

1975 S.C. Op. Atty. Gen. 211 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4144, 1975 WL 22440

Office of the Attorney General

State of South Carolina

Opinion No. 4144

October 2, 1975

\*1 Since both the Star Reporter and Osceola are published in Richland County, they meet the requirements of Sections 10-452, 2403-2404.

State and county officials are prohibited from placing legal advertisements in The State or any other newspapers refusing to publish legal advertisements at the legal rate. Therefore, effective service by publication may be had only by advertising in newspapers subscribing to the legal rates.

By naming a particular newspaper in an order of publication, the officer before whom application for such order is made necessarily has made the determination that the named paper is the one most likely to give notice to the person to be served. Consequently, the officer issuing the order of publication may include such an express finding, but where a particular newspaper is designated, no such finding is required.

Section 10-1310 appears to be mandatory only where all newspapers in any particular county refuse to insert such advertisements at the rate allowed in Section 10-1310.

TO: William F. Able  
Richland County Attorney

QUESTIONS PRESENTED:

- 1) Is service of summons by publication in either the Star Reporter or Osceola compliant with the provisions of Sections 10-452, 203 and 204 in an action where real property in Richland County is involved and where the defendant is unknown and/or his residence is unknown or he is a non-resident?
- 2) May effective service by publication be made by publication in The State by paying a charge in excess of that allowed by Section 10-1308?
- 3) Pursuant to Section 10-454 must the order for publication contain a finding that a particular named newspaper is the one most likely to give notice to the person to be served?
- 4) Are the provisions of Section 10-1310 mandatory where the newspaper with the largest circulation in the particular county refuses to publish legal advertisements at the rate set by Section 10-1308.

AUTHORITIES INVOLVED:

Sections 10-452, 454, 1308, 1310, 2403 (as amended) and 2404, CODE OF LAWS OF SOUTH CAROLINA (1962); 33A Words and Phrases; [16 SC 416 \(1882\)](#);

DISCUSSION:

Sections 10–452, 454, 2403 (as amended) and 2404, CODE OF LAWS OF SOUTH CAROLINA (1962) provide for service by publication under certain circumstances. In that Section 10–2403 provides that service by publication shall be had by complying with the provisions of Sections 10–452, 454, effective service pursuant to Sections 10–452, 454 is effective under Sections 10–2403, 2404. Section 10–452 provides, in part, that service by publication shall be had ‘by publishing [the summons] once a week for three weeks in a newspaper printed in the county where the premises are situated.’ The term ‘printed’ is susceptible to many interpretations.

‘Print,’ as used in a statute requiring notice of judicial sale to be published in a paper printed in the county where such sale was to be made, was used in the sense of ‘publish,’ so that a publication in a paper published in the county, but not wholly printed therein, is sufficient. [Aetna Life Ins. Co. v. Wortaszewski](#), 88 N.W. 855, 63 Neb. 636. 33A Words and Phrases at 334. <sup>1</sup> [Emphasis added].

\*2 Broadly interpreting the phrase ‘printed in the county’ to mean ‘published in the county’ not only validates any legal notices already published in the Star Reporter or Osceola, but also provides for service by publication in counties in the event a newspaper is published in a county but not physically printed therein. <sup>2</sup> Furthermore, as a rule of statutory construction, the Supreme Court of South Carolina has allowed the substitution of one word for another to give a statute force and effect or to make it rational. See, [Waring v. Cheraw & D.R. Co.](#), 16 S.C. 416, 425 (1882). Therefore, since both the Star Reporter and Osceola are published in Richland County, it is the opinion of this Office that both the Star Reporter and Osceola meet the requirements of Section 10–452.

Of course, for service by publication pursuant to Section 10–452 to be valid, the requirements of Section 10–1308 and Section 10–454 must be complied with. Section 10–1308 sets forth the legal rate at which legal notices must be published in newspapers.

State and county officials authorized by law to publish advertisements in the newspapers of this State, . . . shall be charged not exceeding . . .

. . .

The publication of any of the notices herein mentioned may be let by contract for not more than the prices herein mentioned. Section 10–1308 [Emphasis supplied.]

Section 10–1308 is couched in mandatory language. State and county officials shall not be charged more than the legal limit and they are expressly prohibited from contracting for publishing services in excess of the legal rates. Consequently, it appears that state and county officials are prohibited from placing legal advertisements in The State or The Columbia Record or any other newspaper that refuses to publish legal advertisements at the legal rate.

Section 10–454 provides in part:

The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served . . .

In that the state or county officials before whom the application is made are prohibited by the terms of Section 10–1308 from inserting legal advertisements at a rate greater than the legal rate, in determining which newspaper is ‘most likely to give notice to the person to be served,’ such officer can consider only those newspapers published in the county which will insert legal advertisements at the legal rate. Since both the Star Reporter and Osceola will insert legal advertisements at the legal rate, they may be considered in the officer's determination as to the paper most likely to give notice.

The question has been asked as to whether the order of publication provided for in Section 10–454 must contain an express finding that the designated newspaper is the one most likely to give notice to the person to be served. By the

terms of Section 10–454, the officer before whom the application for an order of publication is made must determine that the newspaper designated is the one most likely to give notice. Therefore, specifically designating a named newspaper is an incorporation by necessary implication that the named newspaper is the one ‘most likely to give notice to the person to be served.’ There is nothing, however, in Section 10–454 that prohibits the officer from expressly including such a finding in the order of publication.

\*3 Finally, there is the question as to whether the provisions of Section 10–1310 require the posting of legal notices when the newspaper with the largest circulation in the county refuses to insert legal advertisements at the rates set in Section 10–1308. Section 10–1310 provides:

If the proprietors or managers of the newspapers in any county shall refuse to insert such advertisements in their newspapers at the rates allowed in Section 10–1308 such notices shall be posted in at least three public places in the county, one of which shall be the courthouse door. [Emphasis supplied.]

The language ‘proprietors or managers of the newspapers in any county’ is significant in that it is pluralized. ‘[T]he newspapers in any county,’ not ‘a newspaper in any county,’ must all refuse to insert advertisements at the legal rate. The conclusion is inescapable that for the provisions of Section 10–1310 to become mandatory, all newspapers in any county, here in Richland County, must refuse to insert advertisements at the legal rate, not just the newspaper with the largest circulation.

In conclusion, it is necessary to point out, as you already know, the opinions of this Office do not carry the force and effect of law. Therefore, in order to obtain a definitive answer to the questions propounded by Judge Manning, an action pursuant to the Declaratory Judgments Act, Sections 10–2001, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962), would be necessary.

M. Elizabeth Crum

#### Footnotes

- 1 There are, however, cases which hold that ‘printed in the county’ means that the paper must be physically printed within the county for service by publication to be effective. See, 33A Words and Phrases at 337.
- 2 If the language ‘printed in the county’ is interpreted in a literal sense, service for property located in Barnwell County could be had by printing the summons in the Star Reporter which is printed in Barnwell County but circulated primarily in Richland and Lexington Counties.

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