

1743.

APPROVAL, BONDS OF BUTLER VILLAGE SCHOOL DISTRICT, RICHLAND COUNTY—\$12,000.00.

COLUMBUS, OHIO, April 7, 1930.

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

1744.

APPROVAL, BONDS OF CROWN CITY VILLAGE SCHOOL DISTRICT, GALLIA COUNTY—\$4,000.00.

COLUMBUS, OHIO, April 7, 1930.

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

1745.

SOLDIERS' RELIEF COMMISSION—COMMON PLEAS JUDGE MUST APPOINT ONE MEMBER FROM AMERICAN LEGION, WHEREVER POSSIBLE.

SYLLABUS:

Section 2930, General Code, as amended by the 88th General Assembly, (113 O. L. 466) makes it mandatory that a member of the American Legion be appointed as one of the members of the Soldiers' Relief Commission, wherever it is possible to appoint such a member.

COLUMBUS, OHIO, April 7, 1930.

HON. JOHN J. CHESTER, JR., *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication, requesting my opinion upon a state of facts submitted to you by an adjutant of the American Legion, which communication you enclose.

The inquiry, in substance, is whether Section 2930, of the General Code, as amended with reference to requiring a member of the American Legion being designated as a member of the Soldiers' Relief Commission. Said section reads:

“There shall be a commission known and designated as ‘the soldiers’ relief commission,’ in each county, composed of three persons, residents of the county, each of whom shall serve for three years, and wherever possible one member of said commission shall be a wife or widow or son or daughter of an honorably discharged soldier, sailor or marine of the

Civil War or of the Spanish-American War or of the World War. Two of the persons so appointed shall be honorably discharged soldiers, sailors or marines of the United States, one of whom, wherever possible, shall be a member of the United Spanish War Veterans and the other shall be a member of the American Legion. On or before the first Monday in April of each year, a judge of the Court of Common Pleas in such county shall appoint one commissioner for such term."

Examining the provisions of this section, it will be noted that the word "shall" is used throughout the section. In other words, the section provides that a commission shall be established. It further provides that wherever possible one member of the same shall be a wife, widow, son or daughter of an honorably discharged soldier, sailor or marine of the Civil War, Spanish-American War or World War. The section further provides that two members shall be honorably discharged soldiers, sailors or marines of the United States, and wherever possible one of said members last mentioned "shall be a member of the United Spanish War Veterans and the other shall be a member of the American Legion."

It will be conceded, as a general proposition of law, that the use of the word "shall" is indicative of a mandatory statute. On the other hand, when the power to be exercised is discretionary or permissive the word "may" is used to express the same.

It is true that in special instances the word "shall" has been construed to mean "may" and in other instances the word "may" has been construed to mean "shall". Such constructions were made by reason of the context of the statute or provisions of other statutes in *pari materia* or when such a construction is impelled in order to protect the public interest.

The rule is stated in Sutherland on Statutory Construction, to the effect that "may" and "shall" are to be taken in their ordinary and usual sense unless the sense and intent of the statute require one to be substituted in place of the other.

There is nothing in the context of Section 2930, *supra*, or its related sections, which indicates any intent on the part of the Legislature that the term "shall" as used therein shall be permissive in character. The phrase "whenever possible" is clearly indicative of the fact that the Legislature used the word "shall" in its mandatory sense. Had it be merely directory, qualifications to take care of a situation wherein impossibility occurs would have been necessary. It would appear that it is the mandatory duty to appoint the Soldiers' Relief Commission. It further is mandatory to appoint the members in the manner therein set forth. Therefore, the only exception to the mandatory provision would be if a situation should arise wherein it would not be possible to appoint such members in the manner therein indicated.

I do not deem it necessary to comment upon the impossibility which would relieve the judge from the obligation of appointing a member of the American Legion. This situation may exist in certain counties of the state where there are either no members of the Legion or those who are members are disqualified for some reason or refuse the appointment. Wherever a member is available, however, the duty appears to be clear.

Based upon the foregoing, it is my opinion that Section 2930, General Code, as amended by the 88th General Assembly, (113 O. L. 466) makes it mandatory that one of the members of the Soldiers' Relief Commission be a member of the American Legion wherever it is possible to appoint such a member.

Respectfully,

GILBERT BETTMAN,
Attorney General.