheriff. We are unable to find any provision making it compulsory on the sheriff to appoint a park superintendent as a deputy sheriff. That is a matter that comes within the discretion of the sheriff.

You also inquire whether such an appointment will serve any substantial purpose. The writer happens to know the reason for the State Park Board action requesting the appointment of these park superintendents as deputy sheriffs. During the summer months, which is the busy season, frequent disturbances arise within certain state parks and as a rule it is necessary that some immediate action be taken. There was serious doubt in the mind of the State Park Board as to whether these park superintendents were authorized under the law to handle such disturbances. Frequently, it is impossible to call an officer of the law to the state park and have him arrive in time to apprehend offenders of the law.

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The State Park Board in making such a request had in mind that these park superintendents should be deputized only for the purpose of enforcing the law within the confines of the respective parks which they were supervising.

Therefore, it is the opinion of this Department that it is not mandatory upon the sheriff of your county to appoint park superintendents as deputy sheriffs. This is a matter within the discretion of the sheriff. However, under the law the sheriff may appoint such park superintendents as deputies, providing the sheriff secures the approval of the circuit court.

Respectfully submitted

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APPROVED:

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