

It is elementary that where there are two possible interpretations of a statute, one of which would render it valid and the other invalid, the court will adopt the former, so as to bring it into harmony with the constitution."

In view of the express provisions of the subsequently enacted Budget Law hereinabove commented upon, it is my judgment that the legislature has expressly provided a different method for the raising and distribution of revenue for the district health fund, consequently before moneys may be appropriated for such purpose, the provisions of the statutes for the raising of such moneys must be complied with.

Summarizing, and in specific answer to your question, it is my opinion that a county auditor has no authority under Section 1261-40, General Code, to withhold for the district health fund from townships and municipalities in a general health district at any semi-annual tax settlement, tax moneys raised in such subdivisions when no provisions for such items have been included in the annual tax budgets adopted by such townships and municipalities.

Respectfully,

JOHN W. BRICKER,
Attorney General.

133.

PUBLICATION—DELINQUENT LANDS—METHOD OF PUBLICATION
IN COUNTIES OF LESS THAN THREE HUNDRED THOUSAND.

SYLLABUS:

The provision contained in Section 5704, General Code, is mandatory in its requirement that the county auditor in counties having a population of less than three hundred thousand, shall cause a list of the delinquent lands to be published once each week for two consecutive weeks in two newspapers of opposite politics in the English language.

COLUMBUS, OHIO, February 13, 1933.

HON. HOWARD D. BARNES, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion in answer to the following question:

"Are the provisions of Section 5704 as amended, mandatory as to publication of the delinquent land lists, by the auditor?"

Your inquiry arises by reason of the statement of the purpose of the advertisement as set forth in the second paragraph of Section 5704, General Code, which, in so far as is material to your inquiry, reads:

"* * Within thirty days after delivery of the duplicate the county auditor *shall* cause a list of the lands on such delinquent list and duplicate to be published once a week for two consecutive weeks in two news-

papers of opposite politics in the English language published in the county and of general circulation therein.

* * Such publication shall be considered to be for the information of the public, and the omission of such publication shall not in any respect affect the validity of the delinquent land list and duplicate, nor of any charge then or thereafter made thereon, nor any foreclosure proceedings or other remedies provided in this or the succeeding chapter for the collection of taxes, assessments, penalties and interest shown thereon together with costs and other charges, nor the enforcement of the state's lien therefor. * *” (Italics, the writer's.)

The ordinary connotation of the word “shall” is that it creates a mandate that something is required to be done. I am not unmindful of the rule of statutory construction that “shall” on occasions may be construed as “may”. An examination of the decisions in which such rule is stated will disclose that such construction is permissible only when such construction is necessary to give effect to the other language in the section and to carry out that intent of the legislature otherwise expressed in the act. See *State ex rel. vs. Board of Education*, 95 O. S. 367; *Stanton vs. Realty Company*, 117 O. S. 345; *C. S. & C. R. R. Co. vs. Mowatt*, 35 O. S. 294.

In *Devine vs. State ex rel. Tucker*, 105 O. S. 288, the court held as stated in the first paragraph of the syllabus:

“An act of the general assembly will not be regarded as directory or discretionary as to those upon whom it is intended to operate, unless such directory or discretionary character clearly appears from the entire text of the act.”

The statute purports to direct the county auditor to advertise the delinquent land list “for the information of the public” and for such purpose uses language mandatory in its terms. It is within the province of the legislature to direct that such information shall be so given to the public. It may have been their purpose by such advertisement of delinquent taxpayers, to lessen the number of delinquent taxpayers. I do not believe it is within the province of a court to attempt to determine the soundness of purpose of the legislative body, but rather to determine the intent of such body. I therefore am of the opinion that the language of such section is mandatory in its requirement that the delinquent land list as stated in Section 5704, General Code, shall be published.

Specifically answering your inquiry it is my opinion that the provision contained in Section 5704, General Code, is mandatory in its requirement that the county auditor, in counties having a population of less than three hundred thousand, shall cause a list of the delinquent lands to be published once each week for two consecutive weeks in two newspapers of opposite politics in the English language.

Respectfully,
JOHN W. BRICKER,
Attorney General.