

C O P Y

NEWSPAPERS: The provisions of Section 14968, R.S.Mo. 1939, as amended Laws of Missouri 1943, page 859, relating to duration of consecutive publication of newspapers do not apply to newspapers which became legal publications prior to the effective date of the 1937 act, Laws of 1937, page 432, or the Act of 1943, Laws of 1943, page 859.

March 23, 1948

Filed: #66

Honorable Edgar C. Nelson
Secretary of State
Jefferson City, Missouri



Dear Sir:

This is in reply to your letter of recent date wherein you request an official opinion from this department on the question of whether or not the "Sheldon Enterprise" of Sheldon, Missouri, is now a legal publication and authorized to publish legal notices in this state. The facts relative to this publication, which you submitted with your request, are as follows:

"According to information available, the Sheldon Enterprise was established in 1884 by a Mr. Swan. Continuous ownerships are available from that time.

"The failure of publication between the dates March 1, 1947 and June, 1947, was due to the illness of Mrs. J. A. Jones who had kept publication going until that time from the date that her son had entered service. As stated before, that son was publishing when he entered the Marine Corps.

"Mrs. Jones was unable to obtain the help necessary for the continuance of publication for that three months."

Section 14968, R. S. Mo. 1939, as amended in Laws of Missouri, 1943, page 859, which relates to the above inquiry, provides 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 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 14970, 14971, 14972, Laws of Missouri, 1941, and Section 7771, 7772, and 7773, Revised Statutes of Missouri, 1939, are hereby repealed."

We find no cases which have been before the Missouri courts on the question of the authority of the Legislature to enact legislation regulating newspapers; however, the text writers and out-state courts seem to hold that such legislation may be enacted.

In Volume 46 C. J., page 40, Section 65, it is stated:

"* * * The power to regulate the business of newspaper publishers may be exercised in the interest of the public health, peace, morals, or the general welfare. Newspaper publishers might in this respect be made the subject of legislative classification for appropriate ends."

The reason for legislation requiring regular and continuous publication of a newspaper is well stated by the court in the case of Drabinski vs. Brown, 296 N.W. 538, 540, as follows:

"The main purpose of publication of legal notices is to give notice. The intent of legislature under statute relating to designation of newspapers for publication of notices of tax sales, requiring notice to be published in a regularly established newspaper which is regularly printed and published and has a regular circulation in county was to prevent the publication of legal notices in newspapers of limited circulation established solely for purpose of publishing such notices. **"

The history of Missouri legislation on newspaper regulation as to legal notices reveals that the first law enacted on this subject is found in the Revised Statutes of 1855, page 181. This law was amended in 1873, Laws of Missouri, 1873, page 56, and again amended in 1877, Laws of Missouri, 1877, page 344. None of the laws enacted by the Missouri Legislature up until 1877 contained any provision relating to "continuous publication" of a newspaper as a requirement to make it a legal publication. The next time this act was amended was in 1927, Laws of Missouri, 1927, page 402. In that act, the following, Section 10403, was enacted:

"All public advertisements and orders of publication required by law to be made shall be published in some daily, semi-weekly, tri-weekly or weekly newspaper of

general circulation in the county where located and which shall have been published continuously for a period of at least one year. Provided that when any public notice required by law to be published shall be published in a daily, semi-weekly or tri-weekly newspaper, the notice must appear once a week on the same day of each week, and further provided that every affidavit to a proof of publication shall state that the newspaper in which such notice was published complied with the provisions of this act. All laws or parts of laws in conflict with this section except sections 10405, 10406 and 10407, Revised Statutes of Missouri, 1919, are hereby repealed."

(Underscoring ours.)

This 1927 act remained in force without amendment until 1937, Laws of Missouri, 1937, page 432, when the "continuous publication" clause of the 1927 act was modified by the following proviso clause:

" * * * 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 act. * * *"

The language of this proviso clause is clear and unambiguous and does not need any construction. It definitely exempted newspapers, which had become legal publications prior to the effective date of the said 1937 act, from the provisions of the law which required "consecutive publication" in order that such newspapers might qualify as a newspaper to publish legal notices.

In 1943, Laws of Missouri, 1943, page 860, the law was amended as it is now written. The "proviso clause" of the 1937 act, referred to supra, was carried on and reenacted in the 1943 act. Therefore, publications which were legal publications when the 1937 and 1943 acts became effective were and are now exempted from the "consecutive publication" provisions of the acts. The statement of facts which you have submitted reveal that the "Sheldon Enterprise" was established in 1884 and that the only break in the continuous publication of this newspaper that is in question is for the period of March 1, 1947, to June, 1947. It was, therefore, being

published when the 1937 and the 1943 acts became effective. For the purpose of this opinion, we will assume that it was a "legal publication" on the effective date of said acts.

CONCLUSION

From the foregoing, it is the opinion of this department that the "Sheldon Enterprise" is exempted from the provisions of Section 14968, R. S. Mo. 1939, as amended in Laws of Missouri, 1943, page 860, which requires "consecutive publication" of a newspaper in order to be authorized to publish public advertisements and other legal publications and notices.

Respectfully submitted,

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APPROVED:

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