

1. A newspaper, in order to publish the financial statement of a county, must be qualified under Section 13775 Laws 1931, page 103, and the question as to whether or not the newspaper possesses the qualifications, is one of fact.
 2. County Budget Act. The county court may pay a sum in excess of the amount estimated in the budget out of the funds of Class 5, provided it does not jeopardize the priorities of the four prior classes, or the same may be paid from the funds of class 6.
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Honorable Hampton Tisdale
Prosecuting Attorney
Cooper County
Boonville, Missouri

Dear Sir:

This Department is in receipt of your letter of May 3, 1935 wherein you request an opinion on two questions now under consideration in your county. The letter is as follows:

"I was informed by the Presiding Judge of the County Court of Cooper County that he had discussed with you the legality of publishing the Cooper County financial statement in the Otterville Review, a newspaper published in Otterville, Missouri.

In the Session Laws of 1933, page 353, Section 12165 the publication of a county financial statement is made mandatory in some newspaper of general circulation published within the county.

Section 13775 of the Laws of 1931, page 303 provides:

'All public advertisements and orders of publication required by law to be made, and all legal publications affecting the title to real estate, shall be published in some daily, tri-weekly, semi-weekly or weekly newspaper of general

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circulation in the county where located and which shall have been admitted to the post office as second class matter in the city of publication; shall have been published regularly and consecutively for a period of one year; shall have a list of bona fide subscribers voluntarily engaged as such who have paid or agreed to pay a stated price for a subscription for a definite period of time. . . . '

The County Court asked me for an opinion on the advisability of publishing the statement in The Otterville Review and I advised them that this paper was not a legal publication since it did not meet the requirements of the foregoing Section.

I am enclosing herewith a copy of The Otterville Review dated April 26, 1935, for your examination. You will note that this paper is not entered as second class matter in the Post Office at Otterville, Missouri, which seems to be an essential requirement for a legal publication. It was in existence a year on April 5, 1935, but had not been in existence a year at the time the statement was required by law to be published. Furthermore, this paper does not state whether it is a weekly, semi-weekly, tri-weekly or a daily. Its circulation is confined for the most part to Otterville Township, with no general circulation in Cooper County. With these facts in mind, I advised the County Court that The Otterville Review did not meet the necessary legal requirements.

The County Court is desirous of my getting an opinion from you on this question. They desire to know (1) Is the Otterville Review of Otterville, Missouri, a newspaper legally

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qualified to print the Cooper County financial statement?

The County Court set up the sum of \$750.00 to pay the cost of printing the financial statement. (2) The Court also desires to know in the event the \$750.00, as set up in Class 5 of the budget for the printing of the financial statement is inadequate, can the Court add to this sum of \$750.00 an additional amount out of Class 5 so long as the total amount set up in Class 5 will allow them to do so without taking any funds from any other class, and provided there is a surplus in Class 5 at the end of the year after all disbursements are made?

I would appreciate your advising me with reference to this matter as soon as possible."

I.

A NEWSPAPER, IN ORDER TO PUBLISH THE FINANCIAL STATEMENT OF A COUNTY, MUST BE QUALIFIED UNDER SECTION 13775 LAWS 1931, page 303, AND THE QUESTION AS TO WHETHER OR NOT THE NEWSPAPER POSSESSES THE QUALIFICATIONS, IS ONE OF FACT.

Your question in regard to the Otterville Review, ostensibly a newspaper published in your county, involves a question of fact. Section 13775 Laws of 1931, page 303, as contained in your letter, sets forth the qualifications of a newspaper which, in our opinion, includes the publication of the county financial statement. Whether or not the Otterville Review has been admitted to the post office as second class matter is a question of fact which may or may not be true, although we frankly admit that from our cursory examination of the inclosed copy we see nothing to indicate that it has been admitted to the post office as second class matter. It may or may not be a weekly, tri-

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weekly or semi-weekly newspaper of general circulation in the county. The copy itself does not indicate at what intervals it is published. The question of general circulation is discussed in an opinion which was rendered by this department on September 27, 1934 to Honorable James H. Rooney, Liberty, Missouri, a copy of which is herewith inclosed. The question of the length of time a newspaper should be published in the county is contained in an opinion to Hon. W. H. Holmes, Prosecuting Attorney Maries County, Vienna, Missouri, a copy of which is herewith inclosed. The county court has jurisdiction and is the proper tribunal to pass upon the facts and apply the law, and determine the question whether the paper is such a publication as is required by the statutes.

II.

COUNTY BUDGET ACT. THE COUNTY COURT MAY PAY A SUM IN EXCESS OF THE AMOUNT ESTIMATED IN THE BUDGET OUT OF THE FUNDS OF CLASS 5, PROVIDED IT DOES NOT JEOPARDIZE THE PRIORITIES OF THE FOUR PRIOR CLASSES, OR THE SAME MAY BE PAID FROM THE FUNDS OF CLASS 6.

The county court is required to, by Section 8 page 345 Laws of Missouri 1933, at the regular February term, go over the estimates and revise and amend the same in such a way as to promote the efficiency and economy in the county government; there is also a provision for altering or changing the amount. Within five days after the date of the approval of the budget estimate it is necessary to file a certified copy with the county treasurer. There is no other provision in counties containing the population of Cooper for the further revision, altering or changing of the budget, after it has been filed. Class 5 as contained in

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Section 2 page 342 Laws of Missouri 1933, is as follows:

"The county court shall next set aside a fund for the contingent and emergency expense of the county, which shall in no case be more than one-fifth of the anticipated revenue. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service. (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

The printing of the financial statement is a mandatory duty upon the county court and likewise the payment of the same. The exact amount can not be estimated, it will probably vary in amount from year to year. We are, therefore, of the opinion that if the cost of printing the county financial statement exceeds the estimate and if there are funds remaining in class 5 not appropriated such funds may be used for the additional cost of printing the financial statement.

Respectfully submitted,

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APPROVED:

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Inclosures