

COUNTY HIGHWAY COMMISSION:  
DUTIES OF COUNTY COURT  
IN REGARD THERETO:

The provisions of the County  
Highway Commission Act are manda-  
tory and it is the duty of the  
County Court to comply therewith.

-----

March 18, 1943

Hon. J. V. Kesterson  
Presiding Judge  
Pettis County Court  
Sedalia, Missouri



Dear Sir:

This is in reply to yours of recent date, wherein you  
submit the following:

"A question has arisen before the Pettis  
County Court in regard to the state laws  
applying to the creation of a county high-  
way commission. I refer particularly to  
Chapter 46, Article 2, Sections 8502-8513  
of the Revised Statutes of Missouri, 1939.

"It is our understanding that this law,  
passed in 1927, is mandatory upon the  
County Court, though no such commission  
has ever been established in Pettis County.  
Our desire is of course to fulfill the law  
if it applies to this county, and we there-  
fore are anxious to have your opinion."

The County Highway Commission Act, which is Article 2,  
of Chapter 46, R. S. Mo. 1939, was enacted in 1927 (Laws of  
Missouri, 1927, page 421). The first section of this Act,  
which is Section 8502, R. S. Mo. 1939, reads as follows:

"There is hereby created and established  
in the several counties of this state a  
county highway commission to be composed  
of four members, who shall serve without

compensation and who shall possess the qualifications, and be appointed in the manner and for the term in this article provided."

Your question is whether or not it is mandatory on the part of the County Court to appoint these Commissioners and comply with the provisions of the Act. Our Supreme Court in *State ex rel. Ellis v. Brown*, 33 S. W. (2d) 104, announced the rule in determining whether a statute is directory or mandatory. At l. c. 107 the court quoted from 25 R. C. L. Par. 14, pp. 766, 767, the following principle:

"A mandatory provision is one the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding. Directory provisions are not intended by the legislature to be disregarded, but where the consequences of not obeying them in every particular are not prescribed the courts must judicially determine them. 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 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. Generally speaking, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substance are directory, while the provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory."

Also, in State ex rel. Hay, et al., Election Commissioners, v. Flynn, 147 S. W. (2d) 210, the St. Louis Court of Appeals, in construing an election statute and whether or not it was mandatory, made this statement, l. c. 211:

"\* \* \* There is no absolute test by which the question here presented may be resolved, but in passing upon the matter, the prime object is to ascertain the legislative intent from a consideration of the statute as a whole, bearing in mind its object and the consequences that would result from construing it one way or the other. \* \* \* \* \*"

If the County Highway Commission Act should be considered as directory, then the various County Courts of the State by not following its provisions could nullify the Act. Another statutory construction which might be applicable here is that the Legislature should not be held to have enacted a meaningless statute. After considering this entire Act we are convinced that the lawmakers have intended that it be mandatory and that its provisions be carried out by the various County Courts.

CONCLUSION

It is, therefore, the opinion of this department that it is the mandatory duty of the County Court to appoint the County Highway Commission and carry out the provisions of the County Highway Commission Act as is prescribed in said Article 2, Chapter 46, R. S. Mo. 1939.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK  
Attorney-General

TWB:CP