

COUNTY COURTS:

Mandatory for court to order election
to restrain animals when proper petition
is presented.

October 10, 1938

10-11



Honorable Bryan A. Williams
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of
September 16, 1938, requesting an opinion as follows:

"Referring to Sec. 12805, R. S.
1929, question of restraining
animals, how submitted. The
following question has been
asked:

'Is it mandatory for the County
Court to put the question of
enforcing the provisions of this
article on the ballot, when the
proper petition has been present-
ed to the County Court on that
proposition?'"

Section 12805, R. S. Mo. 1929, is in part as
follows:

"The county court of any county
in this state, upon the petition
of one hundred householders of
such county, at a general election,
and may upon such petition of one
hundred householders, at a special
election, called for that purpose,
cause to be submitted to the quali-
fied voters of such county the
question of enforcing, in such
county, the provisions of this
article. * * * * *

It will be noticed that the word "may" is used in this statute with respect to what the county court is to do when a proper petition is presented. We have examined all the cases of this state which in any way mention the effect of Section 12805, supra, and find none which had determined whether said section is mandatory or directory. In other words, the question is: Must the county court order the election to be held upon the filing of a proper petition?

In *Steines et al. v. Franklin County et al.*, 48 Mo. 167, a situation somewhat similar to the instant question was before the court. The County Court of Franklin County had appropriated certain money for the improvement of roads without submitting the question to the voters. The statute, at that time, provided that before said expenditure could be made "the county court may for the purposes of information" submit the proposed expenditure to the voters. The court held that submission to the voters was mandatory and quoted from the case of *Leavenworth and Des Moines R. R. Co. v. Platte County*, 42 Mo. 171, the following language:

"* * * 'This (the election) was a necessary condition of the power to subscribe. That all the sections of an act are to be construed together is a well-settled rule of construction. The word 'may' in this clause must be interpreted to mean 'shall.' It is a power given to public officers, and concerns the public interest and the rights of third persons, who have a claim de jure that the power shall be exercised in this manner, for the sake of justice and the public good.' Citing cases. This principle is founded in justice, and was declared in an early day, that where the rights of third persons are involved, or the public good requires it, the word 'may' will always be construed to mean 'shall.' * * * * *

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Under the rule of construction as laid down in the above case, it is clear that the word "may" in Section 12805, supra, must be construed to be "shall" and that the provisions of said section respecting submission of the restraining of animals to the voters is mandatory when a proper petition is filed in the county court. To hold otherwise would authorize the county court, if it so desired, to circumvent the will of the people by refusing to submit the question even though the whole county might desire that animals be restrained from running at large. The power given to the county court by this section concerns the public interests and the rights of third persons.

CONCLUSION

Therefore, it is the opinion of this department that Section 12805, R. S. Mo. 1929, is mandatory and that county courts must, upon the filing of a sufficient petition, submit the proposition of restraining animals from running at large to the voters of the county.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

LLB:DA