

ELECTIONS: A county clerk can publish notices
NEWSPAPERS: of primary and general elections
under Sections 120.400 and 120.580,
RSMo 1969, in any two newspapers published in the county when the
newspapers published in the county do not represent both of the
two major political parties.

OPINION NO. 254

October 17, 1972

Honorable A. J. Seier
Prosecuting Attorney
Cape Girardeau County
721 North Sunset
Cape Girardeau, Missouri 63701

Dear Mr. Seier:

The following opinion is issued in response to your request for an opinion as to whether a county clerk violates Missouri law if he publishes notices of the primary and general election in two independent newspapers in a county which does not have a newspaper representing the Republican party and another representing the Democratic party. In dealing with this question, we can only assume that the facts stated in your request are true, i.e., four newspapers are published in your county, two of which are independent and two of which are Republican in nature.

The applicable law in this matter is contained in Sections 120.400 and 120.580, RSMo 1969. Section 120.400 provides:

"Every publication required in connection with the conduct of a primary election shall be made in two newspapers which are published within the county, each of which represents one of the two major political parties, if there are two such newspapers, and if not, then in any two newspapers published within the county, or if there is only one newspaper published within the county then in that newspaper, or if there is no newspaper published within the county then in some newspaper having general circulation within the county."

Section 120.580 provides:

"At least seven days before an election to fill any public office, the clerk of the county court

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of each county shall cause to be published in two newspapers representing each of the two major political parties, if such there be, and if not, then in two newspapers, or if there be only one newspaper published within the county then in such newspaper, the nominations to office certified to him by the secretary of state and also those filed in his office. He shall make two such publications in each of such newspapers before the election, one of which publications in each newspaper shall be upon the last day upon which such newspaper is issued before the election; provided, that no higher rates shall be paid per inch than is provided by section 493.030, RSMo."

These sections clearly place a duty upon the county clerk to publish his notices in two newspapers representing the views of the two major political parties when there are two such newspapers in his county. In our opinion, it is equally clear that the county clerk is under no duty to publish in any particular paper when the newspapers published in his county do not represent both of the two major political parties.

Therefore, in the factual situation mentioned in your request, the county clerk did not violate the provisions of Sections 120.400 or 120.580, RSMo 1969, by publishing the notice of the primary and general elections in two independent newspapers in the county. In the absence of a Democratic newspaper published in the county, he was free to publish the notices in any two of the four county newspapers.

CONCLUSION

It is, therefore, the opinion of this office that a county clerk can publish notices of primary and general elections under Sections 120.400 and 120.580, RSMo 1969, in any two newspapers published in the county when the newspapers published in the county do not represent both of the two major political parties.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard L. Wieler.

Yours very truly,



JOHN C. DANFORTH
Attorney General