

# CLALLAM COUNTY PROSECUTING ATTORNEY

CHRISTOPHER O. SHEA

PROSECUTING ATTORNEY

(360) 417-2301  
FAX (360) 417-2469

COURTHOUSE  
223 EAST FOURTH STREET  
P.O. Box 863  
PORT ANGELES, WASHINGTON 98362-0149

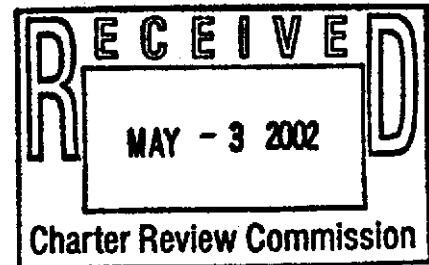
TOLL FREE:  
FROM SEATTLE (206) 464-7098  
FROM FORKS/CLALLAM BAY (360) 374-5324  
FROM CLALLAM BAY (360) 936-2700

DIRECT # 417-2365  
cmelly@co.clallam.wa.us

Ext. 2301

May 3, 2002

Charter Review Commission  
Clallam County Courthouse  
Port Angeles, WA 98362



Re: Article VIII

Dear Commissioners,

I recently received a request for an opinion with regard to the enforcement of the word "shall" in Article VIII. The request for an opinion queried "who has the authority to do the enforcing and how is it done?"

It is not clear what is being requested. The word "shall" appears no less than 41 times in ten sections of Article VIII. Perhaps this topic may be more meaningful if discussed at one of the Commission's meetings.

However, some general guidance can be provided in this letter.

In the constitutional context, the word "shall" is usually mandatory, though it may be treated as directory only if it appears from the express terms of a provision or by a necessary implication of the language used that it was intended to be directory only. *State ex rel Billington v. Sinclair*, 28 Wn.2d 575, 183 P.2d 813 (1947). In a statute, the term "shall" is generally construed to impose a mandatory duty. *Our Lady of Lourdes Hospital v. Franklin County*, 120 Wn.2d 439, 842 P.2d 956 (1993). The term is presumptively imperative unless a contrary legislative intent is apparent. *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389 (1996). The word "shall" in a statute is construed as directory, rather than mandatory, when a mandatory construction would frustrate the legislative intent of the statute. *Frank v. Dept. of Licensing*, 94 Wn.App. 306, 972 P.2d 491 (1999). The meaning of the term is determined by considering: (1) the terms of the act as they relate to the subject of the legislation; (2) the nature of the act; (3) the general objective to be accomplished; and (4) the consequences that would result from construing the statute in one way or another.

To the extent that a particular use of the word "shall" is mandatory, then the failure to comply with the duty imposed would subject the public official to a writ of mandamus which would compel compliance with the duty.

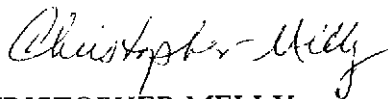
It must be observed, however, that the County Charter cannot be viewed in a vacuum, but must be viewed with regard to the limitations imposed by Article XI, § 4 of the State Constitution which renders any county charter subject to the Constitution and general laws of the State of Washington.

By way of example, Initiative No. 6 proposing repeal of the county's Critical Areas Ordinance was transmitted by the Auditor to the Board of Commissioners for public hearing and enactment or placement on the ballot. Clallam County Home Rule Charter VIII, § 8.50. Upon transmission, the Board had several options available to it. First, it could have done nothing, whereupon the sponsor would presumably have sought a writ of mandamus to compel the Board to conduct a hearing and either adopt the ordinance proposed or place it on the ballot for action by the voters. If a writ was sought and if the court determined that the Board, in fact, had a duty, then the court would have issued a writ compelling the Board to do what the law required the Board to do. However, simply because a writ may be sought does not necessarily mean that a court will find that a duty exists. Had a writ been sought, the County could have raised the lack of duty as a defense to the claim. Second, the Board could take preemptive action, through a declaratory judgment action, filed in Superior Court, to determine whether a duty exists. This latter option was the one selected by the Board with regard to initiative No. 6. The court determined that the Board had no duty due to the Court's interpretation of state law, i.e., the Growth Management Act (RCW 36.70A), which the county charter was determined to be subject to. The trial court based its decision upon two cases rendered by the State Supreme Court, finding the people's right of direct legislation under a county charter to be trumped by the Growth Management Act.

I hope that the foregoing has been of some assistance to you. If I have not adequately responded to the questions posed, perhaps we can discuss them during the next meeting of the Commission.

Very truly yours,

CHRISTOPHER O. SHEA  
Prosecuting Attorney



CHRISTOPHER MELLY  
Chief Deputy Prosecuting Attorney

CM:ljm

|              |           |
|--------------|-----------|
| c: Alexander | Roth      |
| Lotzgebell   | Fleck     |
| Perry        | Miller, R |
| Miller, J    | Sargent   |