

1142.

## HOUSING RELIEF—APPROPRIATION THEREFOR BY COUNTY COMMISSIONERS MANDATORY WHEN—AMENDED SENATE BILL NO. 200 CONSTRUED.

## SYLLABUS:

*The provisions of Am. S. B. No. 200 which in terms authorize the county commissioners to appropriate money for the purpose of direct housing relief and authorize the clerk to issue vouchers on the county auditor for rent for indigent persons, which vouchers are acceptable by the county treasurer in payment of taxes are mandatory even though the language of such grant of power is permissive in terms when the board of county commissioners shall have found it to be necessary to furnish housing relief to indigent persons who are residents of such county, and when it has found such indigent persons to be entitled thereto.*

COLUMBUS, OHIO, July 26, 1933.

HON. LOUIS J. SCHNEIDER, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I acknowledge receipt of your recent request for opinion as follows:

“The County Commissioners of this county have referred to this office Amended Senate Bill No. 200, being an Act to authorize the county commissioners of any county to provide direct housing relief and for the auditor to deduct said amount from the tax settlement with each taxing subdivision, with the request for an opinion as to the legality and constitutionality of said Act, and whether the same is mandatory or directory only.

As this Act has state wide operation, we deem it advisable to request an opinion thereon from your office.”

Sections 1 and 2 of Am. S. B. No. 200, read:

“1. In addition to all other forms of relief, the commissioners of any county *are authorized* to appropriate the sum that said commissioners decide is necessary for the purpose of direct housing relief to indigent persons. Said commissioners may appoint the clerk of the board of county commissioners to investigate claims and demands for such relief. The clerk *may issue* a voucher to the auditor of the county each month for the rent of any indigent person whom he finds is entitled to such relief and such voucher shall in no case be for more than one-twelfth of the tax for the calendar year immediately preceding the issuance thereof and in no event to exceed the sum of ten dollars without including special assessments, upon the premises or portion of the premises occupied by such indigent person. Such voucher shall give the line and page of the book of the tax list of the county on which such property is entered and otherwise identify same as the auditor may direct and upon presentation of such voucher to the auditor, the auditor shall issue a warrant mentioning the property described in said voucher which shall be received by the treasurer on payment of taxes on the premises mentioned on said voucher. Said war-

rant shall not be negotiable or received by the treasurer in payment of taxes of any property except the property mentioned therein. At each semi-annual settlement between the treasurer and the auditor, the warrants that have been presented for the payment of taxes as herein provided shall be entered on a book provided by the auditor who shall deduct from each taxing subdivision the portion of the tax which is represented by said warrants and in making the settlement with each taxing subdivision amounts so deducted shall be entered upon same as taxes withheld for direct housing relief.

Sec. 2. Any municipality by its legislative body or any township by its trustees may appoint one or more officials, individuals or corporations not for profit to receive applications and make investigations of persons applying for such direct housing relief, and the commissioners shall deputize and authorize such persons and/or corporation so appointed by said municipalities or townships, to represent the commissioners and make investigations and, *subject to the approval of said commissioners, issue the vouchers mentioned in section 1 of this act.*"

(Italics the writer's.)

With respect to your inquiry as to the constitutionality of this act, I might say that it has been the long established policy of this office to render no opinion as to the constitutionality of any act which has been passed by the General Assembly. The power to pass upon the constitutionality of a law enacted by the legislative branch of the government or to declare the acts of such body to be violative of the provisions of the Constitution is probably the highest function of the judicial branch of the government. Such power is not vested in the Attorney General as an administrative officer.

Coming now to what I shall refer to as your second inquiry you will note that Am. S. B. No. 200 provides that the county commissioners "are authorized" and "may issue" certain vouchers. In other words, the language of the act is permissive in its terms and, as stated in 2 Lewis' Sutherland Statutory Construction, page 1146 with reference to the subject of mandatory and directory provisions of statute:

"The ordinary meaning of the language must be presumed to be intended, unless it would manifestly defeat the object of the provisions. \* \* But there may be circumstances which may couple the power with a duty to exercise it."

