

April 22, 1933

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Mr. O. N. Moberly
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Moberly:

Your letter of April 19th enclosing letter from Judge William T. Jones addressed to you received. You request an opinion concerning the questions asked therein. The letter referred to in your letter reads as follows:

"This question has arisen in connection with the liquidation of two of the banks which I am handling here:

The Deputy in charge started the publication of his notice to creditors more than 90 days before the last date fixed in the notice for presenting proofs of claims, as required in Section 5333 R. S. Mo. 1928. He arranged for the insertion of these notices in three different newspapers, (St. Louis Globe-Democrat, St. Louis Post-Dispatch, St. Louis Star and Times), using them alternately, and proceeded on that basis to this date, when I have been advised of this arrangement.

I had interpreted the provisions of Section 5333 as contemplating that this notice would be inserted in one newspaper continuously over the period provided for in this section. The question is, will the insertion of this notice in different newspapers once each week for three consecutive months, the first insertion being published more than 90 days before the last date fixed in the notice, for presenting of claims, be a compliance with the requirements of this statute?

I felt that I had better submit this to you and have you get an opinion from the Attorney General's office on the question.

If you concur in this view I will thank you to submit the question to the Attorney General's office and let me have his ruling as soon as possible."

The facts as we gather from the above being that the insertions of the notice were alternated each week between three newspapers. In other words, one week said notice would appear in one newspaper and the second week in another newspaper and the third week in another newspaper and the fourth week would revert back to the first newspaper etc. The notice did not continue in one newspaper weekly during the entire period of three consecutive months. The question asked being whether or not said insertions of notice as aforesaid, meet the requirements of Section 5333.

Section 5333 R. S. No. 1929 reads in part as follows:

" * * He shall also cause said notice to be inserted weekly in such newspaper as he may direct for three consecutive months the first insertion thereof to be published more than ninety days before the last day fixed in said notice for presenting proof of claims." * * "

In the case of Woods v. Gainsville Bank et al. 11 S. W. (2) 58, the Kansas City Court of Appeals held that the publication of the notice as required by this section must be strictly complied with. In this case, a notice was published in a newspaper for the full time as required by said section with the exception of one week, and the court held that the missing of the publication from that newspaper for that week did not meet the statutory requirement of weekly for three consecutive months.

This case was cited and discussed in the case of State vs. Schroetter, 30 S. W. (2) 1.c. 633, wherein the court said:

"Section 11716, Rev. St. 1919, (Section 5333 R.S. No. 1929), providing that the commissioner should notify all persons to present claims within four months, is a special statute of limitation, and in order for the statute to run, the requirements as to giving notice must be followed strictly. Mann v. Bank of Greenfield (Mo. Sup.) 20 S. W. (2) 502, 508. So strictly must the law be complied with that the Kansas City Court of Appeals in the case of Woods v. Gainsville Bank et al., 222 Mo. App. 957, 11 S. W. (2) 56, in construing the above section of the statute, held that the law was not complied with in the publication of notice when the published notice

was omitted from the paper one week of the time it was to run, and the court so held although the claimant had actual knowledge that the bank had closed.

The case of State ex rel. Hennesmeyer v. Reid et al. 134 Mo. App. 582, concerns a notice wherein the statute provided that same should be published for four consecutive weeks, and with the added provision for such other notice as may be directed by the county court. The county court ordered that said notice be published in three newspapers for four consecutive weeks. Two of the newspapers published said notice for four consecutive weeks and one of the newspapers published it for three consecutive weeks. The court held that although it was necessary to only have the notice published in one of the newspapers yet by the county court ordering the publication in three newspapers the fact that one of the newspapers did not carry the insertion as required, namely, four weeks instead of three, that said notice was invalid, although two of the three notices were published as required.

We call your attention to Section 13775 Laws of Mo. 1931, p. 303, relative to public notices which has this provision.

"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."

We are of the opinion, from the foregoing, that said notice, when directed to be inserted in a newspaper by the commissioner must be published continuously in the same newspaper weekly for three consecutive months, the first insertion being published more than 90 days before the last date fixed in the notice for presenting of claims.

Hon. O. H. Moberly.

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We are of the further opinion that the notices inserted in three newspapers alternately does not meet the requirements of Section 5333, and said notice is invalid.

We are returning Judge Jones' letter as you requested.

Yours very truly,

JAMES L. HORNOSTEL.
Assistant Attorney General.

APPROVED

ROY McKITTRICK
Attorney General.

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