SEPTEMBER 12, 1949.

SYLVESTER B. MATHIS, *County Clerk,*
Office of the County Clerk,
Toms River, New Jersey.

FORMAL OPINION—1949. No. 91.

DEAR SIR:

Receipt is acknowledged of your letter, in which you request an opinion "as to whether it is compulsory to furnish registry lists of voters for each election district as referred to in 1949 Election Laws, 19:31–18.1, page 120" (Section 2 of Chapter 347, P. L. 1947; C. 19:31–18.1).

In reality, the exact point presented by your inquiry is whether it is mandatory for the county clerk in all counties to cause to be printed in handbill form the registry lists of voters certified and transmitted to him under R. S. 19:31–18. For if the section under consideration (C. 19:31–18.1) imposes such a mandatory duty upon the county clerk, there can be no doubt that copies of the printed lists must be furnished or delivered not only to voters applying and paying therefor but also to the several public and party officers specified.

After a thorough consideration of the matter we have concluded that under section 2 of Chapter 347, P. L. 1947 (C. 19:31–18.1) it is within the discretion of each county clerk to determine whether or not to cause the registry lists to be printed in handbill form; but that if the county clerk causes such lists to be so printed, it is his mandatory duty to furnish or deliver copies as prescribed in said section.

Section 2 of Chapter 347, P. L. 1947 (C. 19:31–18.1) reads as follows:

> The county clerk in all counties *may* cause copies of the registry lists, certified and transmitted under section 19:31–18 of the Revised Statutes, to be printed in handbill form, and *shall* furnish to any voter applying for the same such copies, charging therefor twenty-five cents ($0.25) per copy. He *shall* also furnish five printed copies thereof to each district board, which *shall* within two days post to such registry lists, one in the polling place and one in another conspicuous place within the election district. The county clerk *shall* also forthwith deliver to the chief of police, superintendent of elections if any there be and the municipal clerk of each of the municipalities in the county for which the lists have been printed five copies of the lists of voters of each election district in such municipality, and to the county board ten copies of the lists of voters of each election district in each of such municipalities. The county clerk *shall* also forthwith deliver to the chairmen of the State committees and to the chairmen of the county committees of the several political parties, five copies of the lists of voters of each election district in each of the municipalities in his county. (Italics supplied.)

In the above quoted section, does the word "may" connote discretion or mandate in the exercise of permitted authority? Ordinarily, the word "may" is not a mandatory term. But where statutes provide for the doing of acts or the exercise of power or authority by public officers, and private rights or the public interest require the doing of such acts or the exercise of such power or authority, they are mandatory, regardless of whether they are phrased in imperative or permissive terms. (See

Sutherland's Statutory Construction, Volume 3, Section 5808.) Resting upon this rule alone, and without deliberating the problem further, it might be concluded that, since the furnishing or delivery of the registry lists by the county clerk is obviously in the public interest, the word "may" is here to be construed in a mandatory sense.

However, the history of the legislation relating to the printing of registry lists by county clerks does not justify such a conclusion. Before enactment of Section C. 19:31–18.1 (which as aforesaid is section 2 of Chapter 347, P. L. 1947), the same (1947) Legislature had earlier amended R. S. 19:30–2 to provide that county clerks in counties having a superintendent of elections *shall* forthwith, and in all other counties *may,* cause the registry lists to be printed. (The distinction as to mandatory and discretionary printing had theretofore pertained to county clerks in counties of the first class and those in all other counties.)

It is important to note that Chapter 347, P. L. 1947, deals only with registry lists. This chapter amended R. S. 19:31–18 relating to the transmittal of the lists to the county clerk by the commissioner of registration; it supplemented Title 19 (Elections) by adding thereto the section under consideration (C. 19:31–18.1), another requiring investigation of names by the chief of police after his receipt of copies of the lists (C. 19:31–18.2), and a third requiring the county clerk to keep the registry lists on file for a year (C. 19:31–18.3); and it repealed R. S. 19:30–1 and R. S. 19:30–2. A comparison of the pertinent sections of the election law before and after the enactment of said Chapter 347 will reveal that, aside from the existing provision relating to the printing of the registry lists by the county clerk in all counties, virtually all the provisions of Chapter 347, P. L. 1947, had been previously embodied in the sections amended and repealed thereby. In other words, the act constituted a re-treatment of the subject matter. It is a logical presumption, therefore, that the 1947 Legislature, in enacting the same, concentrated its attention upon this particular phase of the election law to the point of being cognizant of the words which had been used therein to distinguish between discretionary and mandatory printing of the registry lists by the county clerks. In fact, by Chapter 168, passed earlier in the session, the same Legislature, as hereinabove indicated, had amended R. S. 19:30–2 to prescribe that county clerks in counties having a superintendent of elections *shall* forthwith, and in all other counties *may* cause the registry lists to be printed. Here was a clear distinction between discretion and mandate in the exercise of permitted authority. Accordingly, it must be assumed that, in phrasing section 2 of Chapter 347, P. L. 1947 (C. 19:31–18.1) the Legislature retained the word "may" with deliberate intent. Especially is this assumption logical when in the same section the word "shall" was used (several times) with respect to the furnishing and delivery of copies by the county clerks to the persons or officers specified.

Under the circumstances we have been forced to apply the rule of construction stated in *Federal Land Bank of Springfield, et al.* vs. *Hansen,* 113 F. 2d 82, 84, as follows:

> "May" will ordinarily be interpreted as discretionary when the word "shall" appears in close juxtaposition in other parts of the same statute.

Yours very truly,

THEODORE D. PARSONS,
Attorney General.

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.

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