

NEWSPAPERS:

Selection of newspapers in City of St. Louis for referendum publication.

March 1, 1950



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

Dear Sir:

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

"Some question has arisen as to the qualifications of the ST. LOUIS ARGUS and the ST. LOUIS LABOR TRIBUNE in the matter of publication of notice of House Committee Substitute for House Bill No. 185 passed by the 65th General Assembly.

"It appears from Section 14970 Missouri Session Acts 1941, p. 519 et seq. and Section 14971 Missouri Session Acts 1945, p. 1318, that the only newspapers in the City of St. Louis which are qualified to publish legal notices are those which have complied with the provisions of the said sections at a meeting of the Board of Judges of the St. Louis Circuit Court.

"We are informed that the only newspapers which qualified at the last meeting were the ST. LOUIS POST DISPATCH, the ST. LOUIS GLOBE DEMOCRAT, the ST. LOUIS STAR-TIMES, and the ST. LOUIS DAILY RECORD.

"From the foregoing information the following questions have arisen and we respectfully request your opinion as the Attorney General of Missouri.

"(1) Assuming the foregoing statement is true and correct, can the Secretary of State of Missouri now withdraw from the ST. LOUIS ARGUS and the ST. LOUIS LABOR TRIBUNE his commitments as to the legal printing to be done concerning the beforementioned referendum?

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"(2) In view of the fact that the above mentioned St. Louis newspapers, viz. the ST. LOUIS POST DISPATCH, the ST. LOUIS GLOBE DEMOCRAT, the ST. LOUIS STAR-TIMES, and the ST. LOUIS DAILY RECORD, have qualified at rates higher than the statewide rate, would it be permissible for the Secretary of State to enter into contract for the higher rates?

"(3) In the event that we cannot pay the higher rates required by those papers so qualified, what procedure will be necessary to follow in order to complete the required legal publication of the beforementioned referendum?

"(4) Without assuming the truth or accuracy of the foregoing statements, we respectfully request your opinion as to which publications in St. Louis City are qualified to accept legal printing contracts concerning the beforementioned referendum."

Section 14966, R. S. Missouri, 1939, as amended by Senate Bill No. 123, Sixty-fifth General Assembly, provides as follows:

"When any law, proclamation, advertisement, nominations to office, proposed constitutional amendments or other questions to be submitted to the people, order or notice shall be published in any newspaper for the state, or for any public officer on account of or in the name of the state, or for any county, or for any public officer on account of, or in the name of any county, there shall not be charged by or allowed to any such newspaper for such publications a higher rate than ten cents per line for each insertion, the lines to be two inches long and to be set in type occupying twelve lines to the column inch, fractional lines to be charged and paid for as one line: Provided, however, that where any law authorizing and requiring the publication of any such law, proclamation, advertisement, nominations to office, proposed constitutional amendments or other questions to be submitted to the people, order or notice, shall require the use of a type having a body larger than six point, or more than one size of type, or the use of any emblem, or the spacing of lines so

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as to have a blank space between the lines, said printing shall be paid for by the inch of space used, single column of 12 ems pica wide, which price per inch shall not exceed the rate of one dollar per inch, single column of 12 ems pica wide, for each insertion. When any law proclamation, advertisement, nominations to office, proposed constitutional amendments, or other questions to be submitted to the people, order or notice, shall be required by law to be published in any newspaper, the rates herein specified shall prevail, and all laws or parts of laws in conflict herewith, except sections 14970 and 14972, Revised Statutes 1939, and Section 14971, laws of 1945, pages 1318 and 1319, approved July 3, 1946, are hereby repealed."

(Underscoring ours.)

Section 14968, R. S. Missouri, 1939, as amended Laws of 1943, page 859, provides:

"All public advertisements and orders of publication required by law to be made and all legal publications affecting the title to real estate, shall be published in some daily, tri-weekly, semi-weekly or weekly newspaper of general circulation in the county where located and which shall have been admitted to the post office as second class matter in the city of publication; shall have been published regularly and consecutively for a period of three years; shall have a list of bona fide subscribers voluntarily engaged as such, who have paid or agreed to pay a stated price for a subscription for a definite period of time: Provided, that when a public notice, required by law, to be published once a week for a given number of weeks, shall be published in a daily, tri-weekly, semi-weekly or weekly newspaper, the notice shall appear once a week, on the same day of each week, and further provided that every affidavit to proof of publication shall state that the newspaper in which such notice was published has complied with the provisions of this section: Provided further, that the duration of consecutive publication herein provided for shall not affect newspapers which have become legal publications

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prior to the effective date of this section. Provided, however, that when any newspaper shall be forced to suspend publication in any time of war, due to the owner or publisher being inducted into the armed forces of the United States, the same may be reinstated within one year after actual hostilities shall have ceased, with all the benefits under the provisions of this section, upon the filing with the Secretary of State of notice of intention of said owner or publisher, his widow or legal heirs, to republish said newspaper, setting forth the name of the publication, its volume and number, its frequency of publication, and its readmission to the post office where it was previously entered as second class mail matter and when it shall have a list of bona fide subscribers voluntarily engaged as such who have paid or agreed to pay a stated price for subscription for a definite period of time. All laws or parts of laws in conflict with this section except sections 14970, 14971, 14972, Laws of Missouri, 1941, and Sections 7771, 7772 and 7773, Revised Statutes of Missouri, 1939, are hereby repealed."

