

NEWSPAPERS: Officers under Section 13774, R. S. 1929, are not compelled to accept bids from newspapers, but may accept bids in the interest of efficiency and economy and not violate any statute.

October 14, 1937.



Honorable Paul N. Chitwood  
Prosecuting Attorney  
Reynolds County  
Centerville, Missouri

Dear Sir:

This Department acknowledges receipt of your letter of October 13th, in which you make the following inquiry:

"Under the terms of Section 13774 can the County Court or the Public Officers mentioned in Section 13773 accept bids from newspapers when the same does not conflict with other statutes and the bids be considered the most advantageous terms that can be obtained?"

The statute mentioned, Section 13774, R. S. Mo. 1929, is as follows:

"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."

The above quoted section refers to the rates for public advertisements as contained in Section 13773, R. S. Mo. 1929. The effect of the two sections and the close relation of the same are commented on by the court in State

v. Westhues, 9 S. W. (2d) 612, l. c. 619, as follows:

"The rates herein specified' are the rates specified in the first sentence comprising eleven lines of new section 10401. Such rates may not be higher than \$1, etc. We are unable to perceive any conflict between new section 10401 and section 10402, R. S. 1919. Hence the latter section must be deemed to be in full force and effect. New section 10401 and section 10402, R. S. 1919, must be read together and construed as if they read: There shall not be allowed for such publication a higher rate than \$1 per square, etc., but, in procuring such publication, the public officers shall accept of the most advantageous terms that can be obtained, not exceeding \$1 per square, etc."

At the outset we are concerned with the meaning of the expression in the statute, "shall accept of the most advantageous terms that can be obtained, not exceeding the rates limited in the preceding section." The Legislature has not seen fit to define what is meant by "the most advantageous term" nor has it placed any limitation on the exercise of an administrative officer's right to use his discretion in determining the most advantageous terms. This fact is commented upon in the case of Bakersfield News v. Ozark County, 92 S. W. (2d) l. c. 605.

The question as to whether or not under Section 13774, supra, the administrative officer, or officers to which the publication is intrusted, must accept bids in order to obtain the most advantageous terms, is decided also in the above case of State v. Westhues, l. c. 619, in the following language:

"The requirement of section 10402, R. S. 1919, that the officer 'shall accept the most advantageous terms that can be obtained,' imposes upon such officer the right and duty to exercise an official

discretion. Respondent held that the secretary of state was under no duty to submit the publication of the proposed constitutional amendments to competitive bidding or even to accept the lowest bid, if any such bids were received. The statute does not define the words 'most advantageous terms.' It left it to the secretary of state to determine for himself what terms are most advantageous and to accept the terms he deems to be most advantageous. The statute has not provided that the advantageousness of the terms offered to the officer shall be determined by the number of readers of the given newspaper, nor by its circulation in a particular county, nor by the price to be charged for the publication, nor by the relation of that price to the maximum price authorized by new section 10401; nor does section 10402, R. S. 1919, provide at what time the secretary of state shall determine the advantageousness of the terms offered to him, nor even that the secretary of state shall peddle the publication from one newspaper office in the county to another in order to ascertain all or any of these facts. In short, the General Assembly has not defined the words 'most advantageous terms.'

"Respondent held that the secretary of state had a discretion, which it was his right and duty to exercise. Respondent then proceeded to advise the secretary of state how he should exercise such discretion, to wit:

"That he must exercise that discretion and select those papers that give the widest publicity at rates which are reasonable and in exercising this discretion he must protect the interests of the state financially, as well as otherwise.'

"It may be that the secretary of state should take all the things specified by respondent into consideration in exercising his official discretion, but the declaration of his duty in that respect must come from the legislative and not the judicial department of our state government.

"The legislative department has intrusted to an administrative officer the right and duty to exercise his discretion in determining what terms are 'most advantageous,' and up to this time the General Assembly has seen fit neither to define what it means by the words 'most advantageous terms' nor to rebuke any secretary of state for the manner in which he has exercised such discretion in the past. Reference need only be made to the Session Acts of Missouri from the date of the adoption of the initiative and referendum amendment to the present time to learn that the General Assembly has placed the seal of its approval upon the manner of the exercise of such discretion by all of our secretaries of state when it uniformly passed appropriations to pay for such publications on the terms accepted by them. The appropriation for that purpose by the General Assembly in 1927 is particularly significant (Laws of 1927, p. 69, Sec. 80), in view of the facts that the secretary of state was at that time enjoined from approving bills for such publications. See *Fugel v. Becker* (Mo. Sup.) 2 S. W. (2d) 743."

#### Conclusion.

We are of the opinion that it is not incumbent or mandatory on the administrative officer, being the county court,

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county clerk and other officers of such nature, to whom it is made the duty, as mentioned in Section 13774, supra, to publish proclamations, notices, etc., to accept bids from the various newspapers of the county in order that the most advantageous terms may be obtained. However, we are of the opinion that any of the officers, as mentioned in said section, are at liberty to use bidding as a method to determine the most advantageous terms, providing that the newspaper has the essentials which make it desirable in which to publish a proclamation or other publication; that if such a method is employed in the interest of efficiency and economy the said method does not in anywise violate any statute nor is it contrary to any decision.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney-General

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