

STATUTES:
LEGAL PUBLICATION:

The general printing statute and the delinquent tax statute in regard to the cost of publication of delinquent lands must be read and construed together.

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September 30, 1952

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Honorable James L. Paul
Prosecuting Attorney of
McDonald County
Pineville, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"Please furnish this office with as early an opinion as is possible on the following question. 'Does Section 493.030 of the Revised Statutes of the State of Missouri, 1949, repeal sub-paragraph 5 of Section 140.170 of Revised Statutes of the State of Missouri, or inasmuch as paragraph 5 of Section 140.170 pertains to a special contract and apparently Section 493.030 applies to general publication, is Section 5, applicable on delinquent tax lists?'"

The two provisions to which you have referred and about which you inquire read as follows; Section 493.030 states:

"When any law, proclamation, advertisement, nominations to office, proposed constitutional amendments or other questions to be submitted to the people, order or notice shall be published in any newspaper for the state, or for any public officer on account of or in the name of the state, or for any county, or for any public officer on account of, or in the name of any county, there shall not be charged by or allowed to any such newspaper for such publications a higher rate than ten cents per line for each insertion, the lines to be two inches

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long and to be set in type occupying twelve lines to the column inch, fractional lines to be charged and paid for as one line; provided; however, that where any law authorizing and requiring the publication of any such law, proclamation, advertisement, nominations to office, proposed constitutional amendments or other questions to be submitted to the people, order or notice, shall require the use of a type having a body larger than six point, or more than one size of type, or the use of any emblem, or the spacing of lines so as to have a blank space between the lines, said printing shall be paid for by the inch of space used, single column of twelve ems pica wide, which price per inch shall not exceed the rate of one dollar per inch, single column of twelve ems pica wide, for each insertion. When any law, proclamation, advertisement, nominations to office, proposed constitutional amendments, or other questions to be submitted to the people, order or notice, shall be required by law to be published in any newspaper, the rates herein specified shall prevail, and all laws or parts of laws in conflict herewith, except sections 493.070 to 493.090, are hereby repealed."

Paragraph 5 of Section 140.170 reads as follows:

"5. The expense of such printing shall be paid out of the county treasury and shall not exceed the rate fixed in the county printing contract, if any, but in no event to exceed one dollar for each description, which cost of printing at the rate paid by the county shall be taxed as part of the costs of the sale of any land or lot contained in such list."

Paragraph 5 of Section 140.170, supra, relates to the publication of lands and lots sought to be sold for delinquent taxes.

In answer to your inquiry we would like to set forth certain rules of statutory construction contained in the case of State v. Malone, 192 S.W. 268, which we believe to be applicable. They are as follows:

"Repeal of statutes by implication is not favored. (State ex rel. St. Louis Police Relief Ass'n v. Igoe, 107 S.W. (2d) 929,

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340 Mo. 1166; Graves v. Little Tarkio Drain-
age Dist. No. 1, 134 S.W. (2d) 70, 345 Mo.
557; Coleman v. Kansas City, 156 S.W. (2d)
644, 348 Mo. 916; Lajoie v. Central West
Casualty Co. of Detroit, 71 S.W. (2d) 803,
228 Mo. App. 701.)

"The repeal of a statute by a subsequent
statute is a question of intention, and there
is a presumption against the intention to re-
peal where express terms are not used. (State
ex rel. St. Louis Police Relief Ass'n v. Igoe,
supra.)

"If by any fair interpretation all the sections
of the statutes can stand together, there is no
repeal by implication. (Hull v. Baumann, 131
S.W. (2d) 721, 345 Mo. 159.)

* * * * *

"But though two acts are seemingly repugnant
they must, if possible, be so construed that
the later will not operate as a repeal, by
implication, of an earlier one and if they
are not irreconcilably inconsistent, both must
stand. (Graves v. Little Tarkio Drainage
District No. 1, supra.)

"The repugnancy between the later and the prior
statutes must be wholly irreconcilable in order to
work a repeal of the prior act. (State ex rel.
Wells v. Walker, 34 S. W. (2d) 124, 326 Mo. 1233;
Use of Geo. B. Peck Co. v. Brown, 105 S.W. (2d)
909, 340 Mo. 1189; Graves v. Little Tarkio Drain-
age Dist. No. 1, supra.; State ex rel. City of
Republic v. Smith, 139 S.W. (2d) 939, 345 Mo.
1158.)"

Viewing the above two sections together under the above
rules, we do not believe that Section 140.170, paragraph 5 is
repealed by Section 493.030, RSMo 1949, inasmuch as there exists
no irreconcilable conflict between the two provisions. Both of
these provisions are limitations upon the amount that may be
expended for the publication of legal notices, etc. Section
493.030, RSMo 1949, specifies the maximum amount that may be
expended and Section 140.170, RSMo 1949 specifies an amount not
to be exceeded in the publication of lands and lots sought to

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be sold for delinquent taxes. The later section does not purport to set a maximum in violation of the former, but acts as a limitation only upon the amount that may be expended for publication of this type. In other words, an amount might be allowed by Section 493.030, RSMo 1949, which would exceed the maximum allowable amount specified in Section 140.170 and of course, would act as a limitation thereon. Viewed in this manner, there of course, would exist no conflict between the above two sections.

CONCLUSION

Therefore, it is the opinion of this office that Section 493.030, RSMo 1949, does not repeal by implication or otherwise, Section 140.170, RSMo 1949, since there does not exist an irreconcilable conflict. The later provision merely acts as a limitation upon the maximum allowable amount as indicated by the former, the maximum not to exceed the amount set in either of the two sections whichever is the lesser.

Respectfully submitted,

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APPROVED:

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