

DELINQUENT TAXES:

Publication must be in one newspaper
of general circulation.

September 27, 1934



Honorable James S. Rooney
Prosecuting Attorney Clay County
Liberty, Missouri

Dear Sir:

This Department is in receipt of your request for
an opinion as to the following state of facts:

"Clay County consists of three distinct communities; one of them in Excelsior Springs and vicinity, one of them in North Kansas City and vicinity, and the other in Liberty and vicinity. There is no newspaper in the county of general circulation over the entire county. Each of these three communities has its own newspaper.

Section 9952b appearing at page 430 of the laws of Missouri for 1933 provides for the publication by the county collector of the delinquent tax list. The county collector of this county proposes to publish in an Excelsior Springs paper that part of the list including the lands of the Township in which Excelsior Springs is located; to publish in a North Kansas City paper that part of the list including the lands in the townships in which North Kansas City is located; and the remainder of the list in a newspaper in Liberty. He proposes to state in the notice in each paper that it is only a part of the complete list, stating what part, and that the remainder of the list is being published in other named newspapers.

He has asked me if such publication is a valid, legal publication under the Statute. I have told him that, in my opinion, such publication would give notice to the public better than if the entire list is published in one newspaper, but that I was not sure of the legality of such publication."

Section 9952b Laws Missouri 1933, page 430, provides in part as follows:

"The county collector shall cause a copy of such list of delinquent lands and lots to be printed in some newspaper of general circulation and published in the county, for three consecutive weeks, one insertion weekly, before such sale, the last insertion to be at least fifteen days prior to the first Monday in November. * * * *"

It is contended that there is no newspaper in Clay County of 'general circulation' and it is proposed to publish the list of delinquent lands and lots in three different newspapers, representing three different localities in Clay County.

This proposed publication is not contemplated by the statute nor can the statute be broadened sufficiently to permit any such publication, for it will be noticed that the statute requires the list to be printed in some newspaper, and further provides that the county collector shall, before the day of sale, certify on his record the name of the newspaper of the county in which such notice was printed and published, and the dates of the insertion of such notice in such newspaper. Throughout the statutes the intention of the Legislature is clearly discerned that this notice is to be published in one newspaper only.

The question of what constitutes a newspaper of 'general circulation' has never been specifically passed upon by the courts of Missouri. However, the courts of other states have passed on the question, and it may be said generally that a newspaper is one of 'general circulation'

even though it is devoted to the interests of a particular class of persons and specializes on news and intelligence primarily of interest to that class, if in addition to such special news it also publishes news of a general character and of a general interest and to some extent circulates among the general public. 68 A. L. R. 542.

In the case of *Lynn v. Allen* 145 Ind. 584, 44 N.E. 646, the court, in passing upon this question, said:

" 'By a "newspaper of general circulation" the legislature certainly did not intend a newspaper read by all the people of the county. As a matter of fact, every newspaper is, in a greater or less degree, devoted to some special interest. No one, however, would claim that because a newspaper should, for example, be the organ of a certain political party, and especially devoted to the interests of such party, it would not, therefore, be a newspaper of general circulation. Yet such a newspaper is, to a large extent, read only by the members of the political party whose doctrines are advocated and expounded in its columns.' "

The case of *Ruth v. Ruth* 39 Ind. App. 290, 79 N.E. 523, in holding a certain newspaper to be a paper of 'general circulation,' as required by the statute, said:

"No fixed number of subscribers is required to constitute general circulation. A newspaper's circulation does not necessarily mean that it is read by all the people of the county or the township."

In the case of *In re: Mt. Penn. Fire Co.* 14 Pa. Dist. R. 873, the court said:

" The addition of the words 'of general circulation'. . . distinctly excludes publications whose usual contents do not deal with matters with which the public at large is concerned, but only

with such as are of moment to a limited portion thereof, as, e. g., the legal profession. . . . It is, of course, not decisive that the publication specially appeals to, or serves the particular interest of, any part of the general public short of the whole, if its contents cover the broader field above indicated. Neither is it to be laid down that it must furnish or discuss the news of the whole world or nation or state. If it deals with the news and current events, generally, of the county in which it is published and concerning the whole people thereof, it may be regarded as adapted to the general reader, as intended for general circulation, not only within the county, but beyond it; in short, as a newspaper of general circulation. The size of its subscription list, however, is not controlling one way or the other."

CONCLUSION.

In view of the foregoing it is the opinion of this Department that the notice required by Section 9952b Laws of Missouri 1933, page 430, must be published in only one newspaper. The newspaper chosen must by reason of the statute, be a newspaper of 'general circulation,' but whether or not a newspaper is one of 'general circulation' is a matter of substance and not of size and it would seem by reason of the above cases that if a newspaper contains news of general character and interest to the community although the news may be limited in amount, it

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would qualify as a newspaper of 'general circulation'.

Respectfully submitted,

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APPROVED:

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JWH:LC