Section 14970, R. S. Missouri, 1939, provides:

"In all cities of this State which now have, or shall hereafter have, a population of one hundred thousand inhabitants or more, all public notices and advertisements, directed by any court or required by law to be published in a newspaper, shall be published in same daily newspaper of such city, of general circulation therein, which shall have been established and continuously published as such for a period of at least three consecutive years next prior to the publication of any such notice."

Section 14971, as amended Laws of 1945, page 1317, provides:

"In all such cities a board consisting of the judges of the circuit court of such city or of the judicial circuit in which said city is situated, or a majority of them shall on or before the first day of January, 1942, and every two years thereafter, cause to be published in some daily newspaper of said city-

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a notice for at least twenty days announcing and designating the time and place when and where said board shall hold a hearing to determine what newspapers in such cities are qualified to publish public notices and advertisements under the provisions of the preceding section; and all newspapers in said cities desiring to publish such public notices and advertisements shall, on or prior to the date of each such hearing, file with the board a petition verified by the affidavit of one of the publishers thereof, that such newspaper has the qualifications set forth in the previous section and desires to be designated as a qualified newspaper under the provisions of the preceding section, and a majority of the board at such time and place shall determine what newspapers so petitioning are qualified under the provisions of the preceding section and shall make a record thereof and shall file a copy thereof with the clerk of all courts of record within such cities, and thereupon such newspapers shall be deemed and considered by all courts and officers of this state to be qualified under the provisions of the preceding section; Provided, however, that there shall not be charged by or allowed to any such newspaper for such publications a higher rate than fifteen cents per line for each insertion, the lines to be two inches long and to be set in type occupying twelve lines to the column inch, fractional lines to be charged and paid for as one line; Provided, however, that said petition shall be accompanied by a good and sufficient bond, in a sum to be fixed by said board, conditioned for the correct and faithful publication in said newspaper of all said public notices and advertisements, in manner and form as required by law and at rates not in excess of the rate fixed herein; Provided, further, that the board of judges of any such city, if the board shall deem it in the public interest, shall, in the manner hereinbefore prescribed, qualify any daily newspaper of general circulation for the publication of public notices and advertisements at rates higher than the maximum rates herein established, though such newspaper shall not file bond hereunder."

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The City of St. Louis being a city having a population of more than 100,000 persons, we feel that Sections 14970 and 14971 are applicable in determining the newspapers which are eligible to be designated for publication of the referendum on House Committee Substitute for House Bill No. 185 of the Sixty-fifth General Assembly. We call your attention to the fact that in Sections 14966 and 14968, quoted supra, specific provision is made to avoid any repeal by implication of Sections 14970 and 14971. Such being the case, we feel that the Legislature definitely intended those sections to be applicable in publication of all matters referred to in Section 14966 in the cities having a population of more than 100,000 persons.

In view of the foregoing we feel that the Secretary of State must select from the newspapers which have complied with the provisions of Section 14971, as amended. He would have no authority to contract for the publication in the City of St. Louis in a newspaper which had not so qualified.

" * * * Before a state officer can enter into a valid contract he must be given that power either by the Constitution or by the statutes. All persons dealing with such officers are charged with knowledge of the extent of their authority and are bound, at their peril, to ascertain whether the contemplated contract is within the power conferred. Such power must be exercised in manner and form as directed by the Legislature. * * *" (Aetna Insurance Company v. O'Malley, 343 Mo. 1232, 124 S.W. (2d) 1164, 1.c. 1166)

If the newspapers which the Secretary of State had designated for the publication in St. Louis were not qualified under Section 14971, the Secretary of State would have no authority to enter into a contract with such newspapers, which would be binding upon the State of Missouri. Therefore, insofar as the liability of the State of Missouri is concerned, the Secretary of State must withdraw any commitment which he has made to a newspaper which is not qualified.

As for your second question, Section 14971 specifically authorizes the judges of the circuit court to fix a rate higher than that prescribed by the statute. Any such rate fixed by the circuit court would be such a rate as the Secretary of State or any other public official is authorized to pay in order to obtain the required publication. Inasmuch as Section 14971 controls in the City of St. Louis, the rates prescribed by Section 14966 have no bearing. Of course, the Secretary of State would have no authority to publish at rates higher than those which had been approved by the circuit judges.

CONCLUSION

Therefore, it is the opinion of this department that the Secretary of State, in designating newspapers for publication

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concerning the referendum on House Committee Substitute for House Bill No. 185, must in the City of St. Louis make his selection in accordance with Section 14971, R. S. Missouri, 1939, amended Laws of Missouri, 1945, page 1317. The Secretary of State has no authority to enter into a contract binding on the State of Missouri with any newspaper which has not qualified under said section. The Secretary of State is authorized in the City of St. Louis to pay the rate prescribed by the circuit judges in qualified newspapers under Section 14971.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General