

1977 S.C. Op. Atty. Gen. 196 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-263, 1977 WL 24604

Office of the Attorney General

State of South Carolina

Opinion No. 77-263

August 19, 1977

\*1 TO: Jasper M. Cureton  
Richland County Master In Equity  
Richland County Courthouse  
Columbia, South Carolina

#### QUESTION PRESENTED

With the enactment of Act 146 of 1977, which amends Section 10–1308 of the S. C. Code (1962) (Section 15–29–80 S. C. Code (1976)) to permit charges for legal advertisement at the standard commercial rate, must the order of publication under Section 15–9–740, S. C. Code (1976) designate the newspaper with the greatest circulation in the county or can the legal advertisement be placed in other newspapers of general circulation in the county?

#### CITATION OF AUTHORITIES:

Act No. 146 of 1977;

Section 15–9–740, S. C. Code of Laws, 1976, (Section 10–454, Code, 1962);

Section 15–29–80, S. C. Code of Laws, 1976, (Section 10–1308, Code, 1962);

1975 Ops. S. C. Atty. Gen. Nos. 4098 and 4144, pp. 177 and 211, respectively.

#### DISCUSSION:

Statutes permitting publication of legal notices, summonses, etc., as a means of service vary in their requirements from mere publication in a newspaper in the county to publication in a newspaper of state-wide circulation. The request for an opinion in the instant case did not specify any particular statute but rather referred to a requirement to publish in the newspaper ‘most likely to give notice to the person to be served.’ Such a requirement is imposed by Section 15–9–740, S. C. Code (1976) in certain actions involving real property. See, Section 15–9–720, S. C. Code (1976). For purposes of this opinion, therefore, the inquiry shall be limited to the application of Section 15–9–740.

Prior to June 1, 1977, Section 15–29–80, S. C. Code of Laws, 1976 (Section 10–1308, Code, 1962), established maximum rates which could be charged by newspapers for publication of such legal advertisements. If a newspaper refused to accept legal advertisements at the statutory rate, but instead demanded a higher commercial rate, it was the previous opinion of this Office that a state or county official could not pay the higher commercial rate. See, 1975 Ops. S. C. Atty. Gen. No. 4098 (August 27, 1975); 1975 Ops. S. C. Atty. Gen. No. 4144 (October 2, 1975). This Office was of the further opinion that in determining which newspaper would ‘most likely give notice’ under Section 15–9–740, a state or county officer could only consider those newspapers published in the county which would insert legal advertisements at the legal rate. Thus, for example, if The State or The Columbia Record refused to publish at the legal rate but the Star Reporter and Osceola would publish at the legal rate the official must determine which of the latter two papers was ‘most likely to give notice to the person to be served.’ See, Op.

4144, supra. In our opinion, Section 15–29–80, (Section 10–1308, Code, 1962), did not negate the requirement to publish the newspaper ‘most likely to give notice,’ but rather merely restricted the ‘class’ of newspapers from which such a determination could be made, i.e., those that would publish at the specified rate. If no newspaper in the county would accept advertisements at the legal rate, then Section 15–29–100, S. C. Code of Laws, 1976 (Section 10–1310, Code, 1962) required the posting of such legal notices, Id.

\*2 On June 1, 1977, Act No. 146 amended Section 15–29–80 (Section 10–1308, Code, 1962), by eliminating the statutory maximum rate, except as to indigents, and providing instead that publication of legal advertisements can be made at standard commercial rates. Therefore, state and county officers can now consider all newspapers of general circulation, published in the county in determining the newspaper ‘most likely to give notice to the person to be served.’ The specific question posed is whether the legal advertisement must be placed in the newspaper ‘most likely to give notice and with the greatest circulation.’ This Office has never expressed the opinion that the newspaper ‘most likely to give notice’ is the newspaper with the greatest circulation, although as a practical matter this may be true. Certainly, as a minimum standard, publication should be made in a newspaper of general circulation in the county. This determination, however, must be made by ‘the officer before whom the application is made,’ and his decision would, of course, depend upon the individual facts of each case as well as the peculiar circumstances of his locality. Therefore, this Office is unable to express an opinion as to whether in every case in Richland County, Section 15–9–740, S. C. Code of Laws, 1976, would require publication in The State rather than newspapers of general circulation such as The Star-Reporter, Osceola or Black News.

#### CONCLUSION:

Because of the elimination of the statutory maximum rate for legal advertisements, county or state officers ordering publication of legal notices or summonses may consider all newspapers of general circulation that will publish for the local retail display advertising rate in determining which newspaper would be most likely to give notice. Their decision in each instance will depend upon the individual facts and circumstances of each case.

Richard B. Kale, Jr.  
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