

PUBLIC NOTICES: So long as Republican newspaper complies with Sec. 13773, R.S. 1929, County Clerk must make publication of election notices in same.

10-9

October 2, 1934

Hon. C.D. Perry,  
Clerk of County Court,  
Barton County,  
Lamar, Missouri.



Dear Sir:

This department is in receipt of your request for an opinion relative to the publication of the nominations to office certified to by the Secretary of State.

Section 10249, R.S. Mo. 1929 provides as follows:

"At least seven days before an election to fill any public office, the clerk of the county court of each county shall cause to be published in two newspapers representing each of the two major political parties, if such there be, and if not, then in two newspapers, or if there be only one newspaper published within the county then in such newspaper, the nominations to office certified to him by the secretary of state, and also those filed in his office. He shall make two such publications in each of such newspapers before the election, one of which publications in each newspaper shall be upon the last day upon which such newspaper is issued before the election. Provided, that no higher rates shall be paid per inch, than is provided by section 13773, chapter 114, R.S. 1929 as amended."

It appears from your letter that the Republican paper in your county intends to charge the maximum rate allowed by Section 13773, R.S. Mo. 1929, and you now desire an opinion from this office as to whether or not it is possible to publish this notice in a Democratic or an Independent paper instead of in

the Republican paper by reason of a more favorable price being obtainable from said Democratic or Independent paper.

It will be noticed that Section 10249, supra, requires the publication to be published in two newspapers, representing each of the two major political parties, and the only exception to this command of the Legislature is in a case where there are not two such newspapers; however, it appears from your letter that in Barton County there is a Republican paper and a Democratic paper and by express provision of the statute above referred to the publication must be made in both of these papers.

The legislature has seen fit, however, to provide that no higher rate shall be paid per inch than is provided by Section 13773, R.S. Mo. 1929, and it is the opinion of this department that so long as the Republican newspaper in question complies with Section 13773 with respect to price, it is mandatory upon the county clerk to make publication in said paper.

The intention of the Legislature with respect to a similar statute was clearly set forth by the Court in the case of Columbus v. Barr, 27 Ohio, l.c. 268:

"The kind of newspaper is predetermined by an established party allegiance, which denotes its politics and which the council is not at liberty to ignore.

An independent paper, which refuses to be bound by the ties of party allegiance, is not within the classification, for the reason that, compared with any other paper, it may be of opposite politics on one question, and of the same politics on another, at one and the same time; of opposite politics today and of the same politics tomorrow, evading the provision of the statute at will.

The purpose of the legislature was to provide for the widest publicity of the public acts of the municipal council, under a general law. It is common knowledge that this purpose would be best subserved as a general rule, by publication in the newspapers of opposite party politics, for the reason that when applied to all municipalities, they are the local papers that generally reach the most people. The independent newspaper, as a rule, is confined to the larger cities. It may best subserve the purpose of the statute in a few cities, but it is the exception that must fail under a general law.

The legislature did not undertake to cheapen the publication by competition. The competitive bidding resorted to in this case is the policy of the city, and, as is expressed in the ordinance providing for the same, is not to be used to annul the statute. It may be that this interpretation opens the door to political aggrandizement, but it still remains that extended publicity is the governing purpose of the statute, and must be kept to the fore when seeking to discover the legislative intent. No useful public purpose could be subserved by holding that this language should receive a more liberal construction, unless it be that it would provide competition, but that must yield if it would narrow publicity."

While we recognize that the enforcement of this law may result in some economic loss to Barton County by reason of the fact that there is but one Republican newspaper in the county, nevertheless, the facts cannot render a law invalid or justify this department in nullifying the law. The propriety, wisdom and expediency of legislation is exclusively a matter for the legislature.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK,  
Attorney General

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