

Horse Roundup Law—Notices—Publication—Roundups.

To comply with Chapter 29, Section 4, Laws of 1927, it is not necessary to publish the notice of the holding of the roundup for three weeks prior to the thirty-day period before such roundup. The thirty days mentioned in that section begin to run from the date of the first publication of the notice and the roundup may be held thirty days after the first publication.

Frank E. Blair, Esq.,
County Attorney,
Virginia City, Montana.

August 28, 1929.

My dear Mr. Blair:

You have requested the opinion of this office upon the following facts:

Section 4 of Chapter 29, Laws of 1927, provides as follows:

“Notice of the holding of any such roundup shall be given by the board of county commissioners at least thirty (30) days prior to the date when the same shall begin, such notices to be published at least once a week for three (3) successive weeks in some newspaper of general circulation, printed and published in the county in which such roundup is to be held,
* * * ”

Is it necessary, in order to comply with that portion of Section 4 quoted, to publish the newspaper notice referred to for three weeks prior to the thirty-day period before the roundup, or is the statute complied with by publication of the first notice thirty days prior to the sale and the other two notices the following two publication dates?

Had the statute merely provided that thirty days notice of the intended roundup was to be given by publication in a newspaper, unquestionably the computation of the thirty days would run from the date of the first publication, and the subsequent publications during the said period would constitute a continuity of the notice to complete the period of publication required by law. The statute in this case requires the county commissioners to give notice “at least thirty days prior to the date when the same (the intended roundup) shall begin, such notices to be published at least once a week for three successive weeks, * * * ” unless there be no newspaper published in the county, in which case notice by posting alone is sufficient.

It is my opinion that the provision for notice contained in the statute has for its purpose the notification to the owners of any horses which might be subject to be taken up under the roundup law, that a roundup will be held at a certain time and to afford these owners an opportunity to do whatever is necessary to be done to take their horses out of the status of abandoned horses, if they desire so to do. The statute

does not say that there shall be thirty days' notice given, but that notice shall be given thirty days prior to the roundup.

It would be anomalous to say that the statute contemplated thirty days' notice when by its own terms publication is limited to three issues of the newspaper as there would be no continuity of publication during the whole thirty-day period, publication ceasing with the third issue. Had the legislature provided that the notice was to be published in one issue only there would be no doubt that the time would be computed from the day of the publication. The provision for two subsequent publications is, in my opinion, for the purpose of giving wider publication of the notice for the benefit of the owners of horses likely to be affected by the roundup, and when so published it is but a continuation of the notice originally published. It is analogous to notice to creditors in probate cases. The notice is published for four times notifying creditors to present their claims within a specified time from the first publication. The period of publication is part of the time allowed for doing the act. In the roundup law the period of publication is part of the time within which the owner may do whatever acts are necessary to protect his horses from the operation of the roundup if he desires so to do.

That the law did not contemplate that the owners of horses should have thirty days' time in addition to the time required for publication is indicated by the provisions that if there is no newspaper in the county then notice by posting alone is sufficient. The statute says that it shall be sufficient to post the notices twenty days prior to the roundup. It could hardly be said with any degree of logic that the legislature deemed more time required to give notice when both methods of giving it can be employed than where the method by posting alone is available. To so conclude would be to say it requires forty-four days (the publication being completed on the day of the last publication), to give ample notice where publication and posting are both employed, while less than half of that time is required when posting alone is available. Such a result is not supported by reason and could hardly have been entertained by the legislature.

The phraseology of the statute in this respect is ambiguous and decisions of courts are of little help in ascertaining the meaning of it but it seems to me that the above is the reasonable conclusion to be arrived at by interpretation.

It is therefore my opinion that the thirty days mentioned in the statute begin to run from the date of the first publication and that the twenty-day period provided for in cases where giving notice by posting alone is available was extended ten days so that the additional time would approximately take care of the period required for publication when publication is available.

Very truly yours,

L. A. FOOT,
Attorney General.