

VILLAGES and TOWNS - Villages and towns should style their ordinances in accordance with the statutes relating to such villages and towns.

April 18, 1936.



Mr. William Barton
Jonesburg, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"May a town, with five trustees, under the village and town municipal form of electing trustees and managing the town government, having been operating under that form since incorporation, style their ordinances under Section 7133 Revised Statutes of Missouri 1929 as follows " * * * * Trustees of the Village of _____, or should Trustees of the Town of _____. Section 7133 uses the word 'shall be', which it seems would make it rather mandatory to use the word village, there being a further condition that such town now has a population of over 500 or about 571 population according to the last 1930 census, tho it has not changed to a fourth class city, and operates as it always has by an election of five trustees under the Village and Town form of government?"

"If after styling their ordinances as a village, and actually having over 500 population, or 571, and operating as a village, would the enclosed ordinance be in proper form, and under their power as such operating village, or town, enforceable, presuming that of course, said ordinance would be properly passed and approved by the Board of Trustees?"

"I make this inquiry because if such a village or town in my County is placed in a situation so as not enforce its ordinances, some corrective legislation should be offered to remedy the situation.

"Incidentally, the ordinance in question is one to be used by the town of New Florence to obtain money to repair their streets and maintain them. I shall therefore turn over to them such information as you see fit to me in regard to such situation."

Appended to your request for an opinion is a copy of a proposed ordinance relating to a motor vehicle tax, which we do not deem necessary to set forth for the purposes of this opinion.

There has been no attempt in this opinion to pass upon the validity of the proposed ordinance.

Inferentially, it appears that you believe that by reason of having of population of over five hundred, that the ordinance submitted would not be in proper form. The fact that your city has a population of five hundred seventy-one does not in anywise take it out of the town and village class set forth in our statutes. In the case of State ex rel. vs. Ryan, 232 Mo., l.c. 91, the court, in passing upon a proposition similar to the one which you infer, said:

"A city does not pass from one class to another automatically as counties do under the jury chapter. It passes by virtue of a vote of its people - its people shed their old charter, soul and shell, and assume new ones - the vote of the people in adopting the change being strictly in the nature of an act of incorporation - an entity is born, a municipal corporation, an artificial person, that may not lose its life and charter franchises otherwise than by another act of sovereignty, viz., another vote of the people reincorporating the city in another class."

Mr. William Barton

-3-

April 18, 1936

The style of ordinances relating to towns and villages is provided for in Section 7132, R. S. Mo. 1929. It reads as follows:

"The style of ordinances of villages organized under the provisions of this article shall be: 'Be it ordained by the board of trustees of the village of _____, as follows.' "

It is evident that the Legislature intended that the style of ordinances of villages organized under the provisions relating to towns and villages should be as above indicated. In construing the word "shall" as used in the statutes, which directs that an act or proceeding be done in a particular way, we direct your attention to the case of *Ex parte Brown*, 297 S. W. 1.c. 447; the court said:

"When a fair interpretation of a statute which directs acts or proceedings to be done in a certain way shows that the Legislature intended a compliance with such provision to be essential to the validity of the act or proceeding, then such statute is mandatory."

CONCLUSION.

In light of the above, it is the opinion of this department that the form of the proposed ordinance submitted with your request for an opinion is in proper form and complies with the provisions of Section 7132, *supra*.

Very truly yours,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

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