

NEWSPAPERS: Must be published in county in order to qualify for publication advertisements and orders of publication under Sec. 13775, R.S.Mo. 1929; not necessary that mechanical printing be done in county.

Sec 13775 R.S.Mo. 1929 74 Laws 31

November 2, 1933.

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Mr. E.T. Barnes, Publisher,
The Brashear News,
Brashear, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of October 14, 1933 wherein you make the following inquiry:

"The Probate Judge of Knox County insists that administrators' notices cannot be legally published in The Knox County News because the paper is printed outside of the county. I should like to have your opinion on this point. We have been publishing the ballots for elections, which were paid for by the county and the proposed amendments to the Constitution paid for by the State."

Your question involves a construction of Section 13775, Laws of Mo. 1931, p. 303, which is as follows:

"All public advertisements and orders of publication required by law to be made, and all legal publications affecting the title to real estate, shall be published in some daily, tri-weekly, semi-weekly or weekly newspaper of general circulation in the county where located and which shall have been admitted to the post office as second class matter in the city of publication; shall have been published regular and consecutively for a period of one year; shall have a list of bona fide subscribers voluntarily engaged as such who have paid or agreed to pay a stated price for a subscription for a definite period of time. Provided that when a public notice required by law to be published once a week for a given number of weeks, shall

be published in a daily, tri-weekly, semi-weekly or weekly newspaper, the notice shall appear once a week on the same day of each week, and further provided, that every affidavit to proof of publication shall state that the newspaper in which such notice was published has complied with the provisions of this act. All laws or parts of laws in conflict with this section, except sections 13777, 13778, 13779, 7631, 7632 and 7633, Revised Statutes of Missouri, 1929, are hereby repealed."

I.

It is necessary that a newspaper shall be published in the county in order to qualify for publication advertisements and orders of publication under Sec. 13775, R.S. Mo. 1929, but it is not necessary that the mechanical printing be done in the county.

We assume from your letter-head that you live and edit the Brashear News at Brashear, Missouri in Adair County, and also edit the Knox County News at Hurdland, in Knox County, Missouri, and that the printing for both newspapers is done at Brashear. The statute above quoted states that the notices "shall be published in some daily, tri-weekly, semi-weekly or weekly newspaper of general circulation in the county where located." This involves the construction of the word "publish".

Words & Phrases, Volume VI, p. 437 defines "publish", as follows:

"The word 'publish' means primarily to make known, and has the same significance as 'circulate'.

The word 'publish' is defined as 'to make public; to make known to people in general'; 'to issue; to put into circulation.'"

The decisions of the various states differ widely on the construction of the word "publish", some states holding that when the word "publish" is used in a statute similar to the one quoted above, it also implies and includes the word "print". In State v. Board of County Commissioners, et al, 77 Montana, 316, l.c. 324, the Court, in passing upon the question, said:

"It is true that our statute employs only the word 'published', but the meaning of the word depends upon the subject with which it is connected. It may mean merely made known. (North Baptist Church v. Orange, 54 N.J.L. 111, 14 L.R.A. 62, 22 Atl. 1004). Slander is published by word of mouth; Libel is any sort of writing given publicity; a legal notice may be published by posting, and a newspaper may be published at a given place, within the meaning of one statute, while it does not at all meet the requirements of publication under a different statute. To publish a newspaper is, by common understanding, to compose, print, issue, and distribute it to the public (Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 37 A.L.R. 898, 92 South. 193), and, in our opinion, this was the understanding of the term intended by the legislature in passing the Act under consideration. The clear purpose of the Act was to compel the letting of printing contracts to local newspapers, in order that local capital and local labor should secure the benefits of the expenditure of money derived from local taxes, including their own; the closing paragraph of the Act emphasizes this purpose by providing that, where the newspaper holding the county printing cannot perform a part of the contract, it must sublet that part of the contract to an establishment which will do the work within the state and with Montana labor.

We have heretofore held that the word 'published', as used in the statute, evidently means printed and published. It refers to a newspaper having its home in the county (Strange v. Esval, 67 Mont. 301, 215 Pac. 807), and, whether such declaration was or was not necessary to a decision in that case it correctly interprets the statute and expresses the legislative intent in its passage. To hold otherwise would defeat the purpose of the Act by permitting a large concern situated in a city within the state, or even without the state, to control the county printing in any number of counties by establishing therein and furnishing such offices with papers for distribution within the counties."

The courts of Missouri have not passed directly upon this question but by arguendo in the case of *In Re Publishing Docket*, 266 Mo. 48, l.c. 50, the Court said:

"The only words of the above section which concern us, because they are the only words having any reference to the matter in hand, are: 'A copy of the docket shall be printed in the county wherein such Supreme Courtis held'. If we can read into this section by construction the additional requirement that such printing shall be 'in a newspaper published' in the county wherein the Supreme Court is held, then such publication must be so had. We must give to the word 'print' as used by the law-making power, its ordinary meaning, when used as a verb (and it so occurs in this statute), which is 'to make an impression with inked type.' The word 'publish' ordinarily means 'to make public'. A book, a paper or a pamphlet might be 'printed' but never 'published'. A paper might be 'printed' in St. Louis and 'published' in Chariton County."

In the above statement made by the court it appears that there is a distinction between the word "print" and the word "publish", and that "publish" does not include "print". This distinction was first made in the case of *Julian v. Kansas City Star*, 209 Mo. 35.

In the case of *State v. Morgan*, 144 Mo. App. 35, l.c. 42, same bearing indirectly upon the question, the Court said:

"The objection that the *Times-Democrat* was not a proper newspaper to publish the notice for the reason that its office is in the City of Macon and, therefore, not in the territory affected by the notice, is not well taken. The paper is published at the county seat and the evidence shows it has a general circulation in the county. It is published in the county within the meaning of the statute."

CONCLUSION.

Section 13775, supra, has been amended several times in recent sessions and was evidently designed by the Legislature to compel an editor to conduct a bona fide newspaper before being eligible to receive notices and publications. While the decision

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in the Montana Case, supra, is direct in point and would disqualify you under your statement of facts from accepting orders of publication and notices because the Knox County News is printed in Brashear, however, we do not believe that the courts of Missouri, under the decisions quoted above, have placed as broad an interpretation on the word "publish".

It is therefore the opinion of this department that if the Knox County News complies with all the requirements of the statutes, and is a bona fide newspaper, it is entitled to accept for publication regular notices as set forth in Sec. 13775, Laws of Mo. 1931, p. 303, even though the mechanical work of printing is done outside the county.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK,
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