



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 2, 1976

ATTORNEY GENERAL OPINION NO. 76-333

Mr. Tim R. Karstetter
Assistant County Attorney
McPherson County Courthouse
McPherson, Kansas 67460

Re: Taxation--Tax Rolls--Delivery

Synopsis: The penalty of \$5.00 per day for each day after November 1 that the county clerk fails to deliver the certified tax roll to the county treasurer is mandatory, and may not be waived or excused by the board of county commissioners.

* * *

Dear Mr. Karstetter:

K.S.A. 79-1803 requires that the county clerk prepare the tax roll and deliver it to the county treasurer on or before the first day of November in each year. Failure to do so is penalized thus:

"For every day after the first day of November that the county clerk shall retain such tax roll in his possession the county board shall deduct from his pay five dollars (\$5.00)."

You request my opinion whether the provision for deduction of \$5.00 per day from the county clerk for each day after November 1 that the county clerk has failed to deliver the tax rolls to the county treasurer is mandatory or directory. In my opinion it is mandatory.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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Memorandum

1st Floor, State

Curt T. Schneider
Attorney General

ATTORNEY GENERAL OPINION

Mr. Tim R. Karstetter
Assistant County Attorney
McPherson County Courthouse
McPherson, Kansas 67351

Re: Taxation--

Synopsis: The penalty for failure to file a tax roll on or before November 1 is mandatory, and the board of county commissioners is authorized to assess a penalty of five dollars for each day after November 1 that the county clerk has failed to deliver the tax rolls to the county treasurer is mandatory or directory. In my opinion it is mandatory.

Dear Mr. Karstetter:

K.S.A. 79-1803 requires the county clerk to file a tax roll and deliver it to the county treasurer on the first day of November. The penalty provided is indexed thus:

"For every day after November 1 that the county clerk fails to deliver to the county treasurer such tax rolls, the county board of commissioners is authorized to assess a penalty of five dollars for each day after November 1 that the county clerk has failed to deliver the tax rolls to the county treasurer is mandatory or directory. In my opinion it is mandatory.

You request my opinion whether the provision for deduction of \$5.00 per day from the county clerk for each day after November 1 that the county clerk has failed to deliver the tax rolls to the county treasurer is mandatory or directory. In my opinion it is mandatory.

In regard to this AG opinion, consideration must be given to School District v. Clark County Comms, 155 Kan. 636 (1942), and to the fact ~~the~~ penalty provision in K.S.A. 79-1803 was added to the statute in 1961. (See L. 1960, ch. 57, § 1 and L. 1961, ch. 441, § 1.)

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Paul v. City of Manhattan, 212 Kan. 381, 511 P.2d 244 (1973), which you cite, is directly in point. There, the court observed thus:

"Thus we said in *Shriver v. Board of County Commissioners*, 189 Kan. 548, 370 P.2d 124, 'Generally speaking, statutory provisions directing the mode of proceeding by public officers and intended to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties cannot be injuriously affected, are not regarded as mandatory, unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated.' (p. 566. Emphasis added.) A critical feature of mandatory legislation is often a provision for the consequences of non-compliance." [Emphasis supplied.] 212 Kan. at 385.

The authorities you cite from 2 Sutherland, *Statutory Construction*, § 2801 (3rd ed.), and 82 C.J.S., *Statutes*, §§ 376 and 379 are also directly in point.

Under the abundance of authority reflected above, it is my judgment that the penalty provided above is a mandatory one, which may not be waived by the board of county commissioners. The prompt delivery of the tax roll to the county treasurer is a vital step in the taxing process, and the legislature clearly sought to compel timely compliance with the statutory deadline by the assessment of a monetary penalty for noncompliance. The penalty is mandatory, in my judgment, and may not be waived or excused by the board of county commissioners.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj