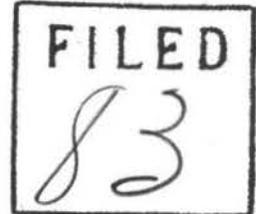


ROADS AND BRIDGES: The word "shall", as used in Section 8514, R. S. Missouri, 1939, is to be construed in a directive or permissive sense; that the words "biennially thereafter", as contained in said section, are to be construed as at least two years must elapse before a County Court shall have authority to change the boundaries of a road district formerly created under said section.

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Honorable J. P. Smith
Prosecuting Attorney
Webster County
Marshfield, Missouri

Dear Sir:

We are in receipt of your letter of April 6 wherein you request an opinion from this department, which opinion request reads as follows:

"Sec. 8514, R.S. Mo. 1939, provides for the County Court, shall during the month of January 1918, shall divide the County into Road Districts.

"The question is, would it be legal for the County Court, in some other months other than January, to make such road districts? Please answer definitely.

"The same Section further provides, 'Said Courts shall during the month of January biennially thereafter, have authority to change the boundaries of said Road Districts, etc.' 2nd question is: Has the County Court the authority to make a change in any other month of the year, other than January? Please answer direct.

"3rd: The first provision was in January, 1918, it being an even number. Must any change of road district to be legal have to be made in January of an even year after January, 1918?

"4th: Where part of County is in Special Road districts, can the County Court organize that part of the County not in special Road Districts, in what is called special unit Road district, or does it require the entire County to form the unit county road

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unit? Please give me direct opinion on this question.

"5th; Webster County has several Special Road Districts. The County Court a few years ago, I think in March, not in January as the law provides, organized that part of the County that is not in Special Road Districts in to what is called a County Unit. Can that legally be done? My version is that the County Court has no authority to form a county unit of the roads, unless it included all of the County, and that the County Court has no legal authority to change road districts only in the month of January of even years and not in any other month or years, and if done, it is illegal. Am I right or am I wrong? You tell me what the law is direct.

"When the County Court pretended to organize the County into a County unit, a Road district that had about \$800.00 in cash was taken over by the Unit Road District. The road district wants to be put back where it was before, and their money and machinery returned to them. Can the County Court do that?"

At the outset, we wish to call attention to Section 8514, R. S. Missouri 1939 referred to in your opinion request, which section reads as follows:

"The county courts of all counties, other than those under township organization, shall, during the month of January, 1918, with the advice and assistance of the county highway engineer, divide their counties into road districts, all to be numbered, of suitable and convenient size, road mileage and taxable property considered. Said courts shall, during the month of January biennially thereafter, have authority to change the boundaries of any such road district as the best interest of the public may require."

Now concerning ourselves with the construction that should be placed upon the word "shall" as that term is used in the above section of the statutes, we call attention to the case in re Laub, appeal of Snyder et al., 21 Atl. (2d) 575, 1. c. 580, wherein the court said:

"While the Act contains provisions mandatory in terms, it must be remembered that the word "shall" when used by the Legislature to a court, is usually a grant of authority, and means "may," and even if it is intended to be mandatory it must be subject to the necessary limitation that a proper case has been made out for the exercise of the power.' Anderson's Appeal, 215 Pa. 119, 122, 64 A. 443, 444; Becker v. Lebanon, etc., St. Ry. Co., 188 Pa. 484, 41 A. 612; Pittsburgh v. Coursin, 74 Pa. 400."

In the case of State ex inf. Gentry, Atty. Gen., v. Lamar et al., 291 S. W. 457, 1. c. 458, the court stated the general rule as follows:

"It is a rule of construction that a statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others, is directory merely, unless the nature of the act to be performed, or the phraseology of the statute is such, that the designation of time must be considered as a limitation of the power of the officer. * * * * * It would be strange if a statute specifying an early day at which an act must be done with a view to its speedy execution, should be construed that the act could not be done at all after the day when the necessity for its performance is as great, if not greater, afterwards than before. If the court had failed to make the appointment in the term time, the clerk could have made it; but clearly when the court convened again, the power of appointment in the clerk was suspended.' St. Louis County Court v. Sparks, 10 Mo. 117, loc. cit. 122, 45 Am. Dec. 355."

