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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

August 26, 1974

Opinion No. 74- 289

Honorable William W. Bunten
State Representative, 54th District
1200 Merchants National Bank Bldg.
Topeka, Kansas 66612

Dear Representative Bunten:

You advise that the Shawnee County Democratic Central Committee has failed to hold a meeting for the organization thereof within two weeks after the August 6, 1974, primary election, as required by K.S.A. 25-3802, which states in pertinent part thus:

"Each county central committee shall organize not later than two weeks after each primary election by electing a chairman, a vice-chairman, secretary and treasurer (the last two of whom may be the same person). . . . A meeting for such purpose shall be called by the county chairman or if he fails to do so for any reason, by any other officer of the county central committee."

According to our present information, the organizational meeting is scheduled for today, Monday, August 26, 1974, twenty days after the primary election, rather than within the fourteen day limitation. The question is raised whether action taken at any organizational meeting held after the fourteen-day period specified by law is legally valid and binding.

In *City of Hutchinson v. Ryan*, 154 Kan. 751, 121 P.2d 179 (1942), the court stated the applicable principles thus, quoting from 59 Corpus Juris 1078:

"A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others, and prompt conduct of business is usually directory, unless the

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phraseology of the statute, or the nature of the act to be performed and the consequences of doing or failing to do it at such time, is such that the designation of time must be considered a limitation on the power of the officer. So a statute requiring a public body, merely for the orderly transaction of business, to fix the time for the performance of certain acts which may as effectually be done at any other time is usually regarded as directory" 154 Kan. at 757.

In *School District v. Clark County Comm'rs.*, 155 Kan. 636, 127 P.2d 418 (1942), the court observed thus:

"There is a rule of statutory construction familiar to all lawyers, which is that when the legislature prescribes the time when an official act is to be performed, the broad legislative purpose is to be considered by the courts whenever they are called upon to decide whether the time prescribed by statute is mandatory or directory. If mandatory, there must be strict conformity. If directory, the legislative intention is to be complied with a [sic] nearly as practicable. Instances of the latter sort frequently arise, and indeed they are particularly applicable in respect to the official mode of procedure in matters of taxation. For example, it is the duty of the board of county commissioners at its meeting on the first Monday in August to order the proper levies of every sort to be extended on the tax rolls Instance are not rare where the board has declined or failed to make a particular levy; mandamus is invoked and a decision may be reached some weeks later holding that the contested levy should be made, and it is then made, although the *directory* time at which it should have been made has passed. Again, the statute says the county clerk shall prepare and deliver the tax rolls to the county treasurer on or before November 1 If the work of preparing the tax rolls is not completed by the statutory date (and litigation over the legality of the levies or other untoward circumstances sometimes causes delay), the statutory date on which the tax rolls should be delivered to the county treasurer must of necessity be regarded as directory rather than mandatory. Although the tax rolls are not delivered to the treasurer by the time *directed by the statute*, nevertheless we all have to pay our taxes when the belated delivery is made!" [Emphasis by the court.] 155 Kan. at 638-639.

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The criteria for determining whether a particular requirement is mandatory or directory was reiterated in *Shriver v. Board of County Comm'rs.*, 189 Kan. 548, 370 P.2d 124 (1962) thus:

"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."
189 Kan. at 556.

The requirement that the county central committee organize during a prescribed period of time is plainly intended to "secure order, system and dispatch" in the proceedings of county committees, and to require biennial organization promptly after the election of precinct committeemen and committeewomen. It is difficult to conceive that the rights of any person could be "injuriously affected" by holding the organizational meeting on August 26, rather than, e.g., on August 20. Moreover, nothing in K.S.A. 25-3802 suggests that if the organizational meeting is not called to be held strictly within this period by either the county chairman or any other officer of the county central committee, it should not be held at all.

In the present instance, we are advised that on August 9, three days after the primary election, the Shawnee County Election Commissioner furnished a list of those precinct committeemen and committeewomen elected at the time of the primary election. On August 13, after the addresses of these persons were assembled, a notice was mailed to all these persons, calling the organizational meeting August 26. We are further advised that the constitution and/or bylaws of the central committee require that notice of at least ten days be given before the meeting. The delay is clearly insubstantial and legally unimportant. Under every guideline and decision of the Kansas Supreme Court on the question of compliance with mandatory and directory statutory requirements, the procedural requirement of K.S.A. 25-3802 is plainly directory, and the lack of strict compliance does not invalidate an organizational meeting held but one week after the period fixed by the statute.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm