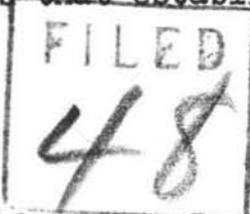


PUBLICATION RATES: Circuit Court en banc in cities of 100,000
PUBLIC ADVERTISEMENTS: population or more has right to set publica-
CIRCUIT COURTS: tion rates at a higher figure than those
COUNTIES OF FIRST CLASS: established in Section 493.080, RSMo. 1949,
Maximum publication rates in counties of the
first class are established by Section 493.030,
Cum. Supp. 1955. Where city of 100,000 population or more located in first
class county, then publication rate for the city is established pursuant
to Section 493.080, supra, and publication rate for county outside the
city is that established by Section 493.030, supra.



March 15, 1957

Honorable Edgar J. Keating
State Senator
Jefferson City, Missouri

Dear Senator Keating:

This is in answer to your opinion request to this office dated March 9, 1957, which reads as follows:

"I will appreciate it if you will give me an opinion on the right of the Circuit Court en banc to fix the rate for public advertising under Section 493.030, 1955 Supplement.

"This matter may require legislation to clarify the Court's powers and since the General Assembly will stop introducing legislation March 15th, I would like to have your opinion as quickly as possible. I understand that your office has heretofore rendered an opinion on this subject concerning the Court en banc in St. Louis City."

Section 493.030, Cum. Supp. 1955, to which you refer in your opinion request, reads as follows:

"When any law, proclamation, advertisement, nominations to office, proposed constitutional amendments or other questions to be submitted to the people, order or notice shall be published in any newspaper for the state, or for any public officer on account of or in the name of the state, or for any county or for any public officer on account of, or in the name of any county, there shall not be charged by or allowed to any such newspaper for such publications a higher rate than three cents per word for each insertion for all type matter which is set solid in any one size of type. When any law, proclamation, advertisement, nominations to office, proposed constitutional amendments or other questions to be submitted to the people, order or notice, require, either wholly or partially more than one size of type, or the use of any emblem, or the spacing of

lines so as to have a blank space between the lines, or tabular matter, the rate shall be computed by the square inch of space used, which rate shall not exceed the rate of seventy-five cents per square inch or major fraction thereof for each insertion. As used herein the term 'word' means any letter, figure or group of letters or figures as set apart by a space. In all counties of the first class the maximum established herein shall not exceed five cents per word or one dollar and twenty-five cents per square inch. All laws or parts of laws in conflict herewith, except sections 493.070 to 493.090, are hereby repealed."

(Underscoring ours.)

This section contains two important provisions as far as an answer to your opinion request is concerned. First, it establishes the maximum publication rate for all public advertisements in class one counties. Second, it repeals all of the laws in conflict with the above except Sections 493.070, 493.080, and 493.090, RSMo. 1949. These sections read as follows:

"493.070. Advertisements published in specified newspapers (cities of 100,000 or more).-- In all cities of this state which now have, or shall hereafter have, a population of one hundred thousand inhabitants or more, all public notices and advertisements, directed by any court, or required by law to be published in a newspaper, shall be published in some daily newspaper of such city, of general circulation therein, which shall have been established and continuously published as such for a period of at least three consecutive years next prior to the publication of any such notice."

"493.080. Notice of meeting to determine newspaper qualified to be publisher--petitions of newspapers.--In all such cities a board consisting of the judges of the circuit court of such city or of the judicial circuit in which said city is situated, or a majority of them shall on or before the first day of January, 1942, and every two years thereafter, cause to be published in some daily newspaper of said city a notice for at least twenty days announcing and designating the time and place when and where said board shall hold a hearing to determine what newspapers in such cities are qualified to publish public notices and advertisements under the provisions of section

Honorable Edgar J. Keating

493.070; and all newspapers in said cities desiring to publish such public notices and advertisements shall, on or prior to the date of each such hearing, file with the board a petition verified by the affidavit of one of the publishers thereof, that such newspaper has the qualifications set forth in said section and desires to be designated as a qualified newspaper under the provisions of section 493.070, and a majority of the board at such time and place shall determine what newspapers so petitioning are qualified under the provisions of said section and shall make a record thereof and shall file a copy thereof with the clerk of all courts of record within such cities, and thereupon such newspapers shall be deemed and considered by all courts and officers of this state to be qualified under the provisions of said section; provided, however, that there shall not be charged by or allowed to any such newspaper for such publications a higher rate than fifteen cents per line for each insertion, the lines to be two inches long and to be set in type occupying twelve lines to the column inch, fractional lines to be charged and paid for as one line; provided, however, that said petition shall be accompanied by a good and sufficient bond, in a sum to be fixed by said board, conditioned for the correct and faithful publication in said newspaper of all said public notices and advertisements, in manner and form as required by law, and at rates not in excess of the rate fixed herein; provided, further, that the board of judges of any such city, if the board shall deem it in the public interest, shall, in the manner herein prescribed, qualify any daily newspaper of general circulation for the publication of public notices and advertisements at rates higher than the maximum rates herein established, though such newspaper shall not file bond hereunder."

(Underscoring ours.)

"493.090. Public notice or advertisement valid, when.--No public notice or advertisement directed by any court or required by law to be published in a newspaper, in cities of one hundred thousand inhabitants or more, shall be valid unless it be published in a daily newspaper qualified to publish such notices and advertisements under the provisions of sections 493.070 to 493.090."

Honorable Edgar J. Keating

Section 493.080, supra, provides that the Circuit Court en banc in cities of 100,000 population or more can, if they deem it in the public interest, qualify any daily newspaper of general circulation for the publication of public notices and advertisements at rates higher than those established for cities of 100,000 population or more by that section.

We call your attention to the fact that in Section 493.030, supra, a specific provision is made to avoid any repeal by implication of Sections 493.070, 493.080 and 493.090. Such being the case, we feel that the legislature definitely intended those sections to remain applicable to public advertisements in cities having a population of 100,000 or more.

CONCLUSION

It is the opinion of this office that in cities of 100,000 inhabitants or more, the circuit court en banc, pursuant to Section 493.080, supra, has the right to set publication rates for said city at a higher figure than those established by said Section 493.080, supra.

It is also the opinion of this office that the maximum publication rates in counties of the first class are established by Section 493.030, supra. Where a city of 100,000 inhabitants or more is located within a first class county, then the publication rate in the city would be that established pursuant to the provisions of Section 493.080, supra, and the rate for the county outside the city would be that established by Section 493.030, supra.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard W. Dahms.

Yours very truly,

JOHN M. DALTON
Attorney General

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