

## Understanding a paper's legal status



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There are calls to the Press Association's hotline on a regular basis that deal with a paper's status under the Missouri legal notice statute.

These calls are always difficult, because generally they involve a paper that is disputing another's paper's status under that same statute. Since the dues that all of you pay are used to fund the hotline services, I must be very careful in handling those calls. Each of you is a client of this firm. As you know, lawyers are not allowed to represent a client when that representation is in conflict with their representation of another client. I frequently have to defer answering tough questions about this issue and refer the caller to the paper's private attorney in order to avoid that conflict of interest. Most of you are very understanding about this issue.

But it is clear that this is a subject about which there is great confusion. For that reason, I want to devote this column to the provisions of chapter 493, in hopes of creating a permanent reference to the terms of Missouri's legal publications law.

First, the key statute that relates to this subject is Section 493.050, which provides the terms under which legal notices must be published. Any time an advertisement is required by law to be published or any time a publication must be made affecting title to real estate, the statute says that it must be published in a daily, triweekly, semiweekly or weekly newspaper of general circulation in the county where located AND which has been admitted to the post office as a periodicals class matter in the city where it is published.

In addition, it must have been published regularly and consecutively for three years and must have a list of bona fide subscribers who have paid or agreed to pay a certain price for the subscription for a certain period of time. (There is a provision allowing for a successor to a defunct newspaper of general circulation to qualify as a legal notice paper if it began publication no later than 30 days after the termination of the earlier paper. There is also an exemption for newspapers which must suspend publication due to the owner or publisher being inducted into the armed forces during times of war in this country, which one would hope would be a rare occurrence.)

There are very few cases in the history of this statute (which dates back to 1879 in another format). Probably the most prominent case relating to the interpretation of Section 493.050 is *Press-Journal Publishing Co. v. St. Peters Courier-Post*, a 1980 case decided by the Eastern District Court of Appeals. This case, filed by the publisher of the Wentzville Union, a weekly newspaper, sought a judgment declaring that the St. Peters Courier-Post and the St. Louis Post-Dispatch were not legal notice publications for St. Charles County because they did not meet the requirements of Section 493.050.

The court looked first at whether the language in Section 493.050 which says "newspaper of general circulation in the county where located: meant that their printing facilities and plant must be located within that county. In deciding the meaning of those words, the court reviewed the history of the statute and its earlier language. In 1879, the language of the predecessor statute was clear that the newspaper was required to be published and circulated in the county in question. It was in 1927 that the language was changed to where it merely required that the newspaper be generally circulated in the county. And although the statute has been modified several times since the 1927 version, the language regarding where the paper is published has never been re-added to the statute. Another issue addressed in this case involved the publication of the St. Charles Courier-Post, which was a new paper begun after its owner purchased the assets of the O'Fallon-St. Peters Times, which ceased publica-

tion. The Courier-Post began publication the week after the Times ceased printing and labeled its first paper as "Volume I, No. 1." However, the court found there was substantial evidence that the change of name and ownership did not cause it to lose its ability to tie onto its publication period the publication period of the predecessor paper. In fact, the court even cited cases from other jurisdictions in which courts have found that a newspaper was a "going" paper even if it missed a few issues during the period of continuous publication.

Earlier, the Missouri Supreme Court addressed this issue of continuous publication in *State ex rel Henderson v. Proctor*, a 1962 decision that arose out of a question about a paper missing continuous publication by one week. The court examined a case in another jurisdiction, then looked back at the statutory language as it had been amended in 1937. It found that the purpose of the statute was to ensure the paper was a "well-established" newspaper, "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."

While the court refused to take this opinion much beyond the particular facts before it in this one instance, it did find that the fact that the publisher took one week off for vacation did not defeat it being a legal publication pursuant to Section 493.050.

In 1955, the Supreme Court addressed the issue of whether a notice of a school election had to be published in a newspaper of the county where the issue was on the ballot. The court, in *State of Missouri ex rel Reorganized School District No. R-6, of Daviess County v. Holman*, acknowledged that the DeKalb County Herald was a newspaper of general circulation in the county affected by the ballot issue. The only requirement on publication of the issue, which was based on a requirement in Section 165.680, was that it be published in at least one paper "of general circulation in the county ... affected...." (This language parallels to some extent the language in Section 493.050 and is of note because of the court's observation on the "general circulation" terminology.) Because the statute did not require that the paper be printed in the county at issue, the court held that the publication in the DeKalb County Herald was sufficient, even though it was not a paper published in Daviess County.

There are other provisions in chapter 493 that are important to note. Section 493.025 provides that the rate charged for publication of a legal notice shall be the "regular local classified advertising rate" which has been in effect for at least 30 days before publication of the notice.

That statute is modified by Section 493.027, which says that in any first class county and in St. Louis, a board consisting of the circuit court judges may qualify papers for publication of legal notices and may review and approve rates which may be charged for such notices. Public officials are mandated by Section 493.040 to accept the "most advantageous terms" in negotiating for legal notices. Section 493.070 provides that in cities of 100,000 or more, all public notices which must be published shall be published in a daily newspaper which meets the requirements of Section 493.050.

Section 493.100 provides that in cities of more than 600,000 residents, notices of power of sale of real estate must run in a daily newspaper with annual cash receipts from circulation in excess of \$6,000.00. These papers, according to Section 493.110, are selected by the circuit court judges in much the same way that Section 493.027 provides for selection of legal notice papers.

And, last but not least by any means, no paper may give a rebate or cash payment to someone publishing a legal notice or they will be guilty of a misdemeanor with a potential fine and imprisonment.