

Opinion No. 197**County Commissioners—Tax Deed Land
—County Land—Sale of Land Acquired
by Tax Deed, Mandatory.**

HELD: Chapter 65, Laws of 1933, makes the duty of the county commissioners mandatory to appraise, order and advertise for sale of lands acquired by tax deed.

May 8, 1933

You have requested the opinion of this office as to the interpretation of Chapter 65, Laws of 1933, and have submitted the following question: "Is it mandatory on the part of the board of county commissioners to order and advertise for sale all lands conveyed to the county by tax deeds prior to the enactment of said law, whether there is any possible chance of selling the same or not?"

Section 1 of said Chapter 65 recites:

"Whenever the county shall acquire any land by tax deed, it shall be the duty of the board of county commissioners, within six months after acquiring title, to make and enter an order for the sale of such lands. * * * And it shall be the duty of the board of county commissioners to so appraise order and advertise for sale all lands heretofore conveyed to the county by

tax deeds within ninety days from and after this Act takes effect."

Since the power of the county commissioners to sell such lands had previously been expressly granted by the legislature in Section 4465 R. C. M. 1921 as amended finally by Chapter 38, Laws of 1929, and the exercise of such power was directory only, it would seem that it was the intention of the legislature in enacting Chapter 65, Laws of 1933, to make the exercise of such powers mandatory. Certainly it is desirable that every reasonable means be used to place all such lands on the tax rolls of the counties and that appears to have been the purpose of this act. The language used by the legislature is of such a nature as to imply compulsion unless it can be made to appear from the other language used that the intention of the legislature was to make such duty directory only. I am unable to find anything in the act which would justify the latter construction. (59 C. J. 1076, sec. 633; 1079, sec. 635; 57 C. J. 548, sec. 5.)

The presumption is that the word "shall" as used in any given law is to be construed in an imperative sense, rather than directory. *State v. Meeker*, 182 Ind. 240, 243, 105 N. E. 906; *Haythorn v. Van Keuren*, 79 N. J. L. 101, 105, 74 A 502; *Colorado Springs v. Street*, 81 Colo. 181, 184, 254 Pac. 440. In *Newton v. Jasper County*, 135 Iowa 27, 30, 112 N. W. 167, 124 Am SR 256, it was said that the uniform rule seems to be that the word "shall", when addressed to public officials, is mandatory. See also: *Trobough v. State*, 119 Nebr. 128, 233 N. W. 452, 454.

Many other cases might be cited to the same effect. The phrase "it shall be the duty" seems to clearly indicate the intention of the legislature to make the duty mandatory. I am unable to find any words in the act to indicate a contrary intention of the legislature so as to permit me to give the act any other construction.