

TOWNSHIP ORGANIZATION: It is the mandatory duty of the county clerk to furnish a prepared form to the township clerk for the publication of the financial condition of the township.

February 8, 1939



Mr. Charles E. Hassett  
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Dear Mr. Hassett:

We are in receipt of your letter dated February 4, 1939, which reads as follows:

"Henry County is, as you know, a Township Organization County. Under Section 8170, R.S. '29, a duty is placed on the township board to publish annually, between the 1st and 10th day of March, an itemized statement of receipts and expenditures, inventory of tools, machinery, and other property, in some newspaper published in the township, etc.

"Under Section 8171, the county clerk has a duty to prepare forms for such publication, and on or before the 20th day of February of each year submit the same to the township clerk, and require such publication, as well as the filing of a certified copy of such statement in his office on or before March 20th.

"Only a few of the nineteen townships of this county have been following this procedure. The county clerk has not furnished such forms, although, all townships have been filing such a statement with the office of the clerk.

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"In my construction of the above sections, it is my view that these provisions are mandatory. Also, that a full itemized statement is required, and that a condensed form will not be sufficient.

"Naturally, the various township boards are much concerned, and would like to find some avenue of escape from this additional expense. I may add for your information, that the matter is being pressed by the newspapers.

"I would appreciate an opinion from your office as to the effect of these provisions, 8170 and 8171. If at all possible, and if you concur in my view that the statutes mean just what they say, I should like to have this opinion in time for the clerk to comply with the same prior to February 20th."

Section 8170, R. S. Missouri, 1929, reads as follows:

"The township board of directors in all counties under township organization shall keep or cause to be kept a full, true and correct record of all moneys received and disbursed on account of roads and bridges and all other receipts and disbursements of every nature in such township, showing in detail from whom and on what account such money was received, and to whom and for what purpose disbursed, together with a complete inventory of all tools, road machinery and other property belonging to the town-

ship, together with such other information as to the condition of roads and bridges and the needs of same as may be deemed of value, and between the first and tenth day of march of each year shall cause to be published an itemized statement of such receipts and expenditures, inventory of tools, machinery and other property in some newspaper published in such township, and if there be no newspaper published in the township, then such publication may be made in any newspaper of general circulation within such township published in the county; such statement shall be made by the township clerk under the direction of the township board and shall be sworn to by such clerk, and it shall be the duty of the township clerk on or before the twentieth day of March of each year to file a copy of such detailed statement with the county clerk of such county, and the county clerk shall lay the same before the county court at its next regular meeting."

Section 8171 R. S. Missouri, 1929, reads as follows:

"For the purpose of carrying out the provisions of the preceding section, it shall be the duty of the county clerk in counties having township organization to prepare, at the expense of the county, forms for the publication of the detailed statement of the township's receipts and disbursements, on or before the twentieth day of February of each year, and submit the same to the township clerk of each

township, together with any other information he may deem necessary, and the county clerk shall require each township board to make such publication according to the form submitted, and also require a certified copy of such statement to be filed in his office on or before the twentieth day of March of each year."

It will be noticed in the above Section 8171 that it is the duty of the county clerk to furnish forms for the publication of the detailed statements therein described. This strong statement proves that it was the intention of the legislature that this section should be considered mandatory and especially so as to the issuing of the above forms. The purpose of the issuing of the above forms was so that all of the detailed statements should be uniform from each clerk of each township. It specifically sets out the procedure how, and when, the clerk shall make his detailed statement and when the publication of such statement should be made.

In the case of Kroger Grocery & Baking Co. v. City of St. Louis, 106 S. W. (2d) 435, loc. cit. 439, par. 5-7, the court said:

