

PROBATE COURT:
PUBLICATION OF
NOTICE:

In specifying the date in a notice for hearing on petition for sale by probate court, the date must be fixed not later than seven days after twenty-eight days following the date of the first publication of notice.



June 11, 1956

Honorable O. L. Spencer
Judge of the Probate Court
Scott County
Benton, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"Section 473.493 of the New Probate Code is so confusing to me that I can't decide what to do. Will you furnish me an opinion to guide me in my dilemma?"

"This statute provides, among other things, 'Publication, if any, shall be for four consecutive weeks in accordance with Section 472.100. Where service by publication is ordered, the hearing shall be held at the time specified in the notice which shall be not later than 7 days after completion of publication,' etc.

"Norton vs. Reed, 253 Mo. Page 236 and Young vs. Downey, 145 Mo. Page 250 seems to hold that, where statute requires publication be for four consecutive weeks, it means 28 days, that is, the completion of the publication is 28 days after the first publication. Then City of Brunswick vs. Beneche, 233 SW Page 169, where the statute considered required publication of notice be published in the paper for two consecutive weeks, the court ruled that the publication required was for full two weeks or 14 days.

"Question:- In specifying date in notice for hearing on petition for sale, must I fix the date not later than 7 days after the last publication or not later than 7 days after 28 days from first publication?"

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Paragraph 2 of Section 473.493, 1955 Missouri Probate Code, reads in part as follows:

" * * * Publication, if any, shall be for four consecutive weeks in accordance with section 472.100, RSMo. Where service by publication is ordered, the hearing shall be held at the time specified in the notice which shall be not later than seven days after completion of publication and, in other cases, the hearing shall be had at the time specified in the notice but not later than twenty days after date of the notice."

In the case of *Ratliff v. Magee*, 169 Mo. 461, at l.c. 467, the Missouri Supreme Court stated:

"In *Young v. Downey*, 145 Mo. 250 (same case on second appeal, 150 Mo. 317), the statute construed was that requiring notice to heirs when land was to be sold by the administrator to pay debts. The requirement of that statute is: 'Such notice shall be published for four weeks in some newspaper in the county in which the proceedings are had . . . before the term of the court at which any such order will be made.' [Sec. 148, R.S. 1899.] There the law does not call for a publication once a week for four weeks successively, but it calls for a publication of the notice for a period of four weeks. In that case the notice had been published once a week during four successive weeks, but the first publication was September 8, and the first day of the term of court to which it was returnable was October 2, so that a period of only twenty-five days from first to last was covered by the notice and we held that the statute was not satisfied, that there must be full four weeks notice and that four weeks covered twenty-eight days. But we did not hold that the statute required a space of four weeks between the

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day of the last publication and the first day of the term of the court."

In the case of Nerton v. Reed, 253 Mo. 236, at l.c. 249, the court stated:

"The notice was published with the addition of the description of the tract of land involved in this suit. The statute (R.S.1889, sec. 147) required it to 'be published for four weeks in some newspaper in the county in which the proceedings are had, or by ten handbills, to be put up at ten public places in said county at least twenty days before the term of the court at which any such order will be made, in the discretion of the court.' "

At 250 et seq. the court stated:

"That the period of four weeks that the statute required this notice to be published was a full period of twenty-eight days is not only evident from the words themselves by the application of their ordinary and usual meaning in such connection, but has been permanently settled by the adjudications of this court. [Young v. Downey, 145 Mo. 250, 254, 259; same case, 150 Mo. 317; Robbins v. Boulware, 190 Mo. 33.] That the notice is an indispensable prerequisite to the jurisdiction of the court to make the order of sale is equally well settled in the same cases. The Young case is not distinguishable in any particular from the one we are considering. In that case the order of sale recited that the notice had been published according to law. The proof of publication shows that there had been insertions of the notice in a weekly newspaper published in the county, that is to say, on September 8th, 15th, 22nd and 29th. The first day of

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the next term was October 2d, so that the same number of days and the same number of weekly publications intervened in that case as in this, yet the court decided that on account of the defective publication in that respect the order of sale and deed made in pursuance of it were void. On the second appeal reported in the 150th Missouri the attention of the court was called to the fact that it had decided differently in *Cruzen v. Stephens*, 123 Mo. 337, and after a full review of many cases both in this and other States, it expressly overruled that case."

In view of these opinions, it is the opinion of this department that the hearing date should be set not more than seven days after the elapse of a twenty-eight day period following the date of the first publication.

CONCLUSION

It is the opinion of this department that in specifying the date in a notice for hearing on petition for sale by probate court that the date must be fixed not later than seven days after twenty-eight days following the date of the first publication of notice.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours

John M. Dalton
Attorney General

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