

NEWSPAPERS: If newspaper moves from one town to another in a different county, in order to qualify for public advertisements, it must be published regularly for a period of three years or more at its last location.

February 7, 1938



Honorable Dwight H. Brown,
Secretary of State,
Jefferson City, Missouri

Dear Sir:

We acknowledge receipt of your request under date of January 31st, last, relative to an opinion on the qualification necessary for newspapers to publish public advertisements, which letter is as follows:

I.

"Agreeable with our conversation of even date, I am reducing to a memo the substance of our conversation.

"The question has been raised concerning the status of a newspaper when moved from one seat of publication to another.

"You will recall that the General Assembly changed the law concerning the qualification of a newspaper for handling public notices or legal publications; changing the period of required continuous publication from one year to three years. Now the question is being raised whether or not a newspaper that is qualified can change its seat of publication and retain its standing as a qualified newspaper. It naturally follows that there is involved in this question that of the laws of retention of partial qualification.

"To use a purely hypothetical case, suppose the owner of the Mokane Missourian should conclude to cater to their present circulation

from a publication seat in Jefferson City, and also develop a Cole County constituency. Of course, I think it follows that the paper would lose its qualification in so far as Callaway County is concerned, but on the other hand, would it continue to be a qualified publication in Cole County?

"Another question that is involved is presented in this hypothetical case. Suppose that the same Mokane Missourian had been published for only two years in Callaway County, and had accomplished only two-thirds of the required qualification, and should be moved. Would the paper in its new seat stand two-thirds qualified or lose the benefit of the time factor involved?"

We assume by reference to the hypothetical case you set out in the above letter that your inquiry is confined to what might be called the country press or newspapers published in the several counties of the state and not in cities of one hundred thousand population or more.

II.

The statute pertaining to this matter, as set forth in the Laws of Missouri, 1937, Section 13775, page 432, 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, 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. Provided, further, that the duration of consecutive publication herein provided for shall not affect newspapers which have become legal publications prior to the effective date 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."
(Emphasis ours.)

The salient feature of the above section pertaining to this case is that the newspaper shall be published in the county where located.

III.

No apt decision, or decisions, from the Missouri courts relative to the precise question involved is to be found. However, the clearest and most pertinent meaning of the word "publish", in relation to a newspaper is found in the following two cases, namely:

In Age-Herald Publishing Co. v. Huddleston, (Ala.) 92 So. 1. c. 197, the court said:

"To publish a newspaper at any place is, according to common understanding, to compose, print, issue and distribute it to the public, especially its subscribers, at and from that place."

Again, in State v. Board of County Commissioners, et al., 77 Mont. 316, 1. c. 324, the court said:

"We have heretofore held that the word "published", as used in the statute, evidently means printed and published. It refers to a newspaper having its home in the county (Strange v. Esva, 67 Mont. 301, 215 Pac. 807), and, whether such declaration was or was not necessary to a decision in that case it correctly interprets the statute and expresses the legislative intent in its passage. To hold otherwise would defeat the purpose of the Act by permitting a large concern situated in a city within the state, or even without the state, to control the county printing in any number of counties by establishing therein and furnishing such offices with papers for distribution within the counties."

Hence, in your first hypothetical question, we agree with you that if the owner of the Mokane Missourian should move its publication seat to Jefferson City, in Cole County, and compose, print and issue the paper therefrom, then, even though circulated in Callaway County, such paper would lose its qualification in so far as Callaway County is concerned, but we will answer the further part of your question, namely, would such paper continue to be a qualified publication in Cole County, in the negative.

IV.

Answering your further question in your hypothetical case, namely, supposing that the Mokane Missourian had been published for only two years in Callaway County, then if the paper moved its publication seat to Jefferson City, would the paper in its new seat be allowed the benefit of the two years' time spent while located in Callaway County, we would say no, because the aforesaid Section 13775 makes no provision for partial qualification, but, on the other hand, clearly states that the newspaper shall be published in the county where located, and shall have been published regularly and consecutively for a period of three years. As the statute reads, there is nothing more nor nothing less so far as the time factor is concerned.

If anything more is needed, an analagous case is found in the case of *In re Miller*, (Calif.) 113 Pac. 690, wherein the court held that a paper could not qualify because it was not published in the city where the advertisement or notice was given, or made, for a period of one year, but was only published at such place for a part of the year. Our statute requires a three-year period in place of a one-year period, but the analogy is pertinent in that if a paper was published for a less period than three years, the same situation would arise as under the California statute providing for a one-year period.

CONCLUSION.

1. A newspaper, in order to qualify to print public advertisements, must be composed, printed and issued to the public and its subscribers from and in the county where its business or printing office is located.

2. There is no so-called partial qualification with respect to time of location of publication, but the period required is a full three-year period at the publication seat.

Respectfully submitted,

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APPROVED:

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