

NOTICE:  
NEWSPAPERS:  
PUBLIC BUILDINGS:

Statutory requirement of ten days' notice  
complied with by insertion in two conse-  
cutive issues of a weekly paper provided  
the first insertion is at least ten days  
before the award of a contract.

May 16, 1950

5/17/50

Honorable Samuel Marsh  
Director  
Department of Public Health and  
Welfare  
Jefferson City, Missouri

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Dear Mr. Marsh:

This is in reply to your request for an of-  
ficial opinion which reads:

"We are contemplating placing adver-  
tisements for bids for a small con-  
tract.

"It has been our practice on this  
type of contract to place an adver-  
tisement for ten consecutive issues  
in a daily paper in the county where  
the work is to be done.

"According to our information there is  
no daily paper in the county where the  
work is to be performed. There are a  
number of weekly papers. Would it be  
permissible for us to place this ad-  
vertisement in one of the weekly papers  
for a period of two weeks. Would this  
amount of advertising meet the require-  
ments required by law."

The statutory requirement for advertisement  
for bids is found in Section 14939, R.S. Mo. 1939, and  
is as follows:

"No contract shall be made by an officer  
of this state or any board or organization  
existing under the laws of this state or

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under the charter, laws or ordinances of any political subdivision thereof, having the expenditure of public funds or moneys provided by appropriation from this state in whole or in part, or raised in whole or in part by taxation under the laws of this state, or of any political subdivision thereof containing 500,000 inhabitants or over, for the erection or construction of any building, improvement, alteration or repair, the total cost of which shall exceed the sum of ten thousand dollars, until public bids therefor are requested or solicited by advertising for ten days in one paper in the county in which the work is located; and if the cost of the work contemplated shall exceed thirty-five thousand dollars, the same shall be advertised for ten days in the county paper of the county in which the work is located, and in addition thereto shall also be advertised for ten days in two daily papers of the state having not less than fifty thousand daily circulation; and in no case shall any contract be awarded when the amount appropriated for same is not sufficient to entirely complete the work ready for service. The number of such public bids shall not be restricted or curtailed, but shall be open to all persons complying with the terms upon which such bids are requested or solicited."

(Underscoring ours.)

From your opinion request we assume that the contemplated work does not exceed the sum of \$35,000.00.

The Supreme Court of Missouri considered the question of publication of notices in the early case of The German Bank vs. Stumpf, 73 Mo. 311, where at l.c. 314, the following was declared to be the law in relation thereto:

"In regard to the notice, we are of opinion that the omission to publish it on the three days named, does not render the sale void. But for the statement in the affidavit read, that the notice was published on Monday, October 2nd, which may be a mistake, we would

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suppose the St. Louis Journal was one of those daily papers, which, in order to avoid the necessity for laboring on Sunday, is not published on Monday. It is unnecessary, however, to make any conjectures upon the subject. When thirty days' notice is required, thirty days should, of course, intervene between the first publication and the day of sale, and although it may be customary and prudent to continue the notice in every issue of the paper from its first insertion to the day of sale, yet it has been expressly decided that 'thirty days' notice in a daily paper' does not mean thirty days' daily notice in such paper. White v. Malcolm, 15 Mo. 543. Vide also, Johnson v. Dorsey, 7 Gill 286; Leffler v. Armstrong, 4 Iowa 482. We think, however, that where the notice has not appeared in every issue of the paper from its first insertion to the day of sale, and the omission to make continuous publication thereof is of such a character, or is attended by such circumstances as to mislead the public and work injury to the party whose property is sold, the sale may be set aside. Stine v. Wilkson, 10 Mo. 96. To avoid such a contingency, therefore, in all cases where notice is required to be published in a daily paper, the notice should be published in every issue of such paper from the first insertion up to and including the day of sale. \* \* \* ."

Correction  
15 Mo. 543

Subsequently, the Supreme Court of Missouri again considered the legality of a statutory notice in the case of City of Brunswick vs. Benecke, 233 S.W. 169, and at l.c. 171, the Court said:

"In State v. Brown, 130 Mo. App. 214, 109 S.W. 99, Bland, P.J. (Goode and Norton, JJ., concurring), said:

"The Dobbins case seems to assume that the notice ceases to be published the day

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after the paper leaves the press; that it does not continue to be published from one issue of the paper to the next succeeding one. If this were true, a notice published in a weekly newspaper 4 times would only give 4 days' notice, and, to comply with the requirements of the statute, it would be necessary to publish the notice for 28 days in a daily paper, or for 28 weeks in a weekly newspaper. The notice, as such, when published in a weekly, does not cease to impart notice the day after the paper leaves the press, but continues, within the meaning of the statute, to be published until the issuance of the next current number of the paper, or for 7 days. The last insertion should be held to continue for the same length of time to impart notice of the election.'

"We approve this enunciation, and think the rule applicable to the question under consideration, and in harmony with all other rulings of this court. \* \* \* ."

Section 14939, supra, requires that public bids be solicited "for ten days in one paper in the county in which the work is located." Under the rule set out in the City of Brunswick case, this requirement is satisfied by advertising in two consecutive issues of a weekly paper, providing the first insertion is at least ten days before the award of the contract.

#### CONCLUSION.

Therefore, it is the opinion of this Department that the statutory requirement of ten days' solicitation for bids is complied with by advertising in two consecutive issues of a weekly paper, providing that the first insertion is at least ten days before the award of a contract.

Respectfully submitted,

APPROVED:

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