

NEWSPAPERS: Must be published in a regular, continuous and unbroken established mode for three years before legal notices are valid.

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October 20, 1937

Hon. Sam V. Cochran  
Judge of Probate Court, Cooper County  
Boonville, Missouri



Dear Sir:

This department is in receipt of your letters of September 30 and October 19, 1937, in which you request an opinion as follows:

"I am desirous of an opinion from your office with reference to the legality of inserting Notices of Letters of Administration and Notices of Final Settlement in a certain newspaper which is being published in this county.

I note that Section 13775 of the laws of 1937 repeals a number of the sections of the Revised Statutes of Missouri, of 1929, and sets forth some new qualifications for a newspaper eligible to receive legal publications.

The facts in this instant case are as follows: The Pilot Grove Weekly Record has been published in Pilot Grove, Missouri for fifty-seven years. Until recently it was individually owned by George B. Harlan of Pilot Grove, Missouri. A short time ago a new corporation was formed which is owned by several stockholders and is headed by George B. Harlan, the owner of the Pilot Grove Weekly Record at the time it suspended publication on September 24, 1937. The new corporation has Boonville, Missouri, as its residence and its principal place of doing business.

The name of this new newspaper being published by the aforesaid corporation is the

"Cooper County Record". Underneath the name appears the statement that it is a continuation of the Pilot Grove Weekly Record. I am told by Mr. Harlan that the Cooper County Record will use the same mailing list as the Pilot Grove Weekly Record, and that the volumes and numbers used in the Pilot Grove Weekly Record will continue in this new publication.

It is apparent that the name, the city of publication and the ownership have been changed. The county of publication, Cooper County, is the same. The first issue of the Cooper County Record was published on September 30, 1937, and therefore, has not been in existence three years as provided in section 13775 of the Laws of 1937, unless one may regard the fifty-seven years of continuous publication of the Pilot Grove Weekly Record as satisfying that requirement. The Cooper County Record, like the Pilot Grove Weekly Record, is a newspaper which is published once each week, and has been admitted to the Post Office in the city of Boonville as second class matter, and will have a general circulation in the county.

A statement in the September 30 issue of the 'Cooper County Record' reading as follows: 'With this issue The Pilot Grove Weekly Record becomes the Cooper County Record, published at 203 Main Street, Boonville, and entered at the post office in the county seat. As the name implies, its scope is broadened to include all of Cooper County.'

I would appreciate very much your giving me an opinion on the legality of notices published by the Probate Judge in the Cooper County Record."

Section 13775, Laws of 1937, page 431, is as follows:

"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 circulation in the county where located and which shall have been admitted to the postoffice as second class matter in the city of publication; shall have been published regularly and consecutively for a period of three years; shall have a list of bona fide subscribers voluntarily engaged as such \* \* \*, and further provided that every affidavit to proof of publication shall state that the newspaper in which such notice was published has complied with the provisions of this act. Provided further, that the duration of consecutive publication herein provided for shall not affect newspapers which have become legal publication prior to the effective date of this act \* \* \* \* \*"

From your letter, it is clear that the Cooper County Record does meet a part of the requirements made by the above section in that it is a weekly newspaper of general circulation in Cooper County, has been admitted to the postoffice as second class matter in the City of Boonville, and has a list of bona fide subscribers. The question here seems to be: Has the Cooper County Record complied with the statute wherein it is provided that a newspaper, in order to be a legal publication, as contemplated by this act, "shall have been published regularly and consecutively for a period of three years?"

Words & Phrases, Vol. 7, First Series, page 6040, defines "regularly" as follows:

"Webster defines 'regularly' to mean a uniform order at certain intervals or periods, as by day and night. Zulich v. Bowman, 42 Pa. (6 Wright) 83, 87.

\* \* \* \* \*

The word 'regularly' is defined as meaning in a regular manner; in a way or method accordant to rule or established

mode; in uniform order; methodically; in due order. Such is its signifi- cation in an ordinance requiring a railroad company to operate the road regularly, etc. City of Belleville vs. Citizens' Horse Railway Co., 38 N.E. 574, 587; 152 Ill. 171; 26 L.R.A. 681."

Words & Phrases, Vol. 2, First Series, page 1437, define "consecutive" as follows:

"'Consecutive' is synonymous with 'successive', and these words are often used interchangeably; so that a decision that a publication for 3 suc- cessive weeks must be made for a per- iod of 21 days authorizes such holding as to a publication required to be made for 3 consecutive weeks. Dever vs. Cornwell, 86 N.W. 227, 230; 10 N.D. 123.

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While the term 'consecutive days' pri- marily means that many days directly following one another, it is also de- fined as meaning successive; but in cases of contracts that significance should be given it which the parties intended it should have. A contract providing for publication in a paper for 10 consecutive days must mean publication in consecutive numbers as such paper was published. We do not regard the word 'consecutive' as any more forcible than the word 'continuous'. Both signify 'unbroken' and the fact that the news- paper published no issue on Sunday did not render the publication other than consecutive. City of El Paso vs. Ft. Dearborn Nat. Bank (Tex.) 715 W. 799, 802."

In view of the above definitions, it is clear that the meaning of this act is that the newspaper must be published in a regular, continuous and unbroken established mode for the statutory period of three years.

It will be noticed that the legislature used the term "shall have been". In State ex rel Stevens vs. Wurdeman,

246 S.W. 1.c. 189, it is said:

"Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute."

In *Ex Parte Brown*, 297 S.W. 1.c. 447, it is said:

"Where a fair interpretation of a statute directs acts or proceedings to be done in a certain way shows that the Legislature intended a compliance with such provision to be essential to the validity of the act or proceeding, then such statute is mandatory."

✓ We think this section is mandatory wherein it provides what qualifications a newspaper must have to publish legal publication, and it is to be further noticed that the affidavit to proof of publication must state that the newspaper has complied with the provisions of this act for the publication to be a valid one.

The Cooper County Record, even though it has a new name, owner and location is, under the facts furnished this department, only a continuation of the Pilot Grove Weekly Record. It has the same subscribers, serves the same territory and uses the same volumes and numbers of publication. It is to be noticed that the statute does not prohibit the sale, changing of name or location of a newspaper. The time which elapsed between the date the Pilot Grove Weekly Record published its last issue and the date the Cooper County Record published its first issue is from September 24 to September 30, 1937. It cannot be said, the one being a continuation of the other, that this is not publication in a regular, continuous and unbroken mode.

In *Rutter vs. Carothers*, 223 Mo. 1.c. 643, in stating a rule to be applied in construing statutes, it is said by the court:

"that those who interpret the laws must not impute injustice to the lawmaker by so interpreting his language as to unnecessarily produce harsh and unreasonable results, or impute to him a disposition callous to natural justice."

In Perry vs. Strawbridge, 209 Mo. l.c. 639, it is said by the court that:

"A statute should be construed with reference to its spirit and reason; and the courts have power to declare that a case which falls within the letter of a statute is not governed by the statute, because it is not within the spirit and reason of the law and the plain intention of the legislature."

Applying the above rules of construction to the facts in the instant case, we believe that in order to further the ends desired by the legislature in this act and to avoid a harsh and unreasonable result and promote natural justice that the Cooper County Record is in fact only a continuation of the Pilot Grove Weekly Record and that there has been no suspension of publication within the reason and spirit of the law which breaks the regular and consecutive publication required by statute.

CONCLUSION

Therefore, it is the opinion of this department that the Cooper County Record meets the requirements of the statute and is a legal publication.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED By:

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J.E. TAYLOR  
(Acting) Attorney General