"Summarizing the reasons underlying Kansas City v. J. I. Case T. M. Co., supra, on the instant issue, they are to the effect, in so far as material here, that said act of 1879 conferred a permissive, not mandatory, power upon certain municipalities to impose a graduated license upon merchants; but (considering the word "may" in said clause authorizing a graduated license as equivalent to "must" or "shall" (Id., 337 Mo. 913, loc. cit. 931 (8), 87 S. W. (2d) 195, loc. cit. 205 (15-17)), any attempt to exercise the

authority there conferred to exact graduated license fees must be exercised in conformity with the authority delegated and graduated in proportion to the annual sales (Id., 337 Mo. 913, loc. cit. 930(7), 87 S. W. (2d) 195, loc. cit. 205(13,14), and authorities cited; Keane v. Strodtman (Banc) 323 Mo. 161, 167(11), 18 S. W. (2d) 896, 898(11) (quoting Dougherty v. Excelsior Springs, 110 Mo. App. 623, 626, 85 S. W. 112, 113, to the effect that when special powers are conferred, or special methods are prescribed for the exercise of a power, the exercise of such power is within the maxim *expressio unius est exclusio alterius*, and 'forbids and renders nugatory the doing of the thing specified, except in the particular way pointed out'); State ex rel v. Clifford, 228 Mo. 194, 207, 128 S. W. 755, 758, 21 Ann. Cas. 1218."

The holding in the above case was to the effect that when a certain procedure was set out in the law and no other procedure was mentioned, then the procedure set out in the law is the only procedure that could be used in obtaining the results required.

In the case of State v. City of Maplewood, 99 S. W. (2d) 138, loc. cit. 142, Par. 5-7, the court said:

"The general rule with respect to the use of permissive words in a statute is stated in 59 C. J. Section 633, pp. 1077 and 1078, as follows:

'On the other hand, where statutes

are purely enabling in character, simply making that legal and possible which otherwise there would be no authority to do, and no public interests in private rights are involved, they will be construed as permissive. Generally, statutes, directing the mode of proceeding by public officers, designed to promote method, system, uniformity, and dispatch in such proceeding, will be regarded as directory if a disregard thereof will not injure the rights of parties, and the statute does not declare what result shall follow noncompliance therewith. \* \* \*

'Permissive words in a statute in respect of officers or courts will not be construed as mandatory where such construction would create a new public obligation; and it has been held that even mandatory words or provisions in a statute defining the duties of administrative officers may be construed as directory only, unless something in the body of the statute indicates the contrary.'

"Our Supreme Court in State ex rel. Ellis v. Brown, 326 Mo. 627, 633, 33 S. W. (2d) 104,107, stated the rule for determining whether a statute is directory or mandatory in the following broad terms: 'There is no universal rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. In the determination of this question, as of

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every other question of statutory construction, the prime object is to ascertain the legislative intention as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished.

According to the holding in this case the intention of the legislature as disclosed by all of the terms and provisions of the act in relation to the subject of legislation should be followed and under section 8171 the fact that the legislature specifically said:

"It shall be the duty of the county clerk."

The only construction that can be given to the section is that it is mandatory.

Section 8175 R. S. Missouri, 1929, reads as follows:

"Any official or other person who shall willfully fail to comply with any of the provisions of this article, and any person who shall willfully violate any of the provisions thereof, shall be deemed guilty of a misdemeanor, and where no other or different punishment is provided, shall be punished by a fine of not less than five dollars nor more than five hundred dollars."

This section provides a penalty which grades from a fine of not less than five dollars nor more than five hundred dollars, to be assessed against any official or other person who shall willfully fail to comply with any of the provisions of article

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15, Chapter 42 of the Revised Statutes of Missouri, 1929. The fact that a penalty is prescribed against the violation of the act is further evidence to show that it was the intention of the legislature to enact a section which was mandatory upon the county clerk to issue the statement of the township's financial condition.

By reason of said penal section, 8175, supra, and according to the holding in the case of State v. City of Maplewood, supra, the section 8171 cannot be given any construction but that it is mandatory.

CONCLUSION.

In view of the above authorities it is the opinion of this department that under section 8171 R. S. Missouri, 1929, it is the mandatory duty of the county clerk to prepare and furnish forms to the township clerks for the purpose of publishing the financial condition of the township.

It is further the opinion of this department that any county clerk who fails to follow the mandatory instructions set out in 8171, supra, could be prosecuted under section 8175, supra. This act of the county clerk is only a ministerial duty and upon failure to perform that duty a mandamus proceeding would properly lie if commenced by some party in interest.

Respectfully submitted,

APPROVED:

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WJB:RW