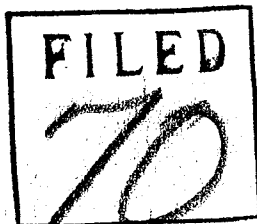


PUBLIC NOTICES: Maximum rate for publication of public notices on behalf of state or county is ten cents per column line of two inches length, twelve lines per column inch, in the absence of law authorizing or requiring use of larger type, wider spacing of lines or incorporation of emblems.



June 24, 1954

Honorable John P. Peters  
Prosecuting Attorney  
Osage County  
Linn, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"Will your honorable department please give me an opinion, as to whether or not, under the provisions of Section 493.030, the charges, marked on each of the Clippings enclosed, can be sustained, as a legal charge under the section cited R. S. Mo. 1949? You will note the difference in the charge of the two papers, one representing each Political Party here in the County. The one, Single Column, seven inches in space, published 4 times, charge \$56.00. The other, Double Space, 8 $\frac{1}{2}$  inches, or total of single space 17 inches, 4 issues - charge \$68.00.

"As I read the section quoted, the maximum that can be charged is not over \$1.00 per inch, but this maximum contemplates, the type, designated in this section of the

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law, as I understand it, that is 'Six Point', is this interpretation, in your opinion correct?

"Further, under the terms of and looking at the proviso, beginning in line 11 top right, is there some other provision of the law, relative the same subject, that fits this proviso portion of the statute, or is this an abstract provision to fit a special order, that might be made by copy or description, furnished, with request that it be so printed? It would seem that the first part of the proviso requires, that there should first be some law, authorizing or requiring the different size of type, and form of the notice, which would go to make up and determine, the space charged for.

"Lastly; can the charge set out on either of the two notices submitted, be sustained under the section of law, cited above?

"Your opinion will be appreciated."

You have submitted with your letter of inquiry the clippings referred to therein. We observe from such clippings that they are notices of the primary election to be held on the third day of August, 1954. This publication has been made by the county clerk pursuant to the provisions of Section 120.330, RSMo 1949, reading as follows:

"Upon receipt of such notice, such county clerk shall, not less than ten days thereafter, publish so much thereof as may be applicable to his county, once each week, for four consecutive weeks, in at least two, and not to exceed four, newspapers of general circulation published in said county."

The expense of such publication is made a liability of the county under the provisions of Section 493.020, RSMo 1949, which reads as follows:

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"When any such advertisement shall be made by a public officer, thereunto authorized by law, the reasonable expense thereof shall be allowed and paid out of the county treasury, as other demands and charges of a like nature."

The statutory maximum rates which may be charged for the publication of public notices have been established by Section 493.030, RSMo 1949, which reads 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 as to have a blank space between the lines, said printing shall be paid for by the inch of space used, single column of twelve ems pica wide, which price per inch shall not exceed the rate of one dollar per inch, single column of twelve ems pica wide, for each insertion. When any law, proclamation, advertisement,

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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 493.070 to 493.090, are hereby repealed." (Emphasis ours.)

You will observe that under the first portion of this statute the maximum rate which may be charged for such publications has been fixed at ten cents per line for each insertion. "Line" as used in the statute has been defined as being one of two inches in length and set in a type occupying twelve of such lines to the column inch. This is the maximum which may be charged in the absence of certain qualifying provisions found in the same statute.

It is noted that in the event a law authorizing or requiring the publication of certain types of informative material for the benefit of the public requires that type of a different size be used, or the use of blank spaces between lines, or the incorporation of emblems, a different maximum rate may be charged. In such circumstances the maximum rate for publication shall be based upon the inch of space used by a single column of twelve picas wide. The rate so fixed for such type of publication may not exceed \$1.00 per column inch for each insertion. However, this latter rate is inapplicable to notices such as those now under consideration inasmuch as the statute requiring the publication thereof makes no requirement so as to bring the publication within the proviso found in the statute.

The foregoing rates, of course, are the maximum which may be lawfully charged by the newspaper publishing the notice. It is made the duty of the officers procuring such publications to obtain the best rate obtainable within such maximums as provided by Section 493.040, RSMo 1949, which reads as follows:

"In procuring the publication of any law, proclamation, advertisement, order or notice, as in section 493.030 mentioned, the public officers shall accept of the most advantageous terms that can be obtained, not exceeding the rates limited in said section."

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It might also be well to point out that an agreement between two or more publishers to charge the highest legal rate is immoral and not enforceable as was held in *Pendleton v. Asbury*, 78 S.W. 51, 104 Mo. App. 723.

CONCLUSION

In the premises we are of the opinion that the maximum legal rate which may be charged for the publication of the notice of a primary election is that fixed by Section 493.030, RSMo 1949, being ten cents per line for each insertion, each line being two inches long and set in type occupying twelve lines to the column inch with fractional lines being charged for as a whole line.

It is our further opinion that the charges which you have indicated upon the two clippings submitted, amounting to \$56.00 and \$68.00 respectively, are both in excess of the maximum legal rate which may be charged for the publication of the notice to which they relate.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

WFB:vlw