

mines the proper spacing between lines in legal publications, and spacing not authorized thereby cannot be legally paid to the county printer.

5. The statute does not authorize a charge by the county printer for evidence or proof of publication. Where he is asked to make more affidavits of proof than reasonably necessary, he should be paid a reasonable amount therefor.

March 19, 1937.

Hon. S. L. Kleve  
State Examiner  
The Capitol

Dear Mr. Kleve:

You have submitted to me certain questions for my opinion, which I am answering in the order submitted:

"1. Is it legal for the County Clerk to order and use sample ballots and have said ballots paid for by the county for the Primary Nominating Election and the General Election?"

I am unable to find any statute authorizing the county clerk to order sample ballots to be printed at the cost of the county. In the absence of statutory authority, he would not, of course, be permitted to obligate the county for such printing. Under Section 652 R. C. M. 1935, he may order sample ballots for political parties, but he is required to collect an amount sufficient to pay the cost of printing from the political committees of the parties ordering such ballots.

"2. What is the proper charge under the Code (Section 4482 R. C. M. 1935) for Judicial Primary Ballots, size 6¼ inches by 9½ inches?"

The statute is rather indefinite as to the cost of printing ballots. Section 4482 R. C. M. 1935 provides the following in regard to primary election ballots:

"Ballots, primary election, complete, including numbering, perforating, assembling, rotated and stitched, per party per 1000 \$45.00—additional 1000 \$35.00."

It is obvious that this provision has reference to the official ballot which contains a list of all of the many candidates at the primaries for the various

Opinion No. 63

Counties—Printing—Sample Ballots—  
Judicial Primary Ballots — Rule and  
Figure Work—Spacing of Legal Pub-  
lications — Affidavit of Publication,  
Charges Therefor.

1. The county clerk is not authorized to obligate the county for printing sample ballots.
2. Proper charge for printing judicial primary ballots considered.
3. Rule and figure work construed.
4. Section 4482 R. C. M. 1935 deter-

offices. This is indicated by the words "per party." Since the judicial primary ballots are non-partisan, it is clear that this provision would have no application to such ballots. The judicial primary ballot, moreover, as you state, was  $6\frac{1}{4}$  inches by  $9\frac{1}{2}$  inches, and very much smaller than the party primary ballots; also it contained only several names, while the party ballots contained a long list of names. I see no justification either on the wording of the statute, or on reason, considering the work to be done, for charging the same amount for judicial ballots as for party primary ballots. The judicial ballots would seem to be more nearly the size of the initiative and referendum ballots, for which the statute permits a charge of \$10.00 per first thousand and \$6.00 for each additional thousand. Since, however, the statute does not expressly refer to judicial primary ballots, and does not fix the charge of printing them, the charge for such service must be left for fair negotiation between the printer and the county officials. The statute expressly provides:

"All other blank books and printing not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin Printing Catalog List."

This list would probably furnish a guide for the cost of such printing.

"3. Legal interpretation is desired on how to determine basis for rule and figure work mentioned in County Printing Law, Section 4482 R. C. M. 1935."

The answer to this question depends upon the meaning of the phrase "rule and figure work." Said Section 4482, under the sub-head "Official Publications and Legal Advertising," p. 962 of the Political Code, reads as follows:

" \* \* \* For rule and figure work, two dollars per folio or fraction thereof, for the first insertion, and fifty cents per folio for each subsequent insertion thereof, required by law to be made. That for the purpose of establishing a basis of measurement one column thirteen ems wide and one inch in depth, when set in solid six point type shall constitute

a folio; one column thirteen ems wide and one and two-tenths inches in depth when set in solid seven point type shall constitute a folio; one column thirteen ems wide and one and four-tenths inches in depth when set in solid eight point type shall constitute a folio; one column thirteen ems wide and one and five-tenths inches in depth when set in solid ten point type shall constitute a folio."

I do not find that this phrase has been defined by law; however, it appears to have a definite meaning among printers and is defined by printers' dictionaries, as well as in the Franklin Printing Catalog List. While in the older publications, the phrase "rule and figure work" is used, in the more modern publications, the phrase "tabular work" is used. In order to come within the classification of "rule and figure work" or "tabular work," such printing must have at least two columns. In fact, there may be a doubt as to whether or not two columns would constitute "rule and figure work" as there seems to be a dispute on this question. However, there is no dispute that three and four columns would be so classified.

"4. If the County Printer, in compliance with instructions of the County Clerk, sets up legal publications wherein the printed lines are spread, thus using more space in the paper, is he entitled to charge more than if it was set up in solid type as set forth in Section 4482 R. C. M. 1935?"

This question must be answered in the negative. We have quoted the paragraph under "3" above, which definitely limits the space which might be used for legal publications. If the clerk directs that more space be used between lines than is permitted by this paragraph, it is my opinion that he acts beyond his authority. The printer may collect for only so much as may be legally contracted for under Section 4482, supra. See Carbon County v. Draper, 84 Mont. 413, 276 Pac. 667. The court there said:

"Any payments made at a higher rate than those fixed by law, to the extent of the excess, were upon claims not 'legally chargeable against the

county,' and were made 'without authority of law.' \* \* \*

"Our conclusion rests on the general principle that the county is not bound by the acts of the board when outside of or beyond the scope of its authority. Public moneys are but trust funds, and officers but trustees for their administration in the manner, and for the purposes, prescribed by statute. If payments have been made at a higher rate than fixed by law, as to the excess, defendant ought not, in equity and good conscience, be permitted to retain the same."

"5. When the County Clerk authorizes the publication of Notices of Application for Tax Deeds for various tracts of land in one notice, is it legal for the County Printer to charge the county the sum of fifty cents each for Affidavit of Publication for each separate tract contained in the said notice? That is to say, if there should happen to be fifty tracts in the notice, the charge would be \$25.00 for the fifty affidavits."

The county printer, before being paid, may be required to furnish evidence or proof of publication. The statute, Section 10637 R. C. M. 1935, provides that such evidence may be given by the affidavit of the printer or publisher of the newspaper, or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made. I am unable to find any section of the Code which permits the county to pay for such evidence or proof of publication, and in the absence thereof, I do not believe that such charge may be paid by the county. It would be unreasonable, however, in the instance that you have mentioned to require the printer to furnish fifty different affidavits of one publication, and, in my opinion, if this is requested and such proof is necessary, the printer would be justified in making a reasonable charge therefor.