

COUNTIES: County court authorized to publish
financial report in only one news-
COUNTY FINANCIAL REPORT: paper at county's expense.



February 7, 1955

Honorable W. H. Pinnell
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request reads as follows:

"The County Court of this county has this day requested me to secure your opinion on a matter relating to the publication of the annual financial statement.

"Provision 1 of MRS 1949 Section 50.800 requires that 'On or before the first Monday in March of each year after the taking effect of this law the county court of each county in this state shall prepare and publish in some newspaper of general circulation published in such county * * *'

"In a decision handed down by the Kansas City Court of Appeals in 1904, Pendleton v. Asbury, 78 S.W. 651, 1.c. 652, the court stated, 'The Legislature has by statute required that a publication of the county financial statement be made in "some" (one) newspaper printed in the county (section 6793, Rev. St. 1899), and has fixed the maximum rate for such publication * * *'

"From the foregoing it would appear that publication can be made in only one newspaper of general circulation. The Court and I are desirous of knowing your interpretation of this statute."

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Section 50.800, RSMo 1949, provides, in part, as follows:

"1. On or before the first Monday in March of each year after the taking effect of this law the county court of each county in this state shall prepare and publish in some newspaper of general circulation published in such county, if such there be, and if not by notices posted in at least ten places in such county, a detailed financial statement of the county for the year ending December thirty-first, preceding."

In the case of Pendleton v. Asbury, 104 Mo. App. 723, 78 S.W. 651, the Kansas City Court of Appeals had this statute under consideration. In that case two newspaper publishers in the same county had entered into an agreement whereby each would bid the maximum rate posed for publishing the county financial statement, and did so. The county court then proposed that each publish the report and receive one half the amount bid. The court held such agreement to be illegal and in its opinion stated, 104 Mo. App. 1.c. 728:

" * * * But the plaintiff contends that as the agreement provided for the publication of the county statement in both papers that a greater publicity was given to it, and it was therefore not against public policy.

"The Legislature has by statute required that a publication of the county financial statement be made in 'some' (one) newspaper printed in the county - section 6793, Revised Statutes - and has fixed the maximum rate for such publication - section 4688, Revised Statutes. The effect of the agreement here was to require the county court to pay for the publication in two papers instead of one, and to pay just double what it otherwise would have been required to pay. The combination agreement so entered into and executed was, it seems to us, but a fraudulent trick by which the parties thereto were enabled to appropriate to their own use out of the county treasury a sum of money to which they had no lawful right. * * *"

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This holding of the court appears to us to construe Section 50.800 as to permit publication in only one newspaper. Such construction also appears to us to conform to the general principles regarding the authority of the county court. In the case of Lancaster v. County of Atchison, 352 Mo. 1039, 180 S.W. (2d) 706, l.c. 708, the court stated in discussing the powers of county courts:

"Both parties to this suit agree that counties, like other public corporations, 'can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation - not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied.' Dillon on Municipal Corporations, 3rd Ed., Section 89. We have repeatedly approved this quotation. * * *"

Further in that case, the court stated, 180 S.W. (2d) l.c. 709:

" * * * Where the statute (Section 8548) 'limits the doing of a particular thing in a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done.' Keane v. Strodman, 323 Mo. 161, 18 S.W. 2d 896, 898. See, also, Dougherty v. Excelsior Springs, 110 Mo. App. 623, 85 S.W. 112; Taylor v. Dimmitt, 326 Mo. 330, 78 S.W. 2d 841, 98 A.L.R. 995. In other words, there can never be an implied power given a county or other public corporation when there is an express power." (Emphasis ours.)

Applying these principles to the present situation, the Legislature has provided for the publication of the county financial statement in one newspaper. Although publication in additional newspapers might be effective to afford greater

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publicity to such financial statement, nevertheless we feel that, the Legislature having prescribed the manner of publication, the court's authority to obligate the county in such regard must be exercised only in such manner and no authority may be implied for further or additional publication.

CONCLUSION

Therefore, it is the opinion of this office that the county court is authorized under Section 50.800, RSMo 1949, to publish the county financial statement at the county's expense in only one newspaper of general circulation published in the county.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml