

COUNTIES:
COUNTY COURTS:
NEWSPAPERS:

A county of the third class in which there is more than one qualified newspaper is not required to award the printing of the county financial statement on competitive bids.

April 21, 1970

OPINION NO. 232

Honorable Lowell McCuskey
Prosecuting Attorney
Osage County Courthouse
Linn, Missouri 65051



Dear Mr. McCuskey:

This is to acknowledge receipt of your request for a formal opinion from this office which reads as follows:

"Is a county of the third class in which there is more than one qualified newspaper required to award the printing of the county financial statement on competitive bids?"

In regard to your request, Section 50.800, RSMo 1959 as amended by Laws of 1969, reads in part as follows:

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

In Op. Atty. Gen. No. 71, Pinnell, 2-7-55, this office has previously advised that the county court is authorized under Section 50.800, RSMo 1959 as amended by Laws of 1969, to publish the county financial statement at the county's expense in only one newspaper of general circulation published in the county. (Copy attached).

Although there is no provision in Section 50.800, RSMo 1959 as amended by Laws of 1969, in regard to selection of a newspaper for such publication, Section 493.030, RSMo 1959 as amended by Laws of 1969, provides in part that "When any . . . notice shall be published in any newspaper . . . for any county or for any public officer on account of, or in the name of any county . . ."

there shall not be charged or allowed a higher rate than therein specified. In addition, Section 493.040, RSMo 1959, reads as follows:

"In procuring the publication of any law, proclamation, advertisement, order or notice, as in section 493.030 mentioned, the public officers shall accept of the most advantageous terms that can be obtained, not exceeding the rates limited in said section."

It was held in Op. Atty. Gen. No. 71, Holman, 7-12-56, that the publication of the financial statement required by Section 50.800 is included within the meaning of Section 493.030, RSMo 1959 as amended by Laws of 1969, (copy attached). It is submitted therefore that the question arises as to whether public officers in procuring publication under Section 493.030, at the most advantageous terms that can be obtained, not exceeding the rates limited in said section, requires that competitive bids be taken.

In the case of State ex rel. Shartel v. Westhues, 9 S.W.2d 612, the contention was made that the Secretary of State should be enjoined and restrained from arbitrarily awarding a contract to a newspaper for the publication of a proposed constitutional amendment at the maximum rate specified in Section 10402, R.S. 1919, the predecessor to Section 493.030, RSMo 1959 as amended by Laws of 1969. One of the arguments made was that the language of Section 10402, R.S. 1919, "that the officer shall accept the most advantageous terms that can be obtained", required that the printing be awarded to the lowest and best bidder. In rejecting this argument, the court said at page 619:

"The legislative department has intrusted to an administrative officer the right and duty to exercise his discretion in determining what terms are 'most advantageous,' and up to this time the General Assembly has seen fit neither to define what it means by the words 'Most advantageous terms' nor to rebuke any secretary of state for the manner in which he has exercised such discretion in the past."

The court further held that the acts of the secretary of state in proposing to designate a newspaper in each county of the state and in the city of St. Louis for publication of the constitutional amendments without taking or receiving competitive bids for such publications did not amount to fraudulent conduct or an abuse of official discretion as to give to the courts the right to control the discretion of the secretary of state.

Honorable Lowell McCuskey -

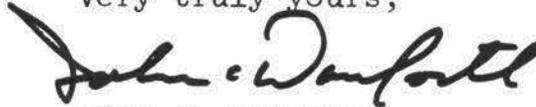
In view of the above, it is our belief that the county court in procuring publication of the county financial statement under Section 493.030, RSMo 1959 as amended by Laws of 1969, at the most advantageous terms that can be obtained, not exceeding the rates limited in said section, is not required to take competitive bids.

CONCLUSION

A county of the third class in which there is more than one qualified newspaper is not required to award the printing of the county financial statement on competitive bids.

The foregoing opinion, which I hereby approve, was prepared by my assistant, B. J. Jones.

Very truly yours,



JOHN C. DANFORTH
Attorney General

enclosures:

Op. No. 71, Pinnell, 2-7-55
Op. No. 71, Holman, 7-12-56