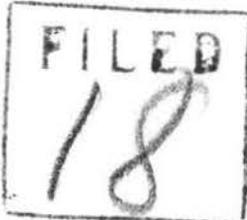


NEWSPAPERS:
LEGAL PUBLICATION:

Requirements of Section 493.050, RSMo 1949, that a newspaper be entered as second class matter at post office in publication city, and that a newspaper shall have been legally and consecutively published for three years, means three years from date first issue was actually published, and not three years from date second class permit was issued. A weekly newspaper which actually began legal and consecutive publication on June 11, 1954, and has continued uninterruptedly to the present, but obtained postal permit on October 11, 1954, three year publication period began June 11, 1954 and not on October 15, 1954. If newspaper has complied with other requirements of said statute, it is qualified to publish all legal notices as of June 11, 1957.



July 2, 1957

Honorable J. W. Colley
Prosecuting Attorney
Dade County
Greenfield, Missouri

Dear Mr. Colley:

This is to acknowledge receipt of your recent request for a legal opinion reading as follows:

"The probate Judge of Dade County, Missouri, has asked me to secure an opinion from your office concerning Section 493.050, Missouri Revised Statutes of 1949.

"It appears that one of our local newspapers began regular and consecutive publication of his newspaper on June 11, 1954, and completed a three year period on June 11, 1957. Said newspaper also has 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. From June 11, 1954, and for four months thereafter this newspaper was mailed under a third class postal permit. After that time the editor secured a second class permit and has been operating under such permit since.

"This question has been raised; does the three year period of regular publication begin October 15, 1954 (the date the second class permit was authorized) or the date of June 11, 1954, when the actual three year period of consecutive publication began?

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"It seems to me as if this section of the Statute merely requires a second class permit be in effect at the time the three year period of regular and consecutive publications have been completed.

"I will appreciate an opinion from your office so that I may correctly advise the Probate Judge of Dade County."

Section 493,050, RSMo 1949 referred to in the opinion request reads 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, triweekly, semiweekly 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; 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, triweekly, semiweekly 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 section; provided further, that the duration of consecutive publication herein provided for shall not affect newspapers which have become legal publications prior to the effective date of this section; provided, however, that when any newspaper shall be forced to suspend publication in any time of war, due to the owner or publisher being inducted into the armed forces of the United States, the same may be reinstated within one year after actual

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hostilities shall have ceased, with all benefits under the provisions of this section, upon the filing with the secretary of state of notice of intention of said owner or publisher, his widow or legal heirs, to republish said newspaper, setting forth the name of the publication, its volume and number, its frequency of publication, and its readmission to the post office where it was previously entered as second class mail matter, and when it shall have a list of bona fide subscribers voluntarily engaged as such who have paid or agreed to pay a stated price for subscription for a definite period of time. All laws or parts of laws in conflict with this section except sections 493.070 and 493.120, are hereby repealed."

The qualifications of a newspaper for publishing advertisements and notices required by law to be published as set out by this section are:

- 1) A general circulation in the county in which the newspaper is located and shall have been admitted to the post office as a second class matter in the city of publication.
- 2) The newspaper shall have been published regularly and consecutively for a period of three years.
- 3) It shall have a list of bona fide subscribers voluntarily engaged, who have paid or agreed to pay, a stated subscription price for a definite period of time.

As we understand the opinion request, the inquiry is whether the three year period of regular and consecutive publication of the newspaper began on October 15, 1954, when the second class permit was authorized, or on June 11, 1954, when the actual three year period of consecutive publication began.

We have been informed the newspaper referred to above is a weekly newspaper and has been published as such continuously from June 11, 1954 to and including the present time.

Since no question has been raised with reference to the qualifications of the newspaper referred to, except as to those mentioned in the opinion request, for the purpose of our discussion it will be assumed that such newspaper has met

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all the other requirements mentioned in the statute.

From the wording of Section 493.050, supra, it is obviously the legislative intent that in order to be a legal publication within the meaning of the statute, a newspaper must comply with each qualification or requirement therein set out, and that it must have met all of said qualifications on any date it attempts to publish a legal advertisement or notice of any kind. This principle was declared to be the law in State ex rel v. Thomas, 203 Mo. App. 452 at l.c. 458:

"The material consideration was whether the newspaper is a daily newspaper at the time the notices are to be inserted. It, manifestly, would not be material whether the paper was a newspaper before the work was actually to be done by it for the reason that it might be a daily newspaper at the time the bids were submitted or the contract let and might not be one during the time the insertions were to be made in it. We do not think that the Legislature was concerned with the question as to whether the newspaper should be a daily newspaper at any time other than when the work of publishing the notices was to be performed. For these reasons we think that there was a valid letting of the contract, or, at least, that the board did not abuse its discretion in letting the contract to a newspaper such as the successful bidder in this case."

If the newspaper referred to had been published regularly and consecutively as a weekly for a period of three years, beginning on June 11, 1954, had been entered as a second class matter in the city of publication on that date, and assuming it had complied with the other statutory requirements as previously stated, then it would unquestionably have been qualified to publish legal notices on June 11, 1957. However, if the three year period of publication did not begin until October 15, 1954, when the second class permit was authorized, then the newspaper could not print legal notices until October 15, 1957.

