

PUBLIC HEALTH NURSE:

When a petition signed by 250 taxpayers of a county requesting the appointment of a public health nurse is presented to the county court, it is mandatory upon the court to make such appointment.

COUNTY COURT:

July 11, 1960



Honorable Charles E. Hansen
Prosecuting Attorney
Franklin County
Union, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"A petition signed by more than two hundred fifty taxpayers has been presented to the County Court of Franklin County with the intention of forcing the County Court to employ a county health nurse under their interpretation of Section 192.160 Revised Statutes of Missouri 1949. Further, the Court doubts that the wishes of the petitioners represent the feeling of the majority of the citizens of the County. Your opinion is requested.

"QUESTIONS:

1. Assuming that the petition is in due form and the signatures valid, and there being no emergency, epidemic or places in need of disinfection, is it mandatory that the Court appoint a health nurse.

2. Does the County Court have the authority to poll the voters of Franklin County at the next General Election by placing on a ballot the question, the gist of which would be, whether or not the voters favor the establishment of a permanent public health nurse for Franklin County?"

Section 192.160, V.A.M.S. 1949, reads:

"In case a petition is signed by two hundred and fifty taxpayers and presented to any city

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council of the second, third or fourth class or any county court, asking for the appointment of a public health nurse or nurses or that any place infected with infectious or contagious disease be disinfected, as designated in section 192.140, it shall be the duty of said city council or county court, as the case may be, to provide for the appointment of said nurse or nurses and for the disinfecting of any infected place and to pay for the same as provided for in section 192.170."

It would appear to us that under the circumstances set forth in your letter, in the light of Section 192.160, supra, that it is mandatory upon the county court to appoint a public health nurse. It will be noted that the statute states that when a petition is signed by two hundred fifty taxpayers and presented to any county court asking for the appointment of a public health nurse, it then "shall be the duty" of the county court to provide for the appointment of said nurse. In the case of State v. Wurdeman, 246 SW 189 (1.c. 194 [6, 7]), the Missouri Supreme Court stated:

"* * * Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute. Especially is this true in a statute calling for strict construction."

In the case of State v. Wade, 231 SW2d 179 (1.c. 181 [1, 2]), the Missouri Supreme Court stated:

"There can be no question about the mandatory character of these statutes. Section 13827 says that each year 'the county court of each county in this state shall prepare and publish * * * a detailed financial statement of the county for the year ending December 31, preceding.' The requirements of the statement are set out in this statute with particularity and Section 13828 provides that 'the court shall forward one proof (of publication of this statement) to the state auditor' and obtain his approval 'that it complies with the requirements of this section' before paying for its publication or preparation.* * *"

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For the above reasons we believe that the answer to the first question is in the affirmative. Since that is our opinion, the answer to your second question is necessarily in the negative because the proposed procedure as set forth in your second question would contemplate a disregard of the law as set forth in Section 192.160, supra.

CONCLUSION

It is the opinion of this department that when a petition signed by two hundred fifty taxpayers of a county requesting the appointment of a public health nurse is presented to the county court, it is mandatory upon the court to make such appointment.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:bw