

JACKSON COUNTY BOARD OF ELECTION COMMISSIONERS: May conduct intermediate registration in any manner they deem advisable.

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August 24, 1934.



Hon. Fred A. Boxley,
County Counselor,
1112 Commerce Building,
Kansas City, Missouri.

Dear Sir:

This department is in receipt of your letter of August 17 with reference to the power of the Board of Election Commissioners of Jackson County to hold intermediate registration.

Section 10524, R.S. Mo. 1929 provides in part as follows:

"The board of election commissioners may from time to time, as in the judgment and discretion of the board may seem necessary cause intermediate registration to be made in such manner and form as to said board may be deemed advisable. Said board of election commissioners may require the judges and clerks to make such intermediate registration in the various precincts in said county or the board of election commissioners as a board of registry may hold sessions in each township in said county for the purpose of making an intermediate registration, said board of election commissioners acting as judges and the clerks of said board of election commissioners acting as registry clerks.****"

Section 10525, R.S. Mo. 1929 provides in part as follows:

****Said board of election commissioners shall also have full power and authority to make any necessary rules and regulations for the conducting of the business of said board and for the expeditious and efficient handling of the business

of said board and of the board
of registry thereof."

The question now before us is whether or not the Board of Election Commissioners may provide for intermediate registration in a manner other than that provided or "suggested" in Section 10524, R.S. Mo. 1929. This point, of course, resolves itself into the question of whether or not the statute is mandatory or directory only. In this connection it must be remembered that the word "may" is only to be construed as mandatory for the purpose of sustaining or enforcing a right, but never for creating one.

The correct rule is announced in the case of Granite Bituminous Paving Company v. McManus, 129 S.W. 448, 144 Mo. App. 593, wherein the Court said (l.c. 607):

"The distinction between mandatory and directory enactments has often been under consideration by the courts. Into which of these classes any given statute falls is to be determined by its character and purpose. If no substantial rights depend upon it and no injury can result from ignoring it, and the purpose of the Legislature can be accomplished in a manner other than as prescribed therein and substantially the same results obtained, then the statute will generally be regarded as directory."

There is no question but that substantial rights depend upon the having of an intermediate registration in Jackson County. In view of this fact, we conclude that the word "may", as used in line 2 of Section 10524, R.S. Mo. 1929, is mandatory in that the Board of Election Commissioners must have an intermediate registration; however, the method of having this intermediate registration is a matter upon which no substantial rights depend, and the word "may" as used in the second line of said section may be construed to be directory only. We conclude that it was also the intention of the Legislature to leave to the Board of Election Commissioners the manner and form of having such an intermediate registration.

CONCLUSION

It is therefore the opinion of this department that by reason of the plain language of Section 10524, R.S. Mo. 1929, and the power to make rules and regulations granted to the Board of Election Commissioners under Section 10525, R.S. Mo. 1929, that

the Board of Election Commissioners may conduct intermediate registration in Jackson County in any manner they may deem advisable.

In the instant case it appears that the handling of the intermediate registration in a manner other than that provided in Sec. 10524, R.S. Mo. 1929 will make for a more expeditious and efficient handling of the business of said Board, and if such be the case, it is the opinion of this department that the Board of Election Commissioners of Jackson County has full power to handle the intermediate registration in this manner.

Respectfully submitted,

GILBERT LAMB,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General

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