The factual situation leads to the inquiry as to just when the regular and consecutive publication would begin and end in order for the newspaper to be qualified to print legal notices,

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and what, if any bearing would the issuing of the postal permit have on the beginning of the three year period. This question, as well as the specific one propounded in the opinion request, can be accurately answered only by reference to the particular qualifications set out in Section 493.050, supra, and a determination from the language expressed therein what the legislative intent was with reference to such subject matter.

Upon a careful examination of the statutes we find no indication of a legislative intent to use the words in a technical sense, therefore according to the rules of statutory construction, it is presumed that the language used in said section has been used in its plain and ordinary sense.

Another rule of statutory construction not so familiarly known, but which we find to be particularly helpful in the present instance, is that announced in *Nordberg v. Montgomery*, 351, Mo. at 180, by the court at l.c. 185:

"The 'several parts, or sections, of such a statute are to be construed in connection with every other part, or section, and all are to be considered as parts of a connected whole, and harmonized, if possible, so as to aid in giving effect to the intention of the lawmakers.' *State ex rel. Dean et al. v. Daues et al.*, 321 Mo. 1126, 14 S.W. (2d) 990, l.c. 1002. See, also, *Holder v. Elms Hotel Co.*, 338 Mo. 857, 92 S.W. (2d) 620, 104 A.L.R. 339; *State ex rel. Kansas City Power & Light Co. v. Smith*, 342 Mo. 75, 111 S.W. (2d) 513; *State v. Wipke*, 345 Mo. 283, 133 S.W. (2d) 354; *State ex inf. McKittrick v. Carelene Products Co.*, 346 Mo. 1049, 144 S.W. (2d) 153."

Applying such rules of construction to the statutory qualifications under consideration, that a newspaper shall have been admitted to the post office as second class matter in the city of publication and that the paper shall have been published regularly and consecutively for a period of three years, it is noted these requirements are separate and distinct and are not dependent on each other; for example, that within the meaning of these statutory requirements a newspaper shall not be deemed to have begun its three year regular publication period until the date when the second class postal permit was authorized. It is also noted that either or both of these separate requirements expressly or by necessary implication fail to indicate any particular time or any other preliminary requirement shall have

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been met at the beginning of the three year publication period.

If the statutory three year period did not begin until the date of issuance of the postal permit, then this would have the inescapable effect of requiring the paper to have the permit in effect during the entire three year period.

It seems to us that if the law makers had intended to place any further restrictions in this particular on newspapers, then they would have expressly so provided in the statute, or at least would have used language therein from which it must necessarily be implied any further requirements of this or a similar nature should be complied with. However, we fail to find any qualifying language of this nature in the statutes.

Rather it appears to be the more reasonable construction of these statutory requirements, and the one more nearly in accord with the apparent legislative intent, that the regular and consecutive publication of a newspaper for a period of three years, can mean only one thing in its plain and ordinary sense; namely, that the three year period shall begin on the date when the actual physical publication of the newspaper occurred, and that such publication, in the case of a weekly newspaper, shall have been continuously published once each week for a period of three years from the first publication.

In the absence of statutory provisions to the contrary we cannot do violence to same by writing something into the statute which is not there, the effect of which would be that it was the legislative intent the three year period shall begin from the date the newspaper had obtained its second class postal permit. Therefore, it is believed that a newspaper may obtain its second class permit at any time within the three year publication period and before the end of such publication period. If it follows such procedure, such newspaper will have sufficiently complied with this portion of the statute.

In view of the foregoing it is our thought that the three year regular and consecutive publication period of the newspaper, referred to in the opinion request, started on June 11, 1954 when the actual publication began, and not on October 15, 1954, when the second class post office permit was authorized.

If said paper has complied with all other requirements of Section 493.050, supra, on or before June 11, 1957, it is qualified to publish a legal advertisement required by law to be published, as of that date.

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CONCLUSION

It is therefore the opinion of this department that the requirements of Section 493.050, RSMo 1949, that a newspaper shall have been entered as second class matter in the post office of the city of publication; and that a newspaper shall have been published regularly and consecutively for a period of three years, mean that a newspaper shall have been published regularly and consecutively for a period of three years from the date the first issue was actually published, and not three years from the date the second class postal permit was granted to such newspaper.

It is further the opinion of this department that where a newspaper actually began regular and consecutive publication on June 11, 1954, and continued thereafter without interruption until the present time, but did not obtain a second class postal permit in the city of publication until October 15, 1954, and if all other requirements of Section 493.050, RSMo 1949 have been complied with, its three year publication period legally began on June 11, 1954 and not on October 15, 1954 when its postal permit was authorized. Said newspaper has sufficiently complied with the statutory requirements and was authorized to publish all legal advertisements and notices as of June 11, 1957.

The foregoing opinion, which is hereby approved, was prepared by Assistant Attorney General, Paul N. Chitwood.

Yours very truly,

Robert R. Welborn
Assistant Attorney General, for

JOHN M. DALTON
Attorney General

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