

general circulation need not have privilege of second class mail to qualify for county printing.

March 31, 1937.

Mr. Harold K. Anderson
County Attorney
Lewis and Clark County
Helena, Montana

Dear Mr. Anderson:

You have submitted to this office for an opinion, the following inquiry:

"Would it be necessary for a newspaper to circulate or be circulated thru the medium of the U. S. Mails, having a second class mailing privilege, in order to be a newspaper of 'general circulation,' and this 'general circulation' to be on the same basis of time as other qualifications of Section 4482."

Section 482, provides:

"It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, printed and published at least once a week, and of general circulation, printed and published within the county, and having been printed and published continuously in such county at least one year immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable including all legal advertising required by law to be made, blanks, blank books, stationery, election supplies, loose leaf forms and devices, official publications and all other printed forms required for the use of such counties at not more than the following prices:"

Section 10519 provides:

"In the construction of a statute or instrument the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."

Opinion No. 76.

Newspapers—Requirements for County Printing.

HELD: Under provisions of Section 4482, prior to its amendment in 1937, which does not become effective until July 1, 1937, a newspaper of

Section 10520 reads as follows:

"In the construction of a statute the intention of the legislature, and in the construction of the instrument the intention of the parties is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."

It may be interesting to observe that in HB-166 which is an amendment to Section 4482, and which house bill goes into effect July 1st, 1937, that in section 1 of said act, the additional language has been added to that in section 4482, as follows:

"Bona fide and paid circulation with second class mailing privilege."

In the case of *Morrison v. Farmers' etc.*, State Bank, 70 Mont. 146, at page 150, the Court said:

"The intention of the legislature in enacting the statute is the consideration which must control its construction (sec. 10520, Rev. Codes 1921), and to ascertain that intention recourse must be had, first, to the language employed (*State v. Cudahy Packing Co.*, 33 Mont. 179, 114 Am. St. Rep. 804, 8 Ann. Cas. 717, 82 Pac. 833), indulging the presumption that the terms used were intended to be understood in their ordinary sense, unless it is made apparent from the context that they were intended to be given a different meaning (*State ex rel Aanconda C. Min. Co. v. District Court*, 26 Mon. 396, 68 Pac. 570, 69 Pac. 103).

Section 4482 requires that said newspapers be printed and published at least once a week, and of general circulation printed and published within the county continuously one year preceding the awarding of the contract.

Nothing upon the face of the statute, requires the paper to have a second class mailing privilege; and in interpreting the words, "General circulation," the common sense definition must be given, and those words must be interpreted under the statutory rules of construction, and if the

paper is generally circulated in this particular county, perhaps placed on newstand, etc., the requirements of the statute have been complied with. To require the paper to have a second class mailing privilege would be to insert a provision in the statute which has not been inserted, and would be in violation of the rules of the statutory interpretation; and it would appear that the legislature in enacting HB-166 into law must have arrived at the conclusion that section 4482 did not require that the paper have a second class mailing privilege, or else it would not have been deemed necessary to add the additional language.

It is therefore my opinion, that it would not be necessary for a newspaper to have a second class mailing privilege in order to bid for a county printing contract, under Section 4482, which is the operating act until July 1, 1937.