

COUNTY COURTS: Section 270.090, RSMo 1949, makes it mandatory upon a county court, upon petition of 100 householders anywhere within such county to submit the issue of invoking the stock law at a general election held in such county and it is discretionary with county court as to whether such issue is to be submitted at a special election preceding any general election. Under Section 270.130, RSMo 1949, a single township within county is not authorized to petition the county court to hold an election to invoke the stock law within such single township.

February 20, 1952



2-20-52

Honorable Jerry B. Schnapp
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Sir:

The following opinion is rendered in reply to your recent request reading as follows:

"The County Court of Madison County, Missouri has requested that I secure an opinion from you under Chapter 270 of the Missouri Revised Statutes of 1949. The question is, whether or not a petition of one hundred householders of a Township in the County is sufficient to submit the question of restraining animals from running at large at a general election or at a special election. This question arises under Section 270.090 and Section 270.130 of the Missouri Revised Statutes of 1949.

"It is my interpretation of the said Statutes that providing the requirements of the Sections are met that it is mandatory to submit a question at a general election and further that the County Court does have the discretion as to whether or not to submit the question at a special election.

"I would certainly appreciate your opinion in this matter."

As we view the above quoted inquiry, we feel that three main questions are presented as follows:

1. Does the language of Section 270.090, RSMo 1949, cast a mandatory duty on the county court, upon the petition of one hundred householders of the county, to submit the issue of invoking the stock law at a general election?

Honorable Jerry B. Schnapp

2. In a county-wide election held under Section 270.090, RSMo 1949, may the one hundred householders, petitioners for such election, be residents of a single township in the county?

3. Under Section 270.130, RSMo 1949, may a single township in a county petition the county court to submit the issue of invoking the stock law within such township at a general or special election?

An answer to the first two questions submitted depends on the construction to be given Section 270.090, RSMo 1949, which provides as follows:

"The county court of any county in this state, upon the petition of one hundred householders of such county, at a general election, and may upon such petition of one hundred householders, at a special election, called for that purpose, cause to be submitted to the qualified voters of such county the question of enforcing, in such county, the provisions of this chapter. Said petitioners shall state in their petition to said court what species of the domestic animals enumerated in section 270.010 they desire the provisions of this chapter enforced against, and may include one or more of said animals in said petition; and said court shall cause notice to be given that such vote will be taken, by publishing notice of the same in a newspaper published in such county, for three weeks consecutively, the last insertion of which shall be at least ten days before the day of such election, and by posting up printed notices thereof at three of the most public places in each township in such county, at least twenty days before said election; said notices shall state what species of domestic animals on which the vote will be taken, to enforce the provisions of this chapter against running at large in such county, which shall be the same as petitioned for to said court."

The wording of Section 270.090, RSMo 1949, quoted above, does contain ambiguity in that it fails to disclose on its face a mandatory duty devolving on the county court to call the election

Honorable Jerry B. Schnapp

referred to therein at a general election. It is possible to clear up this ambiguity if we insert the word "shall" after the word "state" appearing in the second line of the statute.

The appellate courts of Missouri have established a rule of law governing the construction of a statute when the meaning thereof is not clear. The Springfield Court of Appeals in *State v. Mooneyham*, 253 S.W. 1098, 1.c. 1100 said:

"If the intent of the Legislature is reasonably clear, then all grammatical errors and errors in spelling and punctuation are disregarded or corrected. The meaning of words may be limited, restricted, or expanded by construction of the courts, when it becomes necessary in order to make the law harmonize with reason and properly express what was in fact intended by the lawmakers in enacting the law. *St. Louis v. Christian Bros. College*, 257 Mo. 541, 552; 165 S.W. 1057; *Stack v. General Baking Co.*, 283 Mo. 396, 410-413, 223 S.W. 89. To accomplish the same purpose, words omitted may be read into the statute. *Lewis' Sutherland*, *Statutory Construction* (2d Ed.) § 382; *State ex rel. v. King*, 44 Mo. 238. For the same reason, a word, phrase, or sentence may be read out of the statute. *State ex rel. v. Sheehan*, 269 Mo. 421, 427, 190 S.W. 864."

By reading the word "shall" into the second line of Section 270.090, RSMo 1949, immediately after the word "state", we have the meaning of the statute clearly stated and find that a mandatory duty is put upon the county court to submit the matter of adoption of the stock law within the county at a general election when one hundred householders of the county petition for the same. Under the statute the county court may exercise its discretion as to whether to submit the issue at a special election preceding any general election.

The second question posed in the inquiry seeks to determine whether or not the one hundred householders of the county petitioning for such election may be obtained from a single township within the county. It must be kept in mind that this particular section, Section 270.090, RSMo 1949, provides for a county-wide election and not for an election in any single township or in several townships. The only requirement we find in this statute relative to the location of the one hundred petitioning householders is that they be "of such county." Consequently, we are unable to read into

Honorable Jerry B. Schnapp

the statute any additional provision which would prohibit the householders from being located in any single township in the county.

The third question posed in the inquiry involves Section 270.130, RSMo 1949, which provides as follows:

"Whenever two or more townships in one body in any county in the state of Missouri, by petition of one hundred householders, not less than ten of whom shall be from any one of said townships, petition the county court for the privilege to vote on the question of restraining horses, mules, asses, cattle, goats, swine and sheep from running at large, the same law governing counties is hereby applied to said townships, and said petitioners shall not be debarred the right to restrain said animals if a majority of the qualified voters of said townships, voting at any general or special election, shall vote in favor of so restraining such animals. Nothing in this section shall be so construed as to debar the right of restraining any two or more species of such animals; provided, however, that nothing in this section or chapter shall be construed to prevent the petitioning for and holding of an election to permit animals to run at large in any township or townships that have voted to restrain said animals from running at large, notwithstanding the county or township has theretofore voted to restrain animals from running at large."

The above quoted statute is clearly applicable only in those cases where two or more townships in one body petition the county court to call an election within such townships in order to invoke the stock law therein. In such case the statute clearly states that the one hundred householders who are petitioning for the election shall be residents from such townships and that not less than ten thereof shall be from each of the townships which are acting in one body to invoke the stock law within the townships.

The clear language of this statute rules out any possibility that petitioners in a single township within the county may petition the county court to call an election within that township with a view to invoking the stock law therein.

Honorable Jerry B. Schnapp

CONCLUSION

It is the opinion of this office that under the provisions of Section 270.090, RSMo 1949, a mandatory duty is cast upon the county court, upon petition of one hundred householders anywhere within said county, to call an election to invoke the stock law at a general election held in such county, and it is discretionary with the county court as to whether it will submit the issue at a special election preceding any general election.

It is the further opinion of this office that under provisions of Section 270.130, RSMo 1949, a single township in any county may not, by petition of one hundred householders, cause the county court to call an election therein for the purpose of invoking the stock law.

Respectfully submitted,

JULIAN L. O'MALLEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

JLO'M:ba