

NEWSPAPER:

Failure to publish for four weeks will not disqualify a newspaper from being a legal publication under Sec. 14968, R. S. 1939.

September 28, 1943



Honorable A. Moody Mansur
Prosecuting Attorney
Richmond, Missouri

Dear Sir:

This is in reply to yours of recent date, wherein you submit the following statement and request:

"The question has arisen before the County Court and other officials of Ray County in regard to legal advertisements and orders of publication as provided in Section 14968, R. S. Missouri, 1939. The question has arisen in regard to the Hardin News published in Hardin, Missouri.

"My understanding is that said paper is a weekly publication. That a few months ago it ceased publication for about three weeks, during that time said paper was not published. The question has arisen since then, whether said newspaper can publish legal notices for the reason that it was not regularly and consecutively published for a period of three years.

"This newspaper has been published for many years and has carried legal publications in the past."

Section 14968 R. S. 1939, provides in part 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 in some daily, tri-weekly, semi-weekly, 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;" ****

We fail to find where this statute or a similar provision has been before our courts for construction. Literally construing this statute, it might be held that the publication must be each week for three years, in order to qualify under the act. However, the rule applied by the court in *State ex rel. Webster Groves Sanitary Sewer District v. Smith*, 115, S. W. 2d. 816, 823 should be applied here. It is, "In construing an act, the true intention of the framers must be followed, and where necessary, the strict letter of the act must yield to the manifest intent of the Legislature."

The Supreme Court of the State of Michigan in *Drabinski v. Brown*, 296 N.W. 538, 540 in considering a statute similar in purpose to Sec. 14968 supra, in speaking of the purpose of the legislation said:

"The main purpose of publication of legal notices is to give notice. The intent of legislature under statute relating to designation of newspapers for publication of notices of tax sales, requiring notice to be published in a regularly established newspaper which is regularly printed and published and has a regular circulation in county was to prevent the publication of legal notices in newspapers of limited circulation established solely for purpose of publishing such notices." ***

In that case the act required that in order for the newspaper to qualify to publish public notices it must have been printed, published and circulated for more than one year.

The court held the publication good even though the paper had not been printed as required by the statute.

In the case of, *In Re Tribune Publishing Co. of Palo Alto*, 108 Pac. 667, construction of a question

similar to yours was before the Court, the court said:

"*** Section 4460 defines a newspaper of general circulation as follows:
'A newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and which shall have been established, printed and published at regular intervals in the state, county city, city and county, or town where such publication, notice by publication, or official advertising is given or made, for at least one year preceding the date of such publication, notice or advertisement.
***"

"The Palo Alto Tribune as above stated, was published weekly during a part of the period of one year preceding the filing of the petition in the superior court, and daily during the remainder of that period: and the single question presented for determination is: Can it be said under those circumstances that such newspaper was published at regular intervals for one year? It does not appear that the efficiency of a journal would be at all impaired by a change from weekly to daily publication. It might perhaps be said, in answer to the claim of the contestant that the publication in this case was irregular, that a newspaper published every day is necessarily published every week, and the argument could be made that a newspaper published weekly for nine months, and thenceforth daily for three months, has been published weekly for a year. But we think it unnecessary to resort to such an argument, for it appears plain to us, bearing in mind the purpose of the act as well as the language of the provision in question, that the publication in this case constitutes a publication at regular intervals for one year. The section does not require the interval between dates of publication to be equal from beginning to end, but it must be regular; that is, not spasmodic or occasional. ***"

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Also in the case of, In Re Lefavor v. Ludolph, 169 Pac. 412, held that the changing of the name of the newspaper did not change its character or destroy its identity as a legal publication.

C O N C L U S I O N .

Applying the foregoing here, we think the fact that a newspaper failed for four weeks to issue its paper would not disqualify such newspaper from being a legal publication in the provisions of Sec. 14968, supra.

Respectfully submitted,

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APPROVED:

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