

NEWSPAPERS. Independent newspaper cannot qualify for publications  
under Sec. 10249, R.S. 1929.

4-20  
April 18, 1934.



Hon. William E. Stewart,  
Prosecuting Attorney,  
Knox County,  
Edina, Missouri.

Dear Sir:

This department is in receipt of your letter of  
some time ago, requesting an opinion as to the following facts:

"The County Clerk of this county has requested me to submit a question to you. Section 10249 requires the clerk to publish in two newspapers representing each of the two major political parties, at least seven days before an election, the nominations to office certified to the clerk by the secretary of State and those filed in the clerk's office. In Knox County one paper is listed in the Blue Book as Democrat, one of larger circulation, as Independent, and another, of very small circulation, as Republican. The one listed as Republican is printed in Brashear, Adair County, Missouri. The clerk wishes to know if it would be legal to publish in the Democrat paper and the one listed as an Independent."

Sec. 10249, R.S. Mo. 1929, relating to the printing of nominations to office certified to the county clerk by the Secretary of State, 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."

There appears to be no question as to the propriety of printing the notice in the Democratic paper. We take it for granted that the two major political parties are the Republican Party and the Democratic Party.

The decision in the case of Reefy v. Elyria, 30 O.C.A., l.c. 274 is to a certain extent enlightening on this subject, and provides in part as follows:

"It is not pretended that 'politics', as used in the statute under which the contracts attempted to be awarded are allowed, is the word in its broad sense of comprehending the whole scope and office of government. It is used, all will agree, in its restricted sense of partisanship. Thus considered, the word signifies party preference and connection. It lives and exercises its force and brings its power to bear through party organization and discipline and finds expression in party platforms and declarations of principles and in utterances of candidates and leaders."

It is our opinion that the Legislature meant that the two newspapers should represent not only the two major political parties, but two opposite parties in politics. In the case of Reefy v. Elyria, supra, the Court further said:

"The word 'opposite', when employed as the statute in question employs it, means antagonistic, having a different tendency, quality or character. Contrary is, perhaps, the most expressive as well as the most correct verbal equivalent by which the underlying concept of opposition can be voiced; it is, at least, sufficient for the purpose in this case. It does not permit a twilight zone in which, or under the shadow of which, neighbor Garford, or townsman Sharp may be supported by a paper masquerading as a political enemy to their

party. It is not allowable, under this definition of the vital word, to make merchandise of journalistic agencies by selling space to the minor candidates of one side while posing as the party exponent of the other side, in good and regular standing. What the statute clearly means is--'He that is not for me is against me; he that gathereth not with me scattereth abroad.'

There are no decisions directly in point on this question in Missouri; however, the Supreme Court of Ohio, in discussing the status of an independent newspaper, in the case of *The Ohio State Journal Co. v. Brown*, 19 Ohio, l.c. 326, said:

"It is admitted that the *Press Post* is a newspaper of the Democratic Party, and the contention on the part of counsel for the plaintiff is that the *Columbus Dispatch* is an independent newspaper of no political party, while counsel for the *Columbus Dispatch* contends, notwithstanding that newspaper holds itself out to the public as an independent newspaper, and has been such; that the evidence shows its support of the measures and candidates of one of the political parties has been such that it is a newspaper of a political party within the meaning of the statute.

"The only matter necessary to be determined is whether the *Columbus Dispatch* is a newspaper of a political party; and if so, whether of a party different from that of the *Press-Post*.

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"A newspaper to be of a political party, within the meaning of the statute, must profess to be so or be so known. It is not sufficient that it has, while professing to be an independent newspaper, supported a political party.

"A newspaper professing to be of a political party, or one so known, may be independent in the sense that it does not advocate all of the measures of its party, and yet be of the party, for its conduct may be owing to its judgment, or the want of it, and not to its want of faith; and an independent newspaper may advocate all of the measures of a party and support all of its candidates, and yet be not of the party, for its support of the party is to be attributed to its discretion, and not to its allegiance.

"The evidence shows that the Columbus Dispatch holds itself out to the public as 'an independent newspaper', and its proprietor testifies that it is not a Democratic, not a Republican, nor a Prohibition, nor a Populist newspaper; that he is a Republican, and that his newspaper has generally supported that party, but that it is independent in all things and at all times free to choose which side it will take.

"Such newspaper is not of a political party within the meaning of the statute, and in view of its disclaimer, the court ought not to be asked to hold otherwise."

In the case of Columbus v. Barr, 27 Ohio, l.c. 268, the Court said:

"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."

CONCLUSION

In view of the foregoing decisions, it is the opinion of this department that an independent newspaper cannot qualify for publications under Sec. 10249, R.S. Mo. 1929.

Since your request has been on file in this department, we are in receipt of an unsigned letter which we assume was written by some member of your County Court or the Clerk, Hon. Ralph W. Haselwood, in which there is enclosed a form of affidavit made by the Editor of the Edina Sentinel stating that the Edina Sentinel is a Republican newspaper. This raises the question of fact and not being in possession of the facts, this department is not in a position to pass upon the same.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK,  
Attorney General

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