

1976 WL 30616 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 18, 1976

*1 If a particular party or a particular legal advertisement is covered by Section 10-1308, and if the newspapers in the county refuse to publish the legal advertisement at the rate set up in Section 10-1308, then Section 10-1310 provides for notice by posting. The length of time for such posting, the number of times the posting should be checked, and any period of default must be decided under the applicable statutory requisites for the particular type of notice, and by the other facts present in each case.

Legal Aid Service Agency

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Attorney

QUESTIONS PRESENTED:

How often must legal notices be checked to see if still posted; how long must they be posted; when does opponent default?

STATUTES, CASES ETC:

Code of Laws of South Carolina, 1962, Sections 10-1308, 10-1310

DISCUSSION OF ISSUES:

A close reading of Code Section 10-1308 supra, indicates it is applicable to 'State and county officials authorized by law to publish advertisements in the newspapers of this State . . .' these questions depend on the type of notice involved, any applicable statutory directives, and the particular circumstances involved in the case. Such a large number of variable factors makes the attempt to arrive at a general legal condition highly speculative and each case should be considered on its individual merits.

However, it would seem logical to assume that the requisite time periods for publication in the newspaper should also apply to those notices which are posted pursuant to Section 10-1310. The conditions existing at the three positions of posting in the county should determine how often a notice needs to be checked. Common sense should be the determining factor.

It should be pointed out that the adequacy of the alternative notice provisions of Section 10-1310 have been questioned from several quarters. Among the issues raised are the constitutional adequacy of posting in three places when previously such notices appeared in the newspaper. Such a due process challenge to the sufficiency of notice could be raised in an attack on a judgment entered after such notice has been posted.

The potential ambiguities and questions presented by 10-1308 and 10-1310 have reportedly prompted legislative action in the form of pre-filing bills to alter these sections. Until legislative or judicial clarification is forthcoming, these sections will have to be construed in view of all the facts of each case, with every effort made to avoid creating a constitutional grounds for upsetting the resulting judgment.

CONCLUSION:

If a particular party or a particular legal advertisement is covered by Section 10-1308, and if the newspapers in the county refuse to publish the legal advertisement at the rate set up on Section 10-1308, then Section 10-1310 provides for notice by posting. The length of time for such posting, the number of times the posting should be checked, and any period of default must be decided under the applicable statutory requisites for the particular type of notice, and by the other facts present in each case.

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