

Answer by Letter (Klaffenbach)

October 8, 1970

OPINION LETTER NO. 528

Honorable Bob F. Griffin  
Prosecuting Attorney  
Clinton County Court House  
223 East Third Street  
Cameron, Missouri



Dear Mr. Griffin:

This letter is in response to your opinion request in which you ask concerning the constitutionality of the requirement of Section 493.050, RSMo 1969, that a "legal newspaper" for publication purposes "shall have been published regularly and consecutively for a period of three years".

While we find no Missouri cases directly considering this constitutional question, we do note that in *State v. Proctor*, 361 S.W.2d 802, the Supreme Court of Missouri en banc, in 1962, impliedly approved this requirement by the following statement from l.c. 805:

"Prior to 1937 the law of Missouri (Laws 1931, p. 303) provided that such newspapers be published regularly and consecutively for a period of only one year. In 1937 the period was changed to require a period of three years. We think it may be reasonably deduced that the primary and basic purpose of the act is to require publication in a "going", regularly published and well established newspaper. This, upon the theory that, by reason of long establishment of the newspaper in which it is published, the notice will be more likely to come to the attention of a greater number of citizens of the county."

Honorable Bob F. Griffin

We have examined this section and considered the requirement in question and find no clear violation of any constitutional provision.

It is a well settled principle of constitutional construction that, only when there is a clear conflict between a legislative enactment and the constitution, are the courts warranted in declaring the law to be void. In the Matter of Burris, 66 Mo. 442, 450 (1877), Borden Co. v. Thomason, 353 S.W.2d 735, 756 (Mo. 1962).

Very truly yours,

JOHN C. DANFORTH  
Attorney General