Am. S. B. No. 200 grants to the county commissioners the power when they decide it to be necessary for the purpose of direct housing relief to indigent persons, to issue certain vouchers described in such act. The question of construction of interpretation of such Amended Senate Bill, if it is to be viewed mandatory, would change the meaning of the ordinarily directory words "authorized" and "may" to the extent of giving them a mandatory meaning. But, as stated in 2 Lewis' Sutherland Statutory Construction, pages 1149 and 1150:

"Permissive words in respect to courts or officers are imperative in those cases in which the public or individuals have a right that the power so conferred be exercised. Such words, when used in a statute, will be construed as mandatory for the purpose of sustaining and enforcing

rights, but not for the purpose of creating a right or determining its character; they are peremptory when used to clothe a public officer with power to do an act which ought to be done for the sake of justice, or which concerns the public interest or the rights of third persons. A direction contained in a statute, though couched in merely permissive language, will not be construed as leaving compliance optional, when the good sense of the entire enactment requires its provisions to be deemed compulsory. Where a statute confers power upon a corporation, to be exercised for the public good, the exercise of the power is not merely discretionary, but imperative, and the words 'power and authority' in such case mean duty and obligation."

The language of the text writer appears to be amply supported by the decisions in Ohio. Thus, in the Opinion of Johnson, J., in the case of *State ex. rel. Myers vs. The Board of Education*, 95 O. S. 367, 373, we find the following language:

"Concerning the meaning to be given to the words 'may' and 'shall' this court in *The State of Ohio vs. Budd*, 65 Ohio St., 1, at page 5, says: 'The cases in which it is held that these words should be regarded as convertible are numerous, and they contain much learning. The sum of it, however, is that the natural meaning of these words is not always conclusive as to the construction of statutes in which they are employed, and that one should be regarded as having the usual meaning of the other when that is required to give effect to other language of the statute or to carry out the purpose of the legislature as that purpose may appear from a general view of the statute under construction.'

In *Columbus, Springfield and Cincinnati Ry. vs. Mowatt*, 35 Ohio St., 284, it is said, at page 287:

'Where authority is conferred to perform an act which the public interest demands, "may" is generally regarded as imperative.'

Similar is the language of Marshall, C. J. in the case of *Stanton vs. Realty Co.*, 117 O. S. 345, 355:

"It is urged in this case that it was discretionary on the part of the court of common pleas whether it would call witnesses and consider other evidence. With this argument we cannot agree. It is a settled rule of law that the word 'may' will be construed as 'shall' in a certain class of cases. In *Lessees of Swazey's Heirs vs. Blackman*, 8 Ohio, 5, it was held, at page 18:

'May' means 'must', in all those cases where the public are interested, or where a matter of public policy, and not merely of private right, is involved."

And in the case of *Boswell vs. Coal Company*, 217 Fed. 822, the federal court held that "may" in a statute has a permissive meaning, except in cases involving public interests or rights, or where a third person has a claim de jure that the power should be exercised.

I do not believe that the argument could be advanced that a public necessity is not involved in the question as to whether indigent persons are provided with the necessities of life by the government, in the event they are unable to

provide such necessities for themselves. The primary purpose of government is the welfare of its citizens or subjects. Amended Senate Bill No. 200 grants authority to the county commissioners to provide direct housing relief through the issuance of vouchers when the "county commissioners decide" such relief is necessary for the relief of indigent persons.

It would thus appear that the authorization granted by such act is one in which the public is interested or a matter of public policy is concerned as distinguished from a private right and, as held by the court in the case of *Lessees of Swazey's Heirs vs. Blackman*, 8 Ohio 5, 198, "may means must in such class of cases."

It is therefore my opinion that the provisions of Amended Senate Bill No. 200, which in terms authorizes the county commissioners to appropriate money for the purpose of direct housing relief and authorize the clerk to issue vouchers on the county auditor for rent for indigent persons, which vouchers are acceptable by the county treasurer in payment of taxes, are mandatory, even though the language of such grant of power is permissive in terms, when the board of county commissioners shall have found it to be necessary to furnish housing relief to indigent persons who are residents of such county, and when it has found such indigent persons to be entitled thereto.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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1143.

APPROVAL, NOTES OF ORANGE RURAL SCHOOL DISTRICT, CARROLL COUNTY, OHIO, \$1,513.00.

COLUMBUS, OHIO, July 26, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1144.

APPROVAL, NOTES OF LONDON RURAL SCHOOL DISTRICT, CARROLL COUNTY, OHIO, \$5,283.00.

COLUMBUS, OHIO, July 26, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*