

CITIES, TOWNS AND VILLAGES: A newspaper in which a third class City's financial reports are published in accordance with Section 77.110 must meet the requirements set out in Section 493.050.

LEGAL PUBLICATIONS: A newspaper having two hundred subscribers would qualify, assuming that such newspaper contains news of general character and interest to the community, as a newspaper of "general circulation" within the purview of Section 493.050.

FINANCIAL STATEMENTS:

September 29, 1961



Honorable John F. Hayner
Representative
11th District Jackson County
Independence, Missouri

Dear Mr. Hayner:

This department is in receipt of your recent request for a legal opinion which, for the sake of brevity, may be summarized as follows:

- (1) Are the definitions in section 493.050 applicable to Section 77.110?
- (2) Does a newspaper having approximately two hundred subscribers qualify as a newspaper of "general circulation" within the meaning of Section 493.050?

Section 77.110, RSMo 1959, reads as follows:

"The council shall semiannually, in January and July of each year, publish a full and detailed statement of the receipts and expenditures and indebtedness of the city for the half year ending on December thirty-first and June thirtieth preceding the date of such report, which statement shall be published in some newspaper published in the city."

Section 493.050, RSMo 1959, reads as follows:

"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

Honorable John F. Hayner

in some daily, triweekly, semiweekly 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 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, triweekly, semiweekly 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 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

Honorable John F. Hayner

of time. All laws or parts of laws in conflict with this section except sections 493.070 to 493.120, are hereby repealed. (R.S. 1939 §14968, A.L. 1943 p. 859)"

Inasmuch as Section 77.110 imposes upon the City Council of third class cities the duty to publish the cities' financial reports such reports would come within the language of Section 493.050 which lays down the publication requirements for "all public advertisements and orders of publication required by law to be made . . ." Thus a newspaper in which a third class city's financial reports are published in accordance with Section 77.110 must meet the requirements set out in Section 493.050.

You next inquire as to whether or not a newspaper having two hundred subscribers qualifies as a newspaper of "general circultaion" within the meaning of Section 493.050. In *State v. Holman*, Mo. Sup., 275 S.W. 2d 280, 1.c. 282, the Court approved the following criteria for defining a newspaper of "general circulation":

"* * *First that a newspaper of general circulation is not determined by the number of its subscribers, but by the diversity of its subscribers. Second, that, even though a newspaper is of particular interest to a particular class of persons, yet, if it contains news of a general character and interest to the community, although the news may be limited in amount, it qualifies as a newspaper of "general circulation"."

The court further held that a newspaper which had approximately fifty subscribers in a county was a newspaper of "general circulation" in that county. Under the holding of the *State v. Holman* case a newspaper having two hundred subscribers and which meets the other criteria set out in *State v. Holman*, would qualify assuming that it further meets the requirements set out by Section 493.050, as a newspaper of "general circulation" as required by Section 493.050.

CONCLUSION

It is therefore, the opinion of this office that:

(1) A newspaper in which a third class city's financial reports are published in accordance with Section 77.110 must meet the requirements set out in Section 493.050;

Honorable John F. Hayner

(2) A newspaper having two hundred subscribers would qualify, assuming that such newspaper contains news of general character and interest to the community, and assuming that it meets the requirements set out in Section 493.050, as a newspaper of "general circulation" and assuming other requirements of Section 493.050 are met.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Gilbert D. Stephenson.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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