

NEWSPAPERS

) Secretary of State must determine political faith of  
) newspapers for publication of notice of referendum  
) election from facts available to him.

February 23, 1950



Honorable Walter H. Toberman  
Secretary of State  
Jefferson City, Missouri

Attention: J. Paul Markway, Chief Clerk

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"According to a recent opinion from your office, the publications covering the coming Referendum election on H. C. S. for House Bill No. 185 passed by the 65th General Assembly shall be handled in the same manner as publications covering elections on constitutional amendments.

"Section 2, Article XII of the state constitution says, '.....If possible, each proposed amendment shall be published.... in two newspapers of different political faith in each county....'

"The question has arisen as to whether the politics of a paper is determined by its listing with the Missouri Press Association and the Publications Department in this office or whether it can be determined by the known politics of the owner and his policies carried out in his paper."

The opinion referred to in your letter is one dated December 27, 1949, and addressed to you, in which we concluded, "It is the opinion of this department that a law which is made the subject of a referendum election must be published in the same manner as proposed constitutional amendments are published; that such publication is governed by the provisions of Section 2, Article 12 of the

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Constitution of Missouri, 1945, and that the newspaper, or newspapers, in which such publication is to be made are to be designated by the Secretary of State."

No legislation has been enacted to implement the provision of Section 2 of Article 11, Constitution of Missouri, 1945, quoted in your letter, and requiring publication, if possible, in two newspapers of different political faith in each county. The question of whether or not a newspaper is of a particular political faith becomes, therefore, a question of fact to be determined by the Secretary of State from the information available to him.

The primary objective is to obtain publication as was stated in the case of *People ex rel. Bonheur v. Christ*, 208 N.Y. 6, 101 N.E. 846, 1. c. 849, "The duty to publish is primary. The direction to do it in a particular way is secondary. When it is impossible to comply with both, the latter must give way to the former."

That the determination of the political faith of a newspaper is a matter of fact has been established by courts in other states under provision similar to that here involved. In the case of *People ex rel. Quinn v. Voorhies*, 187 N.Y. 327, 80 N.E. 196, 1. c. 197, the court stated:

"Of course, if the controversy should arise over the fact whether defendants did satisfy this test and designate papers advocating the principles of a certain party, it might be pertinent, as bearing upon and tending to the solution of the inquiry, to ascertain whether those papers did or did not support certain candidates and platforms. But, that would be a matter of proof under the provisions of the statute."

(Underscoring ours.)

In the case of *People v. Gorman*, 155 N.Y.S. 727, the court stated at 1. c. 733:

" \* \* \* we are not prepared to hold that it was not competent for the respondents acting in good faith, to appoint a newspaper to publish the laws in behalf of the Republican

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party which had not always been a party organ, in the place of one which had always fulfilled this role, but which, upon a particular occasion, and in the year then just coming to a close, had concededly varied its policy and had refrained from the support of some of the party candidates. If, as is claimed by the respondents, they reached the conclusion in good faith that the Elmira Star-Gazette more nearly represented and advocated the principles of the Republican party than the Elmira Advertiser (and no question is raised upon any other of the requirements), we see no reason why they might not properly designate the Star-Gazette; \* \* \*

In the case of Ohio State Journal Co. v. Brown, 19 Ohio Circuit Court 325, the court considered the question of whether or not a newspaper, which held itself out to the public as an independent newspaper, was a "newspaper of a political party," within the meaning of a statute pertaining to publication. In its opinion the court stated at l. c. 326:

"A newspaper to be of a political party, within the meaning of the statute, must profess to be so or be so known. It is not sufficient that it has, while professing to be an independent newspaper, supported a political party.

"A newspaper professing to be of a political party, or one so known, may be independent in the sense that it does not advocate all of the measures of its party, and yet be of the party, for its conduct may be owing to its judgment, or the want of it, and not to its want of faith; and an independent newspaper may advocate all of the measures of a party and support all of its candidates, and yet be not of the party, for its support of the party is to be attributed to its discretion, and not to its allegiance.

"The evidence shows that the Columbus Dispatch holds itself out to the public as 'an independent newspaper,' and its proprietor testifies that it is not a Democratic

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not a Republican, nor a Prohibition, nor a Populist newspaper; that he is a Republican, and that his newspaper has generally supported that party, but that it is independent in all things and at all times free to choose which side it will take.

"Such a newspaper is not of a political party within the meaning of the statute, and in view of its disclaimer, the court ought not to be asked to hold otherwise."

We are of the opinion that although the listing of the politics of a newspaper with the Missouri Press Association and the Publications Division of the Office of the Secretary of State would be evidence tending to show the political party with which such newspaper is affiliated, such evidence is not the only evidence which might be considered by the Secretary of State, and he may also consider the question of whether or not the newspaper has supported the policies and candidates of the party which it purports to represent. Of course, in the absence of any information in such regard, we feel that the designation by the publisher, on file in the Publications Division of your office, may be relied upon by you in making your selections.

The known politics of the owner would not have any bearing on the matter unless the newspaper also supported and carried out such politics. In the case of *People v. Gorman*, 155 N.Y.S. 722, 1. c. 724, the court stated:

"It appears that the principal owner of the petitioner is Mr. Milo Shanks, of Elmira, N.Y., and that he owns the controlling interest in said paper and is its publisher. The affidavits, presented in opposition to the petitioner's motion, contain statements claimed to have been made by the publisher to the effect that he had joined another party and did not intend to support the candidates of the Republican party, and that the other party, to whom he was about to give allegiance, was going to sweep the state; that other party was one founded by ex-Governor Sulzer, known as the 'Guardians of Liberty.'

"In answering this allegation, Mr. Shanks denies that he made this statement, and

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swears that he is a Republican. This portion of the matter furnished on the contested questions at issue is referred to here solely for the purpose of saying that it is not pertinent to the issue and can have no bearing upon the questions considered. It leads to the further observation that a man has a right to belong to any party that represents his ideas and way of thinking, and he may conduct and publish a Republican newspaper, providing he supports the policies and candidates of that party."

Under the holding of the Ohio case, quoted above, a newspaper which has designated itself as "independent" is not a newspaper of any political faith, regardless of the fact that it might have supported candidates of a particular party. Therefore, such newspaper would be ineligible for designation, except in the absence of newspapers representing two political faiths.

CONCLUSION

Therefore, it is the opinion of this department that the Secretary of State, in determining the political faith of a newspaper for publication of notice of the referendum election on House Committee Substitute for House Bill No. 185 of the Sixty-fifth General Assembly, must ascertain the political faith of a newspaper selected by him from the facts available to him. The listing of its politics by a newspaper with the Missouri Press Association and the Publications Division of the Office of Secretary of State may be relied upon by the Secretary of State in determining the political faith of such newspaper, but it is not conclusive and the Secretary of State may consider whether or not the newspaper has in fact supported the candidates and policies of the party which it purports to represent. A newspaper which has designated itself as an independent newspaper is not a newspaper of any political faith, and, therefore, is not entitled to be designated except in the absence of newspapers representing two political faiths.

Respectfully submitted,

APPROVED:

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Attorney General

RRW/feh