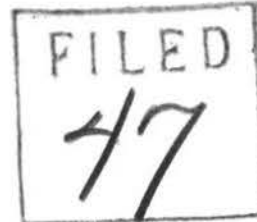


ADMINISTRATION AND:  
FINAL SETTLEMENT:  
NOTICE:

Notice of appointment of administrator and of final settlement should appear in four successive weekly insertions in paper.

July 24, 1949



Honorable O. A. Kamp  
Judge of the Probate Court  
Montgomery City, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion upon the following matter:

"I would like to have an opinion from your department, as to how many weekly issues the Administrator's notice provided for in Section 75 and the final settlement notice provided for in Section 229, R. S. Mo. 1939, should be run. There is some contention that the final settlement notice must run for five weeks prior to the opening of the term, in order to have the full 4 week's (28 days) notice. I will appreciate your opinion on this matter."

Section 75, Mo. R.S.A. 1939, states:

"At the time of the appointment of any administrator or executor of an estate, the court, or judge or clerk making such appointment shall require such administrator or executor to sign a notice prepared and attested by the judge or clerk of such court, with its seal affixed, which notice the judge or clerk of said court shall within ten days after the date letters are granted on such estate, cause to be published in some newspaper published in the county where letters of administration have been granted, and if no paper is published in such county, then in a paper published in any other county in the state nearest to the county where such letters of administration have been granted, once a week for two

consecutive weeks in all counties or cities having over six hundred thousand at the last preceding federal census and in all other counties once a week for four consecutive weeks, which said notice shall state that letters testamentary or of administration have been granted to said executor or administrator, stating the date, and requiring of persons having claims against the estate to exhibit them for allowance to the executor or administrator within six months after the date of granting said letters, or they may be precluded from any benefit of such estate, and that if such claims be not exhibited within one year from the date of the granting of said letters, they shall be forever barred: \* \* \* (Underscoring ours.)

In regard to the above we direct your attention to the case of Bolz Cooperage Corporation v. Beardslee, 245 S.W. 611. This was a case in which the court was construing the above section. The court in its opinion states the situation thus:

"\* \* \*After setting forth a detailed statement of the account, the demand recites that the letters of administration upon said estate were granted by the said common pleas court to respondent, Annie G. Beardslee, on the 8th day of June, 1918; that on July 25, 1918, respondent as said administratrix, filed with the clerk of said court the publisher's affidavit showing publication in due and regular form of the notice of the granting of said letters, showing that such publications were made on June 14, 1918, and once each week thereafter for three consecutive weeks. \* \* \*"

The court held that under the above fact situation the notice was good. It seems to us that this is a clear construction of this section and that it needs no further elaboration.

Section 229, Mo. R.S.A. 1939, states:

"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 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."

In connection with the construction of the above section we call your attention to the case of Ratliff v. Magee, 165 Mo. 461, in which the court makes the following statement in regard to the construction of our Section 229:

"The statute we are now to construe (our 229) directs that an administrator, at the first regular term of the court after two years from the date of publication of notice of his letters, shall make final settlement, 'having first published for four weeks prior thereto, in some newspaper published and circulated in the county, when such settlement is to be made, if there be

one, and if there be none published in said county, then by ten printed handbills put up in ten public places in such 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.' (Sec. 232, R. S. 1899.) As in compliance with this requirement, the administrator, in the case at bar, published the notice March 24, March 31, April 7 and April 14. The first day of the term of court to which the notice was addressed was May 8. Thus between the date of the first publication and the first day of the term, there was a period of more than four weeks, but between the date of the last publication and the first day of the term was a space of only twenty-four days. To hold the notice to be not sufficient in this case we must say that the statute requires not only that it be continued through a period of four weeks but also that there must be a space of four weeks between the last insertion in the newspaper, and the first day of the term of court, to which it is addressed, that it must be a notice continuing four weeks, and ending four weeks before the term, embracing from first to last, eight weeks. That would be a very material judicial amendment to the statute. The statute only calls for a publication to run through a period of four weeks from first to last before the first day of the term of court. It will be noticed that in case there is no newspaper in the county, then the statute requires the publication for four weeks to be by posting printed handbills in ten public places in the county. There is the very same period of time required when handbills are resorted to that there is when a newspaper is employed, and we should have to say that there must be eight weeks between the first posting of the handbills and the first day of the term of the court, if we say that the law requires that space of time between the first insertion of the notice in the newspaper and the first day of the term. The law does not mean that. If it is a case for handbills, it is sufficient if they are posted and so remain four weeks, or twenty-eight days before the first day of the term, and it is so if a newspaper is used.

"The notice of final settlement in this case was sufficient and the discharge of the administrator is res adjudicata."

From the above it appears that the requirements of the statute are satisfied if the period of time elapsing between the publication of the first notice and the opening of the term of probate court is no less than 28 days, which period of notice can be effected by four insertions in the paper.

#### CONCLUSION

It is the conclusion of this department that the number of issues of an administrator's notice provided for in Section 75 and the final settlement notice provided for in Section 229, R. S. Mo. 1939, are four.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

HPW:mw

APPROVED:

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Attorney General