

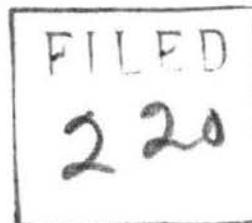
POLLING PLACES:
ELECTIONS:
COUNTY CLERKS:
ELECTION BOARDS:

County clerks, boards of election commissioners or other proper election officials are not required to designate tax supported public buildings to be used as polling places under the provisions of Section 111.257 RSMo. Supp. 1967.

OPINION NO. 220

June 9, 1969

Honorable Peter H. Rea
Prosecuting Attorney
Taney County
Branson, Missouri



Dear Mr. Rea:

This official opinion is issued in response to the request contained in your letter of recent date. The question is as follows:

" 'Are county clerks, boards of election commissioners or other proper election officials required to designate tax supported public buildings to be used as polling places under the provisions of Section 111.257, RSMo. Supp. 1967?' "

The wording of the Statute above referred to pertinent to the issue before us is as follows:

"The county clerk, board of election commissioners, or other proper election official having authority over any general, special or local election, may designate tax-supported public buildings to be used as polling places, and no official having charge or control of any public building shall refuse to permit the use of the building for election purposes."

To determine whether or not the above statute is permissive, in that it is purely optional with the proper official as to whether or not to designate a public building as a polling place, or if by the statute it is mandatory that he do so hinges upon the interpretation given the word "may."

Webster's Third New International Dictionary defines "may" as "have permission to ... used nearly interchangeably with can."

Honorable Peter H. Rea

In 82 C.J.S. Statutes §830a, page 877 it states: "As a general rule the word 'may,' when used in a statute, is permissive only, and operates to confer discretion, especially where the word 'shall' appears in close juxtaposition in other parts of the same statute."

A reading of §111.257 RSMo, Supp. 1967, shows that the person having charge of the building has no discretion in the matter. Had the legislature meant to negate discretion on the part of the official designating the polling places, the word "shall" would have been used to clearly indicate the mandatory intent of the statute.

The courts of Missouri have almost invariably given the word "may" a meaning allowing discretion - granting an option, or giving permission. State v. Youngdahl, 391 S.W.2d 605, 607, 608, (K.C.C.A. 1965); Byers Bros. Real Estate & Insurance Agency, Inc. v. Campbell 353 S.W.2d 102, 108 (K.C.C.A. 1961); State v. Dinwiddie, 213 S.W.2d 127, 130, (Mo. 1948).

Common knowledge in addition to the wording of the statute would clearly indicate the discretionary tone of the statute. For example a great many precincts, or even wards or other geographic voting units would not contain a tax supported public building or if it did contain one, it could be highly unsuitable for a polling place e.g. a city dog pound.

Conclusion

Therefore it is the opinion of this office that county clerks, boards of election commissioners or other proper election officials are not required to designate tax supported public buildings to be used as polling places under the provisions of Section 111. 257 RSMo, Supp. 1967.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jack Edwards.

Very truly yours,



JOHN C. DANFORTH
Attorney General