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In the case of State ex. inf. Mitchell, Pros. Atty., ex rel Goodman v. Heath, 132 S. W. (2d) 1001, 345 Mo. 226, l.c. 229, the court said:

" * * * * '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. * * * * *"

We further wish to point out that in neither Section 8514, supra, nor any section in Article 3, Chapter 46, R. S. Missouri, 1939, of which Section 8514 is a part, is there contained a penalty provision, nor is there prescribed the result that shall follow should the County Court divide their county into road districts, or should the County Court change the boundaries of such road districts in a month different from January, the month set forth with particularity in Section 8514. Therefore, we must conclude from the reading of the cases that the word "shall," as contained in Section 8514, is directory or permissive and not mandatory.

Now turning to your question No. 1 which reads, "Would it be legal for the County Court in some other months other than January to make such road districts," my answer is that it would be legal because of the fact that it is merely directory that the court shall divide the county into road districts in the month of January. Further, the County Court would have the authority to change the boundaries of such road districts in a different month other than January for the same reason.

In question No. 2 you ask, "Has the County Court the authority to make a change in any other month of the year other than January?" This has been answered in question No. 1.

Your question No. 3 reads as follows: "Must any change of road district to be legal have to be made in January of an even year after January, 1918?" The answer to this question is yes.

We wish to call attention to the last sentence in Section 8514, which sentence reads as follows:

"Said courts shall, during the month of January biennially thereafter, have authority to change the boundaries of any such road district as the best interest of the public may require."

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It is our view that it is directory whether or not they change the boundaries in the month of January. However, we wish to particularly call attention to the word "biennially", as under the rules of statutory construction it is our duty to give meaning to the word "biennially" and construe it in its common and ordinary meaning in the whole section. The word "biennial" is defined in Webster's Dictionary as follows:

"A space of two years. Happening, or taking place, once in two years; as a biennial election. Continuing or lasting for two years."

Therefore, it is our view that a County Court having once followed the provisions of the first sentence of Section 8514, and having divided the county into road districts with the advice and assistance of the county highway engineer, that a two year period must elapse before the County Court shall have authority to change the boundaries of such road district so created and designated under the provisions as contained in the first sentence of the section.

To sustain our position in this proposition, we call attention to the case of State ex rel. McKittrick, Atty. Gen., v. Carolene Products Co., 144 S.W. (2d) 153, 1. c. 155, 346 Mo. 1049, wherein the court said:

"It is a cardinal rule of construction that every word, clause, sentence and section of an act must be given some meaning unless it is in conflict with the legislative intent. State v. Wipke et al., Mo. Sup., 133 S.W. 2d 354; State ex rel. Kansas City Power & Light Co. v. Smith, 342 Mo. 75, 111 S.W. 2d 513; Holder v. Elms Hotel Co., 338 Mo. 857, 92 S.W. 2d 620, 104 A. L. R. 339.
* * * * *"

In answer to questions Nos. 4 and 5, we are herewith enclosing an opinion heretofore rendered by this department to Honorable Charles E. Murrell, Jr., Prosecuting Attorney of Adair County, Kirksville, Missouri, dated December 14, 1939, which in our view answers these two questions specifically.

Answering the question in the last paragraph of your opinion request, we presume you have reference to money and machinery and other property turned over to the road overseer under the provisions of Section 8518, R. S. Missouri 1939. It will be noted that such road overseers are under bond. Further,

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in Section 8521, R. S. Missouri 1939, each road overseer makes a detailed report under oath to the County Court of the monies received and how expended by him, which report and settlement is duly approved by the court. We presume that this has been adhered to, and in view of what we have heretofore set forth in this opinion, no doubt the last paragraph of your letter is of no further consequence.

It may be pointed out that the road district referred to in the last paragraph of your letter has become extinct, and any changes there would be now brought about by the County Court might or might not in the scope be the same geographic area of the old district. But be this as it may, if a district were now created it would be an entirely new district for all intents and purposes as distinguished in the old district which is not extinct.

CONCLUSION

It is the opinion of this department that the word "shall", as contained in Section 8514, R. S. Missouri 1939, is to be interpreted in a directive and permissive sense as distinguished from a mandatory sense.

It is the further opinion of this department that when a County Court has divided a county into road districts, as is provided in Section 8514, at least two years must elapse before a County Court of the county shall have authority to change the boundary of any road district so created under Section 8514, for said section uses the words "biennially thereafter".

Respectfully submitted,

APPROVED:

B. RICHARDS CREECH
Assistant Attorney General

ROY McKITTRICK
Attorney General

BRC:ml
Enc.