

NEWSPAPERS:

When county is liable for the costs  
of printing election notices

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November 13, 1937

Honorable John A. Eversole  
Prosecuting Attorney  
Washington County  
Potosi, Missouri



Dear Sir:

This Department herewith renders you an official opinion on the following question, as contained in your letter of some time ago:

"I have a question which the County Court of this county have asked me to present for your opinion.

"There are at the present time two newspapers published in Washington County, Missouri. One has been here for many years, the other issued its first publication on November the 15th, 1935. The papers are of opposite political faith.

"Preceding the general election of 1936 said election was published in both papers at the request of the county Clerk of this county.

"The question has arisen as to whether the paper which lacked two or three publications of being a legal newspaper at the time of the first publication should be paid or not.

"The county court will appreciate your opinion on this matter at your earliest convenience as the matter has been dragging for some time."

Section 13775, Laws of Missouri 1931, page 303, 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 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. Provided that when a public notice required by law to be published once a week for a given number of weeks, shall be published in a daily, tri-weekly, semi-weekly or weekly newspaper, the notice shall appear once a week on the same day of each week, 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. All laws or parts

of laws in conflict with this section, except sections 13777, 13778, 13779, 7631, 7632 and 7633, Revised Statutes of Missouri, 1929, are hereby repealed."

The above section was amended in 1931 and has again been amended at the last session of the General Assembly. However, as the matter under consideration relates to the law as contained in the session acts of 1931 we shall ignore the recent amendment.

The statutes, in enumerating the qualifications of a newspaper, uses throughout the section the verb "shall," which, when used, usually denotes that the terms of a statute are mandatory in nature, that is, the terms must be strictly complied with.

Relative to the question as to whether or not a newspaper must be published in a continuous and unbroken period for a one year period, we are inclosing an opinion rendered by this Department on October 8, 1936, to Honorable Sam V. Cochran, Judge of the Probate Court, Boonville, Missouri.

Your question is to the effect: Whether or not the paper, which, in truth and in fact, lacked two or three publications of being published in a continuous and unbroken period of time for one year, should receive the publication fee for printing the notice of the General Election of 1936.

We call your attention to Section 13776, as amended in 1935, Laws of Missouri 1935, page 320:

"When any notice or other advertisement shall be required, by law or order of any court, to be published in any newspaper or made in conformity with any deed of trust or power of attorney, the affidavit of the printer, editor, or publisher, with a copy of such

advertisement annexed, stating the number and date of the papers in which the same was published, shall be sufficient evidence of the publication."

We think it a reasonable construction, the statutes being in numerical order and following each other, that the affidavit of the publisher must also contain, as stated in Section 13775, that the newspaper publishing said notices has complied with the provisions of said section. Whether or not the newspaper in question has complied with said section is a question of fact. We assume that your statement of the facts is correct and that we must treat the question wholly from a legal standpoint.

Your question has never been directly passed upon by any court in the State of Missouri, at least we are unable to find any decision after having made an exhaustive research. Interpretation of a similar section under the Act of 1933 relating to the qualifications of a newspaper is discussed in Sekyra v. Schmoll, 313 Mo. 1. c. 703:

"Relator's first position is that the Act of 1923 is vague, uncertain and meaningless. It is said that Section 10405, part of which is quoted above, requires the order of publication to be published for at least one year. The section is awkwardly worded, but there is no doubt about the meaning of the language used. It is the daily newspaper and not the order of publication which must have been published for one year. In construing language of that kind it is proper to give it a meaning which is in accord with common sense when it is susceptible of such meaning.

"It is further said that there is no reasonable basis upon which the circuit judges are authorized to qualify newspapers. The paper shall be one of general circulation and shall have been published in the city for one year. Those are the sufficient qualifications required of papers in filing their statement of qualifications verified by affidavit with the board.

"It is further said there is a conflict between Sections 10406 and 10407, because the former section provides that under certain circumstances the legal notices may be published in some other paper than those qualifying at a higher rate than that designated, while Section 10407 provides that no notice required by law to be published shall be valid unless it be published in a paper qualified by the act. It will be noticed that these last two objections are not based on the theory that they render this act unconstitutional and therefore if sustained would be of no effect on the point that the provision in the old law relating to the duty of the clerk is repealed. But a reasonable construction of Sections 10406 and 10407 of the new act shows no such conflict. The requirement under Section 10407, that the notice must be published in a paper qualified, refers, of course, to all that is said in the previous section which provides generally

for the qualifications of the newspapers and allow exceptions in certain instances. The papers coming under the exceptions are qualified under the requirement of Section 10407."

The question as to whether or not a newspaper was legally entitled to bid on a publication and the question of a newspaper being printed in the German language when the statute stated it should be printed in the English language, is discussed in State ex rel. Goebel v. Chamberlain, 99 Wis. 1. c. 509:

"The present case is clearly distinguishable from the cases cited, in that in this case the county treasurer had no power or discretion to receive relator's bid, or award him a contract under it. No authority had been given to him by the county board for that purpose under sec. 675, R. S. 1878. The English language is the language of the country, to be used in all legal and official notifications or proceedings, in the absence of any statute authority to the contrary. It does not appear that the county board had considered or acted upon the subject. We hold that this section is decisive against the validity of the relator's claim, under his bid, to the contract. The publication of said list in the English language in a German paper would not, for the reasons stated, in the absence of such authority, be a legal publication; and the county treasurer rightfully refused to award to the relator a contract for that purpose, upon his bid."

Under Section 10249, R. S. Mo., 1929, it is the duty of the clerk to publish the names of the nominees. Said section reads 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."

The terms of Section 10251, R. S. Mo., 1929, are also to be taken into consideration by the clerk.

#### Conclusion.

We are of the opinion that it being the duty of the clerk to select the newspapers in which publications shall be made, and by the terms of Section 13375, quoted supra, it is his duty to select a newspaper or newspapers

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which contain the requisite qualifications. The facts in the instant case show that the county clerk did not select a newspaper which possessed the requisite qualifications and was without authority to designate and select such newspaper. Hence, the county is not legally liable for the cost of printing the election notice.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney-General

APPROVED:

  
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J. E. TAYLOR  
(Acting) Attorney-General

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