

SCHOOLS: 1. The requirements of Section 178.810,
JUNIOR COLLEGE DISTRICTS: RSMo Supp. 1967, relating to organization
elections of junior college districts are
met by giving notice by publication in
any newspaper of general circulation in each county at the time and
in the manner required by law.

2. The publisher's affidavit of publication of notice of the elec-
tion is sufficient if it conforms to the requirements of Section
493.060 RSMo. There is no requirement that this affidavit be pro-
duced except as may be necessary under the circumstances to provide
"sufficient evidence of the publication."

3. The recording by the State Board of Education of the copy of the
order declaring the junior college district organized pursuant to
Section 178.800, RSMo Supp. 1967, is sufficient to constitute notice
to the county clerk and other county officials of the legal existence
of the district.

OPINION NO. 125

May 28, 1968



Honorable William H. Bruce, Jr.
Prosecuting Attorney
Reynolds County Courthouse
Centerville, Missouri 63633

Dear Mr. Bruce:

This department is in receipt of your request for a legal
opinion upon certain matters pertaining to the organization of
Three Rivers Junior College District. Your inquiry may be summariz-
ed as follows:

- (1) Does Section 178.810 require publication
in a newspaper actually published in each
county included in the proposed junior
college district?
- (2) What is required in the publisher's affidavit
of publication? Can it be amended? When
must it be filed?
- (3) What proof is required to be given to local
county officials of the junior college
district's official existence?

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Section 178.810, RSMo Supp. 1967, provides in part as follows:

"1. Notice of the organization election shall be given by the state board of education by publication in at least one newspaper of general circulation in each county including any portion of the proposed junior college district, . . ."

All Section 178.810, RSMo Supp. 1967, requires is, that notice be given "in at least one newspaper of general circulation in each county." The section neither specifically nor inferentially contains any requirement that the location or situs of the printing of the newspaper be within the county where notice is to be given. Absent such a requirement, such a restriction cannot be read into the statute. State ex rel Reorganized School District No. R-6 of Daviess County v. Holman, 275 S.W.2d 280 (En Banc 1955).

In response to your second question we refer you to Section 493.060, which states:

"When any notice or other advertisement shall be required, by law or the order of any court, to be published in any newspaper or made in conformity with any deed of trust or power of attorney, the affidavit of the printer, editor, or publisher, with a copy of such advertisement annexed, stating the number and date of the papers in which the same was published, shall be sufficient evidence of the publication."

This section neither prohibits amendments to such affidavits nor places any time limit upon the filing of such. The procedure authorized, moreover, is but one of several permissible methods of proving publication of a required notice. It has been held that the words "shall be sufficient evidence of the publication" permits proof by means other than by a printer's affidavit specifically authorized by this section. Murphy v. Butler County, 180 S.W.2d 732 (1944); Spitcaufsky v. Hatten, 182 S.W.2d 86 (En Banc 1944). As these cases make plain, the proof of publication of a required notice may first be made at the time a direct attack is levied upon the validity of the notice, i.e., in the trial of a lawsuit attacking the validity of the general proposition for which the notice was given. By virtue of the words of the statute and the authorities construing it, then, it is plain that the elements of proof can be adduced in any one of several ways and within no certain time limit.

Your final inquiry pertains to the proof of the existence of the junior college district to local authorities. Section 178.800, RSMo Supp., sets forth the procedure and reads in part as follows:

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" * * * If the certificate of the secretary of the state board of education shows that the proposition to organize the junior college district has received a majority of the votes cast thereon, the state board of education shall make an order declaring the junior college district organized and cause a copy thereof to be recorded in the office of recorder of deeds in each county in which a portion of the new district lies. * * * "

Said order was duly made by the State Board of Education on May 6, 1966, and a copy thereof recorded the 10th day of May, 1966, in the office of the Recorder of Deeds of Reynolds County. Such recordation was in compliance with the provisions of Section 178.800, and constitutes notice to the county clerk and other county officials of the official existence of the district.

Your attention is invited to the case of Three Rivers Junior College District v. Statler, 421 S.W.2d 235, in which case the Supreme Court of Missouri discussed the authority of individuals to bring suit to determine the validity of the formation of the school district, stating l.c. 243:

"[11] As to the respondent's final contention the junior college district was illegally formed, such a challenge as here attempted cannot be maintained by county resident taxpayers by way of an injunction suit, but only by the state by quo warranto, as decided in State ex rel. Junior College District of Sedalia v. Barker, (Mo.Sup.banc) 418 S.W.2d 62."

CONCLUSION

It is the opinion of this office that:

1. The notice requirements of Section 178.810, RSMo Supp. 1967, relating to organization elections of junior college districts are met by giving notice by publication in any newspaper of general circulation in each county at the time and in the manner required by law.

2. The publisher's affidavit of publication of notice of the election is sufficient if it conforms to the requirements of Section 493.060 RSMo. There is no requirement that this affidavit be produced except as may be necessary under the circumstances to provide "sufficient evidence of the publication."

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3. The recording by the State Board of Education of the copy of the order declaring the junior college district organized pursuant to Section 178.800 RSMo Supp. 1967, is sufficient to constitute notice to the county clerk and other county officials of the legal existence of the district.

The foregoing opinion, which I hereby approve, was prepared by my assistant Rodney Weiss.

Yours very truly,


NORMAN H. ANDERSON
Attorney General