

Opinion No. 126 Answered by letter
(O'Malley)

March 21, 1963



Honorable Tom Baker
Member, Missouri House of Representatives
State Capitol
Jefferson City, Missouri

Dear Mr. Baker:

This letter of advice is in answer to your inquiry directed to the following financial statement published by Pike Township, Stoddard County, for the fiscal year 1962:

"PIKE TOWNSHIP FINANCIAL STATEMENT

Current Fund

Total Receipts, 1962 -----	\$ 5,373.09
Balance on Hand, Jan. 1, 1962 -----	4,230.11
Total Receipts & Balance, Jan. 1, 1962 -----	<u>\$ 9,603.20</u>
Total Expenditures -----	6,881.42
Balance Dec. 31, 1962 -----	<u>\$2,721.75</u>

Road & Bridge Fund

Total Receipts for 1962 -----	29,542.73
Balance on Hand Jan. 1, 1962 -----	8,178.01
Total Receipts and Balance for 1962 -----	<u>37,720.74</u>
Total Expenditures -----	29,684.60
Balance on Hand Dec. 31, 1962 -----	<u>\$ 8,036.14</u>

A. K. Abernathy, Clerk"

You have asked this office to test the legal sufficiency of the financial statement quoted above, and to disclose how publication of a proper financial statement may be compelled.

Records disclose that Stoddard County is under township organization as authorized by Chapter 65 RSMo 1959. While we do not find in the framework of Chapter 65 RSMo 1959 any directive to publish any financial statement, Section 231.280 RSMo 1959, under which the above quoted financial statement is obviously published, is here quoted in full:

"The township board of directors in all counties under township organization shall keep, or cause to be kept, a full, true and correct record of all moneys received and disbursed on account of roads and bridges and all other receipts and disbursements of every nature in such township, showing in detail from whom and on what account such money was received, and to whom and for what purpose disbursed, together with a complete inventory of all tools, road machinery and other property belonging to the township, together with such other information as to the condition of roads and bridges and the needs of same as may be deemed of value, and within thirty days after the end of the fiscal year of said township board of directors, which fiscal year shall begin and end on the same date as the fiscal year of the county in which such township is located, shall cause to be published an itemized statement of such receipts and expenditures, inventory of tools, machinery and other property in some newspaper published in such township, and if there be no newspaper published in the township, then such publication may be made in any newspaper of general circulation within such township published in the county. Such statement shall be made by the township clerk under the direction of the township board, and shall be sworn to by such clerk, and it shall be the duty of the township clerk within thirty days after the end of the fiscal year of said township board to file one copy each of such detailed statement with the chief engineer of the Missouri state highway commission at Jefferson City, and with the county clerk of such county, and county clerk shall lay the same before the county court at its regular meeting. "

Section 231.290, RSMo 1959 provides:

"For the purpose of carrying out the provisions of section 231.280, it shall be the duty of the county clerk in counties having township organization to prepare, at the expense of the county, forms for the publication of the detailed statement of the township's receipts and disbursements, on or before the twentieth day of February of each year, and submit the same to the township clerk of each township, together with any other information he may deem necessary and the county clerk shall require each township board to make such publication according to the form submitted, and also require a certified copy of such statement to be filed in his office on or before the twentieth day of March of each year."

Section 231.290 RSMo 1959, quoted supra, has remained unchanged since being placed in Laws of Missouri, 1917, page 561, Section 22. Section 231.280 RSMo 1959, quoted supra, has had only one change in its language since it was placed in Laws of Missouri, 1917, page 561, Section 21, such minor changes occurring in the repeal and reenactment of the section in 1945 (Laws of Missouri, 1945, page 1498). The two minor changes made in 1945 to what is now Section 231.280 RSMo 1959 provided for timing the required report to the fiscal year of the township, and for furnishing a copy of such report to the Missouri State Highway Commission.

Section 231.280 RSMo 1959 uses the following language when disclosing how detailed the required financial statement must be:

"The township board of directors in all counties under township organization shall keep, or cause to be kept, a full, true and correct record of all moneys received and disbursed on account of roads and bridges and all other receipts and disbursements of every nature in such township, showing in

detail from whom and on what account such money was received, and to whom and for what purpose disbursed, together with a complete inventory of all tools, road machinery and other property belonging to the township, together with such other information as to the condition of roads and bridges and the needs of same as may be deemed of value, and * * * shall cause to be published an itemized statement of such receipts and expenditures; inventory of tools, machinery and other property in some newspaper published in such township, and if there be no newspaper published in the township, then such publication may be made in any newspaper of general circulation within such township published in the county. * * * (Underscoring supplied)

The Pike Township financial statement for 1962 incorporated in the forefront of this opinion does not on its face disclose a colorable attempt at compliance with Section 231.280 RSMo 1959, and must be construed to be legally insufficient.

Under the provisions of Section 231.290 RSMo 1959, quoted supra, it is the duty of the county clerk in a county under township organization to prepare forms for the publication of the detailed statement required by Section 231.280 RSMo 1959. Section 231.330 RSMo 1959 prescribes penalties for willful failure to comply with Sections 231.150 to 231.330 RSMo 1959, and reads as follows:

"Any official or other person who shall willfully fail to comply with any of the provisions of sections 231.150 to 231.330, and any person who shall willfully violate any of the provisions thereof, shall be deemed guilty of a misdemeanor, and where no other or different punishment is provided, shall be punished by a fine of not less than five dollars nor more than five hundred dollars."

Any willful failure to comply with the directives found in Sections 231.280 and 231.290 RSMo 1959 will justify initiation of criminal proceedings against those officials responsible for not complying with such statutes, and such evidence should be made available to the Prosecuting Attorney of Stoddard County.

Honorable Tom Baker

-5-

An additional copy of this letter is being attached in order that you may make the same available to your constituent who wrote to you in regard to this matter. The enclosures of your letter of March 5, 1963, are enclosed.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

Encl.
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