

NEWSPAPERS, Sec. 13775--Must be published regularly and consecutively one year before legal notices are valid.

13775 Laws of 31

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Hon. W. H. Holmes
Prosecuting Attorney
Maries County
Vienna, Missouri

Dear Mr. Holmes:

This is to acknowledge your letter of July 27th, 1933, which reads as follows:

"I would like your opinion on Section 13775 Revised Statutes of Missouri, 1929, as amended in Laws of 1931, page 303, under the following state of facts, to wit:--

The Maries County Gazette has been a regularly published weekly newspaper here in this County, of general circulation, for 35 years to my personal knowledge and for how much longer I do not know, but about 2 months ago ceased issuing its weekly edition, due, at that time, as I understood to some break in the machinery. The matter stood thus until about 10 days ago, when the owner and publisher sold the paper, plant and equipment to another who is issuing the regular weekly edition today and proposes to so continue under the same name, with same subscription list, etc.

What I wish to know is, whether or not public advertisements, orders of publications and in fact all legal publications can properly and legally be run in this paper or will it be necessary for it to publish regularly and consecutively for at least one year more before they will be regular."

Section 13775, Laws of Missouri, 1931, page 303, reads as follows:

"PUBLIC ADVERTISEMENTS AND ORDER OF PUBLICATION TO BE PUBLISHED IN NEWSPAPER OF COUNTY.--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 in some daily, tri-weekly, semi-weekly or weekly newspaper of general circulation in the county were 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 one year; shall have a list of bona fide subscribers voluntarily engaged as such who have paid or agreed to pay a stated price for a 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, tri-weekly, semi-weekly 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 act. All laws or parts of laws in conflict with this section, except sections 13777, 13778, 13779, 7631, 7632 and 7633, Revised Statutes of Missouri, 1929, are hereby repealed."

In your letter you state that the paper therein named was a weekly newspaper and published in your County for many years, but, about two months prior to July 27th, 1933, it ceased issuing its paper, due probably to a breakdown. Such paper was not published for about fifty days, or eight weeks. You desire to know whether or not, due to non-publishing of same, it comes within the provisions of Section 13775, supra,

in particular, that part which provides that all public advertisements required by law to be made, shall be published in some newspaper that "shall have been regularly and consecutively published for a period of one year." We invite your attention to the words "shall have been" and also "regularly and consecutively".

We look to a definition of the words "regularly" and "consecutively". Words & Phrases, Vol. 7, first series, page 6040, defines "regularly" as follows:

"Webster defines 'regularly' to mean a uniform order at certain intervals or periods, as by day and night. Zulich v. Bowman, 42 Pa. (6 Wright) 83, 87.

The word 'regularly' is defined as meaning in a regular manner; in a way or method accordant to rule or established mode; in uniform order; methodically; in due order. Such is its signification in an ordinance requiring a railroad company to operate the road regularly, etc. City of Belleville v. Citizens' Horse Ry. Co., 38 N. E. 584, 587, 152 Ill. 171, 26 L. R. A. 681."

Words & Phrases, Vol. 2, first series, page 1437, defines "consecutive" as follows:

"'Consecutive' is synonymous with 'successive,' and these words are often used interchangeably; so that a decision that a publication for 3 successive weeks must be made for a period of 21 days authorizes such holding as to a publication required to be made for 3 consecutive weeks. Dever v. Cornwell, 86 N. W. 227, 230, 10 N. D. 123.

While the term 'consecutive days' primarily means that many days directly following

one another, it is also defined as meaning successive; but in cases of contracts that significance should be given it which the parties evidently intended it should have. A contract providing for publication in a paper for 10 consecutive days must mean publication in consecutive numbers as such paper was published. We do not regard the word 'consecutive' as any more forcible than the word 'continuous.' Both signify 'unbroken,' and the fact that the newspaper published no issue on Sunday did not render the publication other than consecutive. City of El Paso v. Ft. Dearborn Nat. Bank (Tex) 71 S. W. 799, 802."

A reading of Section 13775, supra, with the definitions of the words "regularly" and "consecutively" borne in mind, shows that the Legislature intended that public advertisements, etc., should be published in a daily, tri-weekly, semi-weekly or weekly newspaper of general circulation in the county where located and that such newspaper whether daily, tri-weekly, semi-weekly or weekly shall have been published regularly and consecutively, respectively, for a period of one year before such advertisements etc., be published in such newspaper. And further evidenced such intention by providing public advertisements, if published once a week for a given number of weeks, to be published in the newspaper on the same day of each week. In order to make public advertisements legal all the requirements of this section must be complied with.

In the instant case, at least eight weeks elapsed during which time no edition of this newspaper was published, and we believe that by said lapse of time said newspaper lost its identity as being one regularly and consecutively published for a period of one year. We further invite your attention to the affidavit to be made by the publisher that he has complied with the provisions of this section.

It is our opinion that public notices relating to the county or state, which we only pass on in this opinion, may not legally be published in the newspaper named in your letter, because it is not one that has been regularly and consecutively published for a period of one year.

Yours very truly,

James L. HornBostel
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General.

JLH:EG