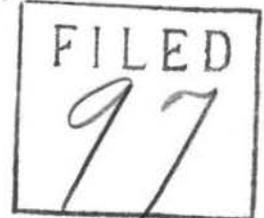


ROAD DISTRICTS: Publication of notices of filing of petition  
ORGANIZATION: to form a special road district must comply  
PUBLICATIONS: with statute.

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January 16, 1943

Mr. R. P. C. Wilson, III  
Prosecuting Attorney  
Platte County  
Platte City, Missouri



Dear Sir:

This is in reply to yours of recent date wherein you submit the following statement and question:

"In the month of November, 1942 under the old Court a Special Road District was organized. It has been called to the attention of the present Court that the publication as provided under Section 8711, Amended 1941, page 529 which provides that three publications are necessary. The order of the Court organizing the Special District states that the publication notice was published only twice instead of three times.

"The question, therefore, of the present Court is, 'Shall they recognize the Special Road District as a body politic and shall the Treasurer pay out money to the new district under the above facts?'"

Section 8711, at page 529, Laws of Missouri, 1941, provides in part as follows:

"Whenever a petition, signed by the owners of a majority of the acres of land within a district proposed to be organized, and setting forth the proposed name of the district, and giving the boundaries thereof

and the number of acres owned by each signer of such petition, and the whole number of acres embraced therein, and the names of other owners of land within such boundaries so far as known, and the number of acres owned by each so far as known, and praying for the organization of a public road district in accordance with this article, shall be filed in the office of the clerk of the county court thirty days before the beginning of the next regular term of said court, the said clerk shall give notice by at least three publications in some weekly newspaper printed in the county and by at least five handbills put up at public places within the district of the presentation of said petition, and of the date of the beginning of the next regular term of the county court at which the same may be heard. Said notices shall contain the names of at least three signers of said petition and set out the boundaries of said proposed district, and shall notify all owners of land in the then existing district who may desire to oppose the formation thereof to appear on the first day of such regular term of court and file their written remonstrance thereto. \* \* \* \* \*

It will be noted from the foregoing provisions of the section that in order for the county court to acquire jurisdiction over the subject matter of forming a special road district, the clerk of the county court must give notice of the filing of the petition for the formation of the special road district, "by at least three publications in some weekly newspaper printed in the county." This provision is a form of process. In speaking of constructive service in a suit against a non-resident member of a corporation, the court, in *Wilson v. The St. Louis & S. F. Ry. Co.*, 108 Mo. 588, 599, said:

"And it is entirely immaterial what is the means or method pointed out by the statute, or used in this instance, to acquire jurisdiction of the defendants, Seligman--whether by writ or notice, it is properly denominated 'process.' \* \* \* \* \*

In State ex rel. Utilities P. & L. Corp. v. Ryan, 337 Mo. 1180, 1186, the court, in speaking of the necessity of complying with the provisions of statutes which provide for constructive service, said:

"\* \* \* Service by publication or other substituted service is not only a statutory right but the requirements of the statute authorizing such service must be strictly complied with. (Chapman v. Chapman, 269 Mo. 663, 192 S. W. 448; St. Louis v. Williams, 235 Mo. 503, 139 S. W. 340; Stanton v. Thompson, 234 Mo. 7, 136 S. W. 698.) \* \* \* \* \*

The statute in question requires the clerk to give the notice of the filing of the petition for the formation of the special road district by at least three publications in some weekly newspaper printed in the county. From the statement of facts which you have submitted we find that the county court by its order found that the publication of the notice for the formation of this district was published twice instead of three times. This record on its face shows that the statute was not complied with. From the principles announced above the county court did not acquire jurisdiction until the statutory provisions were complied with. If the court had no jurisdiction, then its order attempting to form the district was void.

CONCLUSION

It is, therefore, the opinion of this department that the publication of the notice of the filing of the

petition for the formation of a special road district having been published only twice instead of three times, did not give the county court jurisdiction to entertain the petition for the formation of the special road district. That any orders made by the county court pertaining to such special road district are null and void.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

TWB:CP