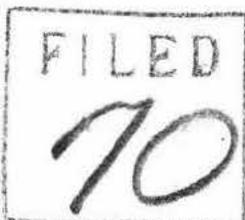


ELECTIONS: Printing official ballot on supplement
to a newspaper, which is contained in
PUBLICATIONS: the newspaper and distributed to all
subscribers, constitutes sufficient
NEWSPAPERS: publication of the official ballot.



December 9, 1952

12-11-52

Honorable John P. Peters
Prosecuting Attorney
Osage County
Linn, Missouri

Dear Sir:

This will acknowledge receipt of your letter, with enclosures, requesting an opinion of this department, which, in part, reads:

"I write to inquire if my enclosed 'Exhibit B' is a legal Publication of the Official Ballot, here in a local newspaper and to better understand my proposition submitted, I also enclose 'Exhibit A', the difference being that Exhibit 'A', is manifestly a part of the general makeup of the paper, while 'B' is only designated as a 'Supplement' to the paper, and is and has been folded in the Paper, publishing it, and in that form delivered to the subscribers. My concern is, that the papers publishing or distributing both 'A' and 'B' will present sizeable bills to the County Court, for payment, 'For publishing the Official Ballot.' An early opinion will be highly appreciated."

You have inquired whether or not enclosed Exhibit B is a legal publication of the list of nominations as required by law.

Section 120.580, RSMo 1949, imposes the duty upon the clerk of the county court to publish the list of nominations to public office prior to the holding of an election, and reads as follows:

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

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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 1949." (Emphasis ours.)

Section 120.590, RSMo 1949, provides for the arrangement or form in which the list of nominations shall be published, and, in part, reads:

"The list of nominations published by the clerks of the county courts of the respective counties shall be arranged in the order and form in which they will be printed upon the ballot, the size of type, squares and emblems used, spacing and blank lines to be as prescribed by law for the official ballot; * * *"

The above statute, in effect, provides for the publishing of a form of the official ballot to be used in the election.

In reading your letter there appears to be no question or objection regarding the form or arrangement of the official ballot as printed. Rather, you have inquired whether or not the ballot as printed constitutes a publication within the meaning of the statutes.

It is noted at the top of the page or paper on which the official ballot is printed that it is designated as a "Supplement to Osage County Republican, Linn, Missouri," and dated Thursday, October 23, 1952. Immediately there following, in large type, are the words "County Clerk's Notice of General Election." Then following is a printing of the form of official ballot with instructions to voters.

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You have stated that Exhibit B, as above described, was folded and inserted in the newspaper and that the newspaper with the folded supplement contained therein was delivered to the subscribers. From this we assume that Exhibit B or the supplement was delivered to all of the subscribers of the newspaper.

With regard to the meaning of the terms "publish" and "publication," the following is said in *Estill County v. Noland*, 295 Ky. 753, 175 S.W. (2d) 341, 346:

" * * * The thought running through all the uses of the words 'publish' and 'publication' in such connections is an advising of the public or the making known of something to the public for a purpose and the act is deemed sufficient if it gives notice to the public of any matter desired to be brought to its attention. * * *"

Again in the case of *National Geographic Soc. v. Classified Geographic*, 27 F. Supp. 655, 659, the Federal District Court of Massachusetts said:

"In its ordinary acceptation, the word "publication" means "the act of publishing a thing or making it public; offering to public notice; or rendering it accessible to public scrutiny." * * *"

Applying the above definitions to the situation which you have presented it would seem that by enclosing Exhibit B in all of the newspapers delivered to the subscribers it would be making known to the subscribers of the public matter desired to be brought to their attention, and would be offering to public notice the form of official ballot and rendering it accessible to public scrutiny.

Exhibit B has been designated as a "supplement" to the newspaper undertaking to publish the form of official ballot. The term "supplement" has been held to mean that which completes or makes an addition to something already organized, arranged or set apart. *State v. Wyandot County*, 16 Ohio Cir. Ct. Rep. 218. Applying this definition it would appear that Exhibit B was an addition to the organized and arranged issue of the *Osage County Republican* which was published and distributed Thursday, October 23, 1952.

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In the case of Star Company v. Colver Publishing House, 141 F. 129, the Federal Circuit Court of Appeals held that a supplement to a newspaper is an addition to the usual issue of the newspaper.

Therefore, applying the above definitions to the situation which you have presented it would seem that Exhibit B, designated as a supplement to the newspaper in question, was an addition to the issue of the newspaper published and distributed on October 23, 1952, and was included in all copies of the newspaper distributed on that date, which we believe would be sufficient to convey notice to the public and subscribers of the newspaper of the matter desired to be brought to their attention, and that such would constitute a publication in the newspaper sufficient to comply with the requirements of the statutes.

CONCLUSION

In the premises, it is the opinion of this department that the printing of the form of official ballot to be used in a general election in a supplement to the newspaper printing said form of ballot, and where the particular issue of the newspaper with the supplement contained therein is distributed to all of the subscribers, is sufficient to comply with the statutes requiring a publication of the official ballot.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

RFT:ml