

COUNTY PRINTING. Charges for printing election notices should be computed under Sec. 13773, R.S. Mo. 1929

1-31
January 27, 1934.



Hon. Roth H. Faubion,
Prosecuting Attorney,
Barton County,
Lamar, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of December 8 relative to the payment of the County Court of your county for printing of the Notice of Special Election of August 19, 1933. Your letter is as follows:

"I am mailing under separate cover copies of the Lamar Democrat and the Lamar Republican. A controversy has arisen between the Lamar Republican and the County Court of this county over the publication notices of the election held August the nineteenth regarding the Repeal of the 18th Amendment. The Lamar Democrat charged \$7.50 while the Republican charged approximately \$45.00. The Republican claims that the Democrat's publication was illegal because of its size and the size of type used, so far the court has refused to pay the demand of the Republican. I would like to have your opinion as to whether under the circumstances either or both are legal and whether or not the seemingly exorbitant demand of the Republican should be paid.

Also in the event of a strictly fee office is it permissible for the office holder to employ a member of his family such as Recorder?"

In order to intelligently answer your question, it would be necessary for us to have a technical knowledge of the terms and measurements used by printers; unfortunately, we do not have that knowledge. The question, however, should be decided by Section 13775, R.S. Mo. 1929, which is 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 allowed for such publication a higher rate than one dollar per square of two hundred and fifty ems for the first insertion, and fifty cents for each subsequent insertion; and for fractional squares and parts of squares in the same proportion: Provided, that in estimating, measuring and calculating the number of squares or parts of squares, the matter contained in said law, proclamation, advertisement, nominations to office, proposed constitutional amendments or other questions to be submitted to the people, order or notice shall be estimated, measured and calculated as if set 'solid' or without spacing between the lines, and the total number of ems shall be ascertained by multiplying the number of ems per line of the type used by the number of lines printed. Provided, however, that where any law authorizing and requiring the publication of any such law, proclamation, advertisement, nominations to office, proposed constitutional amendments or other questions to be submitted to the people, order or notice, shall require the use of a type having a body larger than eight point, or more than one size of type, or the use of any emblem, or the spacing of the lines so as to leave a blank space between the lines, said printing shall be paid for by the inch of space used, single column of 15 ems pica wide, which price per inch shall not exceed the rate of one dollar per inch, single column of 15 ems pica wide, for the first insertion, and fifty cents per inch for each subsequent insertion. 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 required by law to be published in any newspaper, the rates herein specified shall prevail, and all laws or parts of laws in conflict herewith, except sections 13777, 13778 and 13779, R.S. 1929, are hereby repealed."

The next section, to-wit, Sec. 13774, R.S. Mo. 1929, makes it the duty of the County Clerk to procure the best rates possible. Sec. 13774 provides:

" In procuring the publication of any law, proclamation, advertisement, order or notice, as in the next preceding section mentioned, the public officers shall accept of the most advantageous terms that can be obtained, not exceeding the rates limited in the preceding section."

In determining the rates to be paid for such advertising, the matter would depend largely on the original contract made by your County Clerk as to the amount of space and the form of the ballot as to whether or not the charges of each paper are proper or improper. If the County Clerk made an agreement with the Lamar Republican to print the election notices and his charges for the same do not exceed the amount as set forth in Section 13773, supra, then, of course, the charges are legal.

Under Sec. 13774, supra, the County Clerk has broad discretionary powers in the letting of such printing. In the case of *State v. Westhues*, 9 S.W. (2d) 612, a case in which a similar question with respect to the Secretary of State was decided, the Court said:

"Respondent did not find that the secretary of state was about to exercise his discretion fraudulently, so that no discretion would, in fact, be exercised by him, but quite obviously undertook to substitute his judgment for that of the secretary of state as to what considerations should control that officer in the exercise of his official discretion. This the trial court had no power to do. The secretary of state is an officer of a department of the state government, separate and distinct from the judicial department. In the absence of fraud, the exercise of his official discretion cannot be controlled by the judicial department. The legislative department may lay down rules for the guidance of the secretary of state in the performance of this duty, if so advised. Certain it is that the circuit court of Cole County had no power to interfere in the exercise of the discretion intrusted to the secretary of state upon the facts contained in the record before us, which record is stipulated here as the record before respondent when he entered the judgments complained of."

As to the computation of the charges, we suggest that the standard table of type measurements, showing the number of ems to the inch of the various sizes of type be used. According to this table

there are:

6 Point	312 ems to 15 in column inch
8 "	176 " " " " "
10 "	112 " " " " "
12 "	78 " " " " "
14 "	57 " " " " "

Thus, by measuring the number of inches of the various sizes of type, the total number of ems can be readily ascertained. The Lamar Democrat's publication shows:

Space	No. Lines	Type	No. Em
2 1/2"	15	12 Pt.	195
1-5/8"	10	10 "	150
5-3/4"	312 ems to in.	6 "	1794
Total			2145 Em

This reduced to to squares would be 8.145 squares. The rate according to Sec. 13773, supra, is \$1.00 per square of 250 ems for the first insertion and 50¢ per square for each subsequent insertion.

The above computations were made by one familiar with the terms and measurements of printers; however, we are not vouching for the correctness of same or recommending especially that it be followed. As stated above, this is merely a suggestion.

The County Court, in the absence of any special contract made by the County Clerk, should have some one familiar with printing rates to compute the same according to Sec. 13773, supra, and make payment accordingly. The matter is not one which presents to this office a purely legal problem and should really be decided by your County Court.

With reference to the last paragraph of your letter requesting an opinion as to the propriety of an office-holder having in his employ a member of his family when the office is a fee office, we are enclosing copies of two opinions bearing on this question, one written to the Honorable Elliott M. Dampf, Prosecuting Attorney of Cole County on October 4, 1933, and the other to Hon. W.D. Ross, Circuit Clerk, Buffalo, Mo. No doubt, these opinions will give you the information you desire.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

Attorney General.