

NOTICE OF
ADMINISTRATOR OF
FINAL SETTLEMENT
IN PROBATE COURT:

In a county of under 600,000 population a notice of final settlement published in a weekly newspaper for four consecutive weeks prior to time of making final settlement is sufficient.

April 18, 1942

Hon. Walter A. Eggers
Judge of Probate
Perry County
Perryville, Missouri



Dear Sir:

We have for answer your opinion request of April 13, 1942, which is as follows:

"The writer qualified as Judge of Probate of Perry County, Missouri on April 10, 1942, after the office had been vacant for several weeks.

"The first day of the Regular May Term of this court is to be held on Monday, May 11, 1942. Final notices are being published in the weekly newspapers of the county on the following dates:-

April 16, 1942.
April 23, 1942.
April 30, 1942.
May 7, 1942.

"Will you kindly advise whether this is considered as sufficient notice as called for in Sec. 229 of the Revised Statutes of Missouri 1939."

Section 229, R. S. Mo., 1939 sets out the proper manner of giving notice of final settlement by an administrator of an estate in the Probate Courts of this State. That section is as follows:

"At the first regular term of the court after the expiration of one year from the date of granting of the first letters on the estate, as required by this chapter, unless further time has been given by the court by an order entered of record, every executor and administrator shall make final settlement, having first published once a week for two consecutive weeks in cities or counties having a population of over six hundred thousand as shown by the last preceding federal census and in all other counties once a week for four consecutive weeks prior thereto in some newspaper published and circulated in the county where such settlement is to be made, if there be one, and if there be none published in such county, then by ten printed handbills put up in ten public places in said county, a notice to all creditors and others interested in the estate that he intends to make such final settlement at the next term of the court. If any executor or administrator fail to so advertise and make such final settlement at such term or when required by the court at any time thereafter, he shall be proceeded against as for his failure to make annual settlements, unless for good cause shown the court shall continue same. If the first insertion of the publication required by section 75 is not published within ten days from the date of the granting of the letters, then the one year above mentioned shall begin to run

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from the date of the first publication of such notice: Provided, that where publication is made in a daily newspaper, publication for each week after the first shall fall on the corresponding day of the week as did the first publication." (Underscoring ours).

In 36 Cyc. 1106, it is said as follows:

" * * * * * The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority. * * * * * "

The law is well settled in this state that where a statute is plain and unambiguous it is not necessary to place a construction upon it. It is only necessary to take the obvious intent of the Legislature and act in accordance therewith. In State v. Keller, reported in 137 S. W. 2d 989, l.c. 990, the court said:

" * * * * * In construing this statute the following well established rule should be kept in mind: Where the language of a statute is plain and unambiguous nothing contrary to the evident intent can be implied. State ex rel. Jacobsmeyer v. Thatcher, 358 Mo. 682, 92 S. W. 2d 640. A statute should be so construed as to give effect to the legislative intent. State ex rel. Wabash R. Co. v. Chain, 341 Mo. 19, 106 S. W. 2d 898. A statute that is clear in its terms and leaves no

room for construction must be forced as written. Dahlin v. Missouri Commission for Blind, Mo. App., 262 S. W. 420. * * * * *

In the case of Fichtner v. Mohr, reported in 16 S. W. 2d 759 l.c. 741, the court said as follows:

* * * * * We are bound to ascertain and give effect to the intention of the Legislature as expressed in the statute, and, where the language used is plain, it must be given effect by the courts. * * * * *

In the case of Cummins v. Kansas City Public Service Co. 66 S. W. 2d 921 l.c. 925, the court said as follows:

* * * * * The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and 'the manifest purpose of the statute, considered historically', is properly given consideration. See Grier and Meyering Cases; 2 Lewis, Sutherland on Stat. Const. (2d Ed.) section 363; Endlich on Interpretation of Statutes, section 329; and Maxwell on Statutes (5th Ed.) 425. * * * * *

CONCLUSION

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Perry County is a county of under six hundred thousand (600,000) inhabitants. It is, therefore, the conclusion of this office that if an administrator has complied with all the other provisions of Section 229, supra, and makes his publication as set out in your request, the last insertion being four (4) days before the term opened, that is sufficient notice as required in Section 229, supra.

Respectfully submitted,

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APPROVED:

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