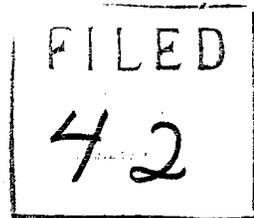


DEEDS OF TRUST:
MORTGAGES:
NEWSPAPERS:

Newspaper notice for the foreclosure of a deed of trust on property lying within that part of Kansas City located in Clay County must be made in newspapers published in Kansas City and Clay County.

November 16, 1950



Honorable John Hoshor
Senator
Fifteenth District
Missouri Senate
Jefferson City, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department reading as follows:

"The question has come up in Clay County as to the proper procedure in foreclosing deeds of trusts in an annexed area. Some are of the opinion it should be advertised in the Kansas City newspapers (Jackson County) as well as in the Clay County paper. Others are of the opinion that if it is advertised in a Clay County paper, it is sufficient.

"I understand there is no weekly or daily newspaper in the annexed area, which is the reason this particular question has arisen.

"Please be so kind as to give me an opinion on this matter before steps are taken in the legislature. I will appreciate your help very much."

The law governing publication of newspaper notices for foreclosure of mortgages and deeds of trust is found in Section 443.32, Senate Bill No. 1125, 65th General Assembly of Missouri.

"Section 443.32 (3464). Such notice shall set forth the date and book and page of the record of such mortgages or deeds of trust,

Honorable John Hoshor

the grantors, the time, terms and place of sale, and a description be given by advertisement, inserted for at least twenty times, and continued to the day of the sale, in some daily newspaper, in counties having cities of fifty thousand inhabitants or more, and in all other counties such notice shall be given by advertisement in some weekly newspaper published in such county for four successive issues, the last insertion to be not more than one week prior to the day of sale; or in some daily, tri-weekly or semi-weekly paper published in such county at least once a week for four successive weeks, said notice must appear on the same day of each week, the last insertion to be not more than one week prior to the day of sale, and if there be no newspaper published in such county or city, such notice shall be published in the nearest newspaper thereto in this state: Provided, that nothing herein contained shall be construed to authorize the giving of any shorter notice than that required by such mortgage or deed of trust; Provided further, that where the property to be sold lies wholly or in part within the corporate limits of any city having or that may hereafter have a population of fifty thousand inhabitants or more, then the notice provided for in this section shall be published in a daily newspaper in such city."

Such section, which was Section 3464, Laws of Missouri, 1943, p. 402, had the same provisions insofar as publication in counties and cities are concerned as does the present law and was, of course, in effect long before a portion of Kansas City, Missouri was located in Clay County, Missouri.

We believe the obvious intent of the statute as originally enacted was to require the publication in a daily newspaper in a city of over fifty thousand where such city was located within the county itself. Of course, where a city was located wholly within a county, such publication in a daily newspaper published within such city was also publication in a newspaper published in the county.

It is our view, therefore, that the publication required by Section 443.32 of Senate Bill No. 1125 must be made in a daily

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newspaper published within Kansas City and also in a newspaper published in Clay County where the property to be sold lies wholly or in part within the corporate limits of that part of Kansas City located in Clay County. We believe this view is buttressed by the fact that almost invariably, mortgages or deeds of trust contain the provision that the notices of sale required before such mortgages or deeds of trust can be foreclosed are to be published in a newspaper published in the county wherein the land is located.

It will be necessary for the Legislature to amend such section before it can be held that publication in a newspaper published in a city wherein the land is located, but not published in the county wherein the land is located, is sufficient.

CONCLUSION

It is the opinion of this department that the notice required by Section 443.32, Senate Bill No. 1125 of the 65th General Assembly, must be published in a daily newspaper published in Kansas City and in a newspaper published in Clay County, when the property to be sold lies wholly or in part within that part of the corporate limits of Kansas City located in Clay County, Missouri.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General