

COUNTY COURTS: (1) Mandamus does not lie against newspaper to compel publication of county financial statement; (2) posting of such statement, as provided by Sec. 50.800, RSMo 1949, is sufficient when newspapers refuse publication; (3) refusal of publication by single owner of all newspapers in county does not violate Anti-Trust law.

JOHN M. DALTON
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May 1, 1953

John C. Johnsen
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Honorable Harold S. Hutchison
Prosecuting Attorney
Maries County
Vienna, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"The County Court of Maries County has instructed me to ask you for an opinion, relative to their rights and duties under Section 50.800 COURTS FINANCIAL STATEMENT.

"We have three newspapers in Maries County, now, all owned by The Tri-County Publications. The Home Advisor being recently purchased by said company. The Tri-County Publications has an old bill against the county court for printing and stationery furnished the county in previous years and which the previous and present County Court have refused to pay on the grounds that part of the supplies were never printed or delivered. As far as I know, there are no bills outstanding for the Home Advisor.

"The County Court had their financial statement drawn up and submitted the same to the Managing Editor of the Maries County Gazette and Home Adviser the First of February and was informed by the Managing Editor that the Tri-County Publications would not print the same unless the old bill was taken care of as presented. The Court asked for separate bids on each paper and the Editor refused to submit written bids but informed the Court

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that the price would be the maximum allowed by law in any of the three papers. They have refused to print said publication to date in any of the three papers and give no assurance that they will do so.

"Under the above circumstances:

"1. Will Mandamus lie against said publication?

"2. Where all the papers in the County refuse to publish financial statement, will publishing and posting in ten public places meet the requirements of the above Statute?

"3. Where one man owns all three papers in the County; sets price of statement in all papers at the maximum and refuses to print statement in paper that the County does not owe because it owes old bills to the other two; does this come under the anti-trust laws of this state?"

1. You inquire whether mandamus will lie against said publications. "The proper function of mandamus is to compel inferior or subordinate tribunals and all others exercising public authority to perform their duty. * * * Ordinarily, the writ will not be granted against a private individual unless some obligation in the nature of a public or quasi-public duty is imposed upon him in respect of the act sought to be enforced." 34 Am. Jur., Mandamus, Section 91, page 879.

In 46 C. J., Newspapers, Section 50, page 35, the rule as to the duty on newspapers accepting and publishing legal notices is stated as follows:

"Publishers of newspapers are not bound to publish legal notices. It is without the power of the legislature to make punishable the refusal of a newspaper publisher to publish the report of a public commission at its regular rates, such legislation being regarded as an interference with the right to contract. * * *"

In our opinion, publication of the county financial statement would come within this rule. Since there is no duty imposed upon newspapers to publish such report, it is our opinion that mandamus will not lie.

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In State ex rel. Crites v. Short, 351 Mo. 1013, 174 S.W. (2d) 821, l.c. 823, the court stated:

"Before the appellant would be entitled to a writ of mandamus, he must show a clear legal right to compel performance of the particular act. The writ will not lie to establish a legal right, but its office is to enforce one which has already been established. The legal right of appellant 'or relator to the performance of the particular act of which performance is sought to be compelled must be clear and complete.' * * *"

2. You inquire whether publishing notices in ten public places would meet the requirements of the statute since the newspapers refuse to publish the notice. Paragraph 1 of Section 50.800, RSMo 1949, provides:

"On or before the first Monday in March of each year after the taking effect of this law the county court of each county in this state shall prepare and publish in some newspaper of general circulation published in such county, if such there be, and if not by notices posted in at least ten places in such county, a detailed financial statement of the county for the year ending December thirty-first, preceding."

The above section contemplated that the financial statement would be published in a newspaper published within the county. The assumption seems to be that if there is a newspaper in the county publication would be made. However, if the newspapers in the county refuse to make the publication, we believe that the county court of necessity must post ten notices, as required by this section, and that such action on the part of the county court would meet the requirements of this section. Otherwise, there would be no publication whatsoever in your county of the county financial statement.

3. You further inquire whether or not the refusal by a single owner of all of the newspapers in a county to print the county financial statement would be a violation of the Anti-Trust laws of this state.

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The Anti-Trust laws of Missouri are found in Chapter 416, RSMo 1949. Section 416.010 provides:

"Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400."

Section 416.020 prohibits any person from entering into or becoming a member of any "pool, trust, agreement, combination, confederation or understanding with any other person" to regulate, control or fix the price of any article of merchandise or commodity.

Section 416.030 prohibits any two or more persons engaged in buying or selling any articles of commerce from entering into or participating in "any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article."

Section 416.040 prohibits all arrangements, contracts, agreements, combinations or understandings between any two or more persons designed to or which tend to lessen lawful trade or free competition.

It is evident that a conspiracy or an agreement between two or more persons is the prohibited act to which the Anti-Trust statutes are directed. A single owner of more than one newspaper has been held liable for violation of the Federal Anti-Trust Act because of the manner in which such newspapers were operated. *United States v. The Times-Picayune Pub. Co.*, 105 F. Supp. 670. There, however, the violation arose out of contracts made with the customers in the operation of the newspapers. Here, there is no question of agreements or contracts of any form, merely a refusal on the part of the publisher to

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accept the county business. Anti-Trust statutes have been held not to "restrict the long recognized right of a trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal." United States v. Colgate and Company, 250 U. S. 300, 307.

CONCLUSION

Therefore, it is the opinion of this department that:

1. Where a publisher of all newspapers published in a county refuses to publish the county financial statement he may not be forced by mandamus to do so.

2. In such circumstances the posting of such statement in ten public places in the county fulfills the requirements of Section 50.800, RSMo 1949.

3. That the publisher of such newspapers who refuses to print the county financial statement does not thereby violate the Missouri Anti-Trust Laws.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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