

**ELECTIONS: Necessary qualifications for
NOTICE: newspaper to publish notice.**



May 10, 1946

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Mr. George A. Spencer
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Boone County
Columbia, Missouri

Dear Sir:

This acknowledges your request, which is as follows:

"On this morning's mail I received two copies of 'The Tri-County Truth', one is dated April 4th and the other is dated April 18th. I do not know whether the issue for April 11th has ever been published or not.

"It is not unusual to receive two or three issues on the same mail of this paper and, although it appears to be a weekly and published weekly, it does not come out each week but as stated above at least two or maybe three copies come out at the same time.

"This is the only republican paper in the county. The question with the County Clerk and myself, is such a legal newspaper under these circumstances that requires publication of the notices of election in such a publication."

Replying thereto, it appears that Section 11555, R.S. 1939, requires the county clerk to publish names of candidates and certain other information, and says:

"* * * * It shall be the duty of the county clerk to publish such notice for three consecutive weeks next prior to said primary."

Section 11556, R.S. 1939, states:

"Every publication required in this article shall be made in not less than two newspapers of general circulation in such county; one of such newspapers shall represent the political party that cast the largest vote in such county at the preceding general election, and one of such newspapers shall represent the political party that cast the next largest vote in such county at the preceding general election. In any case where the publication of notice cannot be made as hereinbefore required, it may be made in any newspaper having a general circulation in the county in which the notice is required, to be published."

46 C. J., page 19, describes a newspaper thus:

"* * * In ordinary understanding a newspaper is a publication, usually in sheet form, intended for general circulation, and published regularly at short intervals, containing intelligence of current events and news of general interest."

As to its circulation it says, page 19:

"That the circulation of a publication is very limited does not prevent its coming within the definition of a newspaper."

You do not give us detailed information as to the contents of the paper, and we assume it is a newspaper within the usual meaning of that term, although perhaps it is not "as deep as a well nor as wide as a barn-door but 'tis enough."

While the statute, Section 11555, places the duty upon the county clerk to "publish such notice for three consecutive weeks," it, when read in connection with Section 11556, means, of course, that the clerk shall direct it to the newspapers in question and that they "publish" the notice.

46 C. J., page 22, speaking of a "newspaper of general circulation," states as follows:

"'Newspaper of general circulation' is a term generally applied to a newspaper to which the general public will resort in order to be informed of the news and intelligence of the day, editorial opinion, and advertisements, and thereby to render it probable that the notices or official advertising will be brought to the attention of the general public. As to whether a newspaper is of general circulation is manifestly a matter of substance, and not merely of size. The term 'general circulation' is a relative one, and its meaning must be determined by a process of inclusion and exclusion. That which will be of general circulation in a town of a small population cannot be said to be general in a populous city. A newspaper to have the characteristics of a newspaper of general circulation does not necessarily have to be read by all the people of the county. The question as to whether or not a newspaper is one of general circulation involves other elements besides the number of its subscribers, and the size of the community in which it is published and circulates. The patent inside do not affect the status of a newspaper as that of a newspaper of general circulation so long as the paper otherwise meets the necessary requirements of a newspaper of general circulation."

Section 11556, supra, requires that the newspaper to which said publication shall be directed shall be of "general circulation in such county." From your letter it appears that the newspaper in question represents one of the two major political parties. Said statute, 11556, further provides that in case there are no such newspapers of the two political faiths and of general circulation in the county, the publication may be made in any newspaper having a general circulation in the county in which the notice is required to be published. Said section would seem to mean that the clerk must publish said notice in at least two newspapers of general circulation, and if there is not a newspaper of each of two major political parties and of general circulation and published in consecutive weeks, then it would be the duty of the clerk to have said publication made in newspapers that did meet with the statutory requirements.

From your letter it appears that serious question may be raised as to whether the newspaper here considered is a proper newspaper in which to have the statutory publication made, because your letter impliedly says that the newspaper is not published each week.

The term "week" has been construed by our courts, as well as by many other courts. In *Russell v. Croy*, 164 Mo. 69, the question was raised as to what was the meaning of the publication for "four consecutive weeks." The object of the suit was to prevent the defendants from enforcing against the plaintiffs the terms of the third constitutional amendment voted on and declared adopted at the general election in November, 1900, purporting to relieve the owner of the equity of redemption of mortgaged farm lands to the extent of the mortgage placed thereon and to tax the mortgage instead of that much of the value of the land. Plaintiff contended the constitutional amendment was not legally adopted, because the publication in the newspapers over the state was not legally made. The court held to the contrary and that the amendment was properly adopted. At l.c. 93 the court said:

"The Constitution uses the words 'four consecutive weeks.' The word 'week' in its most accurate sense means seven consecutive days beginning with Sunday; in that sense it is most usually used. But it is also appropriately used to mean seven consecutive days beginning with any day. * * * *"

Mr. George A. Spencer

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From your inquiry it appears that at least the copies of the purported weekly issues that are received by you as a subscriber appear to be printed for two weeks at one time, or at least circulated at one time. You say, "at least two or maybe three copies come out at the same time."

In State ex rel. v. Johnson County Court, 133 Mo. App. 427, it is held that the date of publication of a newspaper is not necessarily the date when it is printed. At page 431 the court said:

"* * * * The publication of a notice in a newspaper is not the day it is set up in type and printed; it is the day that it may be seen and read in the paper by the public. Not that it must reach every member of the public, but its publication will date from the day when the public begin to receive it from the publisher. * * * *"

Conclusion.

It is our opinion that a newspaper should have the qualifications above mentioned, to wit, it should be a newspaper of general circulation in the county and it should be published each week, and by the word "published" is meant it should be distributed to the public of the county each week in order for it to qualify as a proper newspaper to which the county clerk shall award a publication under the above statutes. If such newspaper does not come within these provisions, then the county clerk is not only within his rights, but he is exercising his statutory duty in publishing said notice in two other newspapers which do have the above set forth qualifications.

Very truly yours,

DRAKE WATSON
Assistant Attorney General

APPROVED:

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