

Statutes govern notices of election in counties

3rd law rules statewide election notices

In the last few months, several MPA members have called to talk about their counties' publication of sample ballots in the newspaper. Whenever more than one person calls with the same question, it's probably time for us to look closer at that issue.

There are two statutes that govern the publication of sample ballots BY YOUR COUNTY prior to an election. The first, which governs SPECIAL elections, is in Section 115.127, subsection 1, which says: "Within one week prior to each special election to fill a vacancy held in its jurisdiction, the election authority shall cause legal notice of the election to be published

in two newspapers of different political faith and general circulation in the jurisdiction. The legal notice shall include the date and time of the election, the name of the officer or agency calling the election and a sample ballot. If there is only one newspaper of general circulation in the jurisdiction, the notice shall be published in the newspaper within one week prior to the election. If there are two or more newspapers of general circulation in the jurisdiction, but no two of opposite political faith, the notice shall be published in any two of the newspapers within one week prior to the election."

The second statute that governs COUNTY GENERAL elections, is in subsection 2 of Section 115.127, and it states, after some preliminary material: "[T]he election authority shall cause legal notice of each election held in its jurisdiction to be published. The notice shall be published in two newspapers of different political faith and qualified pursuant to chapter 493, RSMo, which

are published within the bounds of the area holding the election. If there is only one so qualified newspaper, then notice shall be published in only one newspaper. If there is no newspaper published within the bounds of the election area, then the notice shall be published in two qualified newspapers of different political faith serving the area. Notice shall be published twice, the first publication occurring in the second week prior to the election, and the second publication occurring within one week prior to the election. ..."



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A third statute governs STATEWIDE elections for which the notice is placed by the Missouri Secretary of State (ie: initiative and referendum elections), and the instructions for publication of that notice are contained in Section 116.260, where it states: "The secretary of state shall designate in what newspaper or newspapers in each county the text of statewide ballot measures shall be published. If possible, each shall be published once a week for two consecutive weeks in two newspapers of different political faiths in each county, the last publication to be not more than thirty or less than fifteen days next preceding the election. If there is but one newspaper in any county, publication for four consecutive weeks shall be made, the first publication to be not less than twenty-eight days next preceding the election. If there are two or more newspapers in a county, none of which is of different political faiths from another, the statewide ballot measures shall be published once a week for two consecutive weeks in any two newspapers in the county with the last publication not more than thirty or

less than fifteen days next preceding the election."

Long ago, newspapers declared their political affiliation and that guided the selection of papers pursuant to the language contained in Section 115.127. Today, a flip through your MPA Newspaper Directory will quickly make it clear that there are as many "Nonpartisan" or "Independent" newspapers as there are papers of a political affiliation. (This is especially true of our dailies, where we have three Democrat papers, one Republican paper, and one Libertarian paper among all the papers!) So what happens in terms of the language about "political faith"?

(And is a paper that declares itself "Independent" a "Nonpartisan" paper? Or is that paper declaring itself representing the "Independent" Party?" Some states have an "Independent Party," an "Independence Party," an "American Independent Party" and/or an "Independent American Party." What potential for confusion that raises!)

The Missouri Secretary of State's office told me at one point that they take the position that publication of the notice in two papers is mandatory. However, they do not control your local counties. There, you are dependent on how your local legal adviser to the county is interpreting the statute.

Unfortunately, there's no case law that deals with this issue, but certainly the language is there that would make it clear that the intent of the law is for publication of the ballot language in two newspapers, and if one is politically affiliated and another is not, then that is clearly two "political faiths." If they are both Nonpartisan, then at least it's clear that the publication has occurred in two publications, as the statute mandates, because the most important part of the statute is that it must be in a paper qualified pursuant to chapter 493, the part of the Missouri Statutes that governs what qualifies as a "legal notice" paper.

Feel free to call if we need to talk further about this topic.

Hoping to see you at the convention in a few weeks, where all those candidates will be looking to talk to you, their hometown publishers!