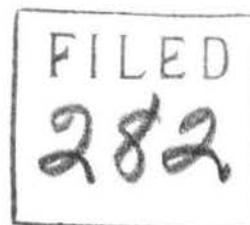


COUNTY LIBRARY DISTRICT: If petition for establishing county library  
PETITION FOR: district outside all cities and towns with  
COUNTY COURT: DUTIES: tax supported libraries of county, filed  
MANDATORY: WHEN: with county court of such county, under  
Section 182.010 RSMo 1959, and court finds  
petition to comply with section, it shall make record required by sec-  
tion. Court without discretion has mandatory duty of ordering election  
held. Court has discretion in setting date, and may order election held  
on next annual school election date or on special election date of peti-  
tion. Cannot hold election less than forty-five days after filing of  
petition.

OPINION NO. 282

August 3, 1967



Mr. Charles O'Halloran  
State Librarian  
Missouri State Library  
State Office Building  
Jefferson City, Missouri 65101

Dear Mr. O'Halloran:

This office is in receipt of your request for a legal opinion regarding the construction of Section 182.010 RSMo 1959. Your request reads in part as follows:

"My question is, does the county court have any discretion in calling an election or, having found the petitions adequate and satisfactory, must the court call the election without fail?"

"May I ask your opinion further as to whether the county court in this situation possesses any discretion as to the date of the election if a date has been stated in the petition. In other words, may the county court postpone the date of the election beyond the dates in the petition for reasons of its own?"

Honorable Charles O'Halloran

That part of Section 182.010 RSMo 1959 to which your first inquiry is directed reads as follows:

"1. Whenever qualified electors equal to five per cent of the total vote cast for governor at the last election in any county, outside of the territory of all cities and towns in the county which at the time of election as hereinafter provided maintain and control free public and tax supported libraries pursuant to other provisions of this chapter except as provided in section 182.030 shall petition in writing the county court, asking that a county library district of the county, outside of the territory of all such aforesaid cities and towns, be established and be known as ' \_\_\_\_\_ ' county library district, and asking that an annual tax be levied for the purpose herein specified, and specifying in their petition a rate of taxation not less than one mill nor more than two mills on the dollar of assessed valuation; then the county court, if it finds the petition was signed by the requisite number of qualified petitioners and verified in accordance with the provisions of section 126.040, RSMo, pertaining to initiative petitions, shall enter of record a brief recital of the petition, including a description of the proposed county library district, and of its finding; and shall order that the propositions of the petition be submitted to the voters of the proposed county library district at the next annual school election, or at a special election to be held on date stated in the petition. Under no circumstances shall the election be held less than forty-five days after the filing of the petition \* \* \*."

Under provisions of Section 182.010 supra, the procedure for organization of a county library district is started by filing of a petition with the county court of the county of the proposed library district. The petition shall contain the signatures of qualified voters, equal in number to five percent of the total vote cast for governor at the last election outside the territory of all cities and towns of the county maintaining free public, tax supported libraries. The petition shall ask for the establishment of " \_\_\_\_\_ county library district", and shall specify a rate of not less than one nor more than two mills on the dollar assessed valuation for library taxes.

Honorable Charles O'Halloran

If the court finds the petition to contain the required number of signatures of qualified voters, verified in accordance with Section 126.040, it "shall enter of record a brief recital of the petition, including a description of the proposed county library district, and of its finding; and shall order that the propositions of such petition be submitted to the voters of the proposed county library district at the next annual school election, or at a special election to be held on the date stated in the petition. Under no circumstances shall the election be held less than forty-five days after filing of the petition."

The word "shall" has been used twice in the last quoted portion of Section 182.010, in connection with the duties of the court after the filing of the petition, and it is believed the proper construction of this word is of vital importance and the answer to the first inquiry is dependent upon same.

The primary rule of all statutory construction is to ascertain and give effect to the intent of the lawmakers, from the words used in the statute if possible. In such construction words are to be construed in their plain or ordinary sense rather than in a technical sense in the absence of a legislative intent to give them a technical meaning.

The general rule with reference to the construction of the word "shall" appearing in a statute in connection with an act or duty of a public officer affecting the right or welfare of the public is that "shall", is imperative where the public or persons have rights which ought to be exercised or enforced, but may be held directive, only where no rights or benefits depend upon its imperative use, or permissive when necessary to accomplish the purpose of the legislative act or to sustain the constitutionality of a statute, as it was held in the case of State v. City of St. Louis, 2 S.W.2d 713.

Section 182.010 supra, grants the right to qualified voters of any county outside the territory of cities and towns of the same county, maintaining free tax supported libraries, to organize a county library district by following the procedure provided by the section.

After that step in such procedure has been reached at which the county court has found the petition filed with it to be in proper form and verification, the mill tax shown, within the statutory limitation and the required number of qualified voters' signatures thereon, all in accordance with the statute, it then becomes the duty of the court to make the necessary entries in its

Honorable Charles O'Halloran

record and to order an election to be held on the date of the next annual school election or on the date set out in the petition for a special election, at which the propositions of the petition shall be submitted for approval or disapproval of the voters of the proposed library district. The court has no discretion in the matter, but has the mandatory duty of calling the election and it cannot deny the voters the right of voting upon the propositions of the petition, thereby defeating the legislative intent and purpose in enacting Section 182.010 supra, by refusing to call an election.

After finding the petition to be sufficient, the court has no discretion as to whether it will or will not call the election, and shall call same as noted above, it is believed the court does have discretion in setting a date for the election. It may order the election held on the date of the next annual school election or on the date set out in the petition for a special election, as it may deem proper under the circumstances provided however that such election cannot be held less than forty-five days after the filing of the petition.

For reasons given above, our answer to the first inquiry is that upon finding a petition for establishing a county library district, under Section 182.010 supra, sufficient, the county court has no discretion, but has the mandatory duty of calling an election at which the voters of the proposed county library district may vote upon the petition-propositions. The court does have discretion in setting the date of election and it may order the election held on the date of the next annual school election or on the date for special election shown in the petition, as it may choose, provided however, that such election cannot be held less than forty-five days after the filing of the petition.

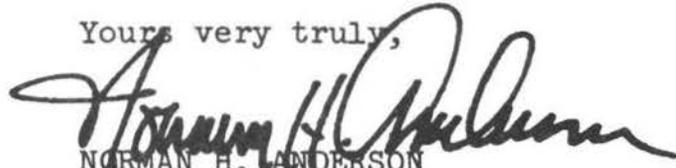
#### CONCLUSION

Therefore, it is the opinion of this office that if a petition for establishment of a county library district outside all cities and towns of a county maintaining tax supported libraries, is filed with the county court of any such county, as provided by Section 182.010 RSMo 1959, and the court finds the petition to comply with the section, it shall make its record entries in the matter as required by such section. The court then has no discretion, but has the mandatory duty of ordering an election to be held. However, upon finding the petition to be sufficient, the county court has discretion in setting an election date. The county court may order the election held on the date of the next annual school election or on the date set out in the petition for a special election as the county court deems proper provided, however, that the election shall not be held less than forty-five days after the filing of the petition.

Honorable Charles O'Halloran

The foregoing opinion which I hereby approve was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

A handwritten signature in black ink, appearing to read "Norman H. Anderson". The signature is written in a cursive style with a large, prominent initial "A".

NORMAN H. ANDERSON  
Attorney General