

**County Commissioners—Publication of Proceedings in a Newspaper—Whether Mandatory.**

Publication of the proceedings of the Board of County Commissioners in a newspaper is not mandatory.

The purpose of publication is to furnish information to the taxpayers and citizens, and this may be done by a published report in a newspaper, pamphlet, or by posted notices.

Unless a very substantial amount can be saved Boards of County Commissioners should cause their proceedings to be published in a newspaper, that method of publication being recognized as the most effective for furnishing information to taxpayers and citizens.

E. E. Collins, Esq.,  
County Attorney,  
Billings, Montana.

My dear Mr. Collins:

You have asked whether in my opinion it is mandatory for the Board of County Commissioners to publish their proceedings and statement as provided by Subdivision 21 of Section 2894 of the Revised Codes of 1907, as amended by Chapter 15, Laws of 1919. This section in so far as applicable, provides:

"The Board of County Commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: \* \* \*

"21. At the adjournment of each session of the board to cause to be published in a newspaper, or otherwise, a fair statement of all its proceedings, and annually a statement of the financial conditions of the county."

From an examination of the various subsections under this section, numbering 27 in all, it will be observed that all except Subsection 21 relate to those purposes for the performance of which the county is created, as, to supervise county officers; create township, school and road districts and election precincts; manage and improve highways; provide for indigent sick and dependent poor; provide county buildings; sell real or personal property; examine and allow accounts; levy taxes, equalize assessments; direct prosecutions and defend actions to which the county is a party; grant licenses; fix compensation of county officers when not provided for; fill vacancies in office; represent the county and care for county property; adopt a seal; borrow money; issue bonds and make rules for its own government.

All of the other subsections of Section 2894, except Subsection 21, which was adopted March 6, 1895, and Subsection 27, which was adopted in 1905, were included in the original Code.

Subsection 21 does not deal with any power necessary to the administration of the county government. This section (2894) is dealing with powers of the Board and the powers there conferred would, no doubt, in many instances also imply a duty, especially where necessary to enable the county to function as such. No such implication attaches to Subsection 21.

Furthermore, where publication is made a duty by the Codes, it is required to be made in some newspaper of general circulation, and usually required to be published in the county a specified number of times. Subsection 21 is entirely silent as to where publication is to be made, nor does it require publication to be made in a newspaper of any kind. This subsection reads: "cause to be published in a newspaper, or otherwise."

By the use of the words "or otherwise," the Legislature evidently intended that publication could be made in some other manner than through the medium of a newspaper.

In the case of *State ex rel. Torreyson v. Grey*, 32 Pac. 190, the Supreme Court of Nevada had occasion to define the term "publish" as used in a constitutional provision providing that proposed amendments "shall be published for three months next preceding the time of making such choice." The court said:

"A 'publication' is defined in the dictionaries: 'The act of publishing or making known; notifying or printing; proclamation; divulgation; promulgation,—as the publication of the gospel; the publication of statutes or edicts.' 'Published' is defined by Worcester as the act of publishing or making public; by Webster, the act of publishing or making known; notification to the people at large either by words, writing, or printing; by Bouvier, as the act by which a thing is made public."

The Supreme Court of Wisconsin, in the case of *Sholes v. The State*, 2 Piney's Wisconsin Reports, 499, 511, also defined the term "publication" in a similar manner under a constitution providing for the publication of the Revised Codes. The court said:

"Section 21, article 7 of the constitution, directs that the legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions as may be deemed expedient.

"This provision we do not regard as dependent upon or necessarily connected with the provisions in relation to printing. While it is true that the employment of the art of printing is the best *means* of publication, still *publication* cannot be confined to the limited signification of mere *printing*, but comprehends the exercise of additional labor and skill. This provision implies a discretion to be exercised in the method of publication; for instance,—that the general laws which cannot be in force until published, shall be published in the public journals, that being the most speedy method; or in pamphlet form, that being more convenient for many purposes; or even by proclamation at the door of the court house in each county, and that the whole body of the laws and the decisions of the supreme court shall be published in the more permanent form of a bound book. All these would be different forms of publication, and all would answer the constitutional requirements; and it is obvious enough that in many instances the object could not be accomplished under a contract for mere mechanical printing."

It is my opinion that publication in a newspaper is not mandatory, but that the public is entitled to know, either by published report in a newspaper, pamphlet, or by posted notices, how their business has been handled by the Commissioners, and that unless a very substantial

amount can be saved the Commissioners should cause their proceedings to be published in a newspaper, inasmuch as this is recognized as the most effective means of furnishing the information to the taxpayers and citizens.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.