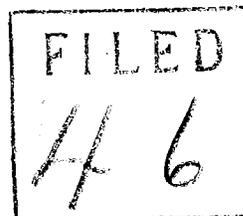


NEWSPAPERS: A newspaper which suspended publication during the war because of the owner being inducted into the armed forces may be reinstated within one year after hostilities have ceased with all benefits theretofore held in the matter of publishing legal notices.

October 30, 1947



Honorable Kelso Journey
Prosecuting Attorney
Henry County
Clinton, Missouri

Dear Sir:

This is in response to your letter of recent date wherein you submit to this office a request for an official opinion upon the following statement of facts and question:

"David D. Scroggs, Sr. and David D. Scroggs, Jr., operating under the firm name of Scroggs and Son, have been the owners of the Montrose, Missouri Tidings, a weekly newspaper of this state since July 1, 1938. With the approach of World War No. 2, the junior member of the firm being subject to military service, the paper was leased to Glen A. Campbell on July 1, 1941 and Mr. Campbell operated the paper until August 1, 1943 as the publisher, after which he left the newspaper work and enlisted in the Navy. On August 1, 1943, the newspaper was taken over by David D. Scroggs, Sr., who operated it until December 9, 1943 when the paper discontinued publication due wholly to conditions attributable to the war. The junior member of the firm, David D. Scroggs, Jr., enlisted in the Coast Guard in February, 1942, and was discharged in November of 1945. The publication of the paper was resumed on July 19, 1947 and was re-admitted to the U. S. mails as second class matter on the same date. The owners of the paper have filed with the Secretary of State the proper notice of intention to republish said newspaper, setting forth the name of the publication, its volume and cost, its frequency of publication, and its re-admittance to the Post Office where it was previously listed as second class mail matter. Hostilities were terminated by presidential proclamation on December 31, 1946.

"Question: Are public advertisements and orders of publication in the above paper under the provisions of Section 14968, Chapter 119, Revised Statutes of Missouri, 1939, as amended August 2, 1943, valid and legal as coming within the proviso in the above statute in said section in regard to newspapers which were forced to suspend publication during the war?"

From the statement of facts which you have submitted, it appears that David D. Scroggs, Sr., and David D. Scroggs, Jr., have owned a certain newspaper since July 1, 1938, and that on account of hostilities the junior member of the firm entered military service, and during the time while he was in military service, the newspaper was leased to two parties who operated it up until December 9, 1943, at which time publication was discontinued. It also appears that the junior member of this firm was in military service from 1942 to 1945 and that in 1947 the publication of the paper was resumed and entered in the United States mails as second class matter. The provisions to the statute applicable to your question are found in Laws of Missouri, 1943, at page 860. Section 14968 of this act 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; 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, tri-weekly, semi-weekly 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 hostilities shall have ceased, with all the 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 re-admission 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. * * * "

From your letter, it appears that all the provisions of the act have been complied with, and the only question now is, is David D. Scroggs, Jr., who was one of the owners of this newspaper and who was in military service at the time the publication was discontinued, qualified to resume publication of this newspaper and able to publish legal notices therein. This statute is somewhat penal in nature and should receive a strict construction, and unless one is clearly within the provisions of it, it should not be applied against him. We find this is somewhat penal in nature for the reason that where a publication is discontinued for a certain length of time, then the publisher or owner is not authorized to publish legals until he can qualify under the statute.

Under the proviso clause in said Section 14968, it is provided that when the newspaper is forced to suspend publication in any time of war due to the owner or publisher having been inducted into the armed forces that such newspaper may be reinstated within one year after actual hostilities have ceased. When such paper is so reinstated, then it has all the benefits under the laws which it had prior to such suspension. As stated in your inquiry, hostilities were terminated by presidential proclamation on December 31, 1946,

so, insofar as time is concerned, application for reinstatement is timely.

From our research on this question, we have come to the conclusion that the answer of it will depend on whether or not the junior member of this firm would be classed as an owner of the newspaper during the time that he was in service. Referring to the statute again, it will be seen that it does not provide that the owner shall be the sole owner or sole publisher, but merely an owner. According to the definitions of the term "owner" which we have been able to find, we do not think the lawmakers used the word with the intention of it meaning the sole owner. In Volume 30, Permanent Edition, Words and Phrases, page 117 of the Pocket Part, we find where the Missouri Supreme Court defined the term "owner" as follows:

"Upon owner's failure to redeem from tax sale within the period allowed for such redemption, the holder of tax sale certificate is such an 'owner' as may call in the legal title upon producing his certificate and paying the taxes then standing against the land. * * * "

At page 119 of the same Pocket Part, we find the term "owner" defined as follows:

"The word 'owner' as used in statutes providing for eminent domain proceedings includes all persons who have an interest or estate in the property taken or injured. Mesich v. Board of Com'rs of McKinley County, 129 P. 2d 974, 976, 977, 46 N.M. 412."

Under these definitions, it would seem that anyone who has an interest in property would be termed and held as an owner. According to that holding, the junior member of the firm of Scroggs and Son would be considered as an owner of the Montrose, Missouri, Tidings during the time that he was in service.

CONCLUSION

From the foregoing, it is the opinion of this department that public advertisements and orders of publication in a

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newspaper, namely, the Montrose, Missouri, Tidings, which discontinued publication due wholly to conditions attributable to the war, would be valid and legal publications under the Missouri law in said newspaper which has resumed publication on July 19, 1947, and which has been readmitted to the United States mails as second class matter.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:VLM