

No. 383

PUBLICATION—NOTICES—ORDERS

Held: Under a statute prescribing the period of time during which a publication is to be made and not prescribing the number of times of publication, publication once a week during the full period prescribed is sufficient.

March 24, 1942.

Mr. J. Miller Smith
County Attorney
Lewis and Clark County
Helena, Montana

Attention: Mr. Victor H. Fall
Deputy

Dear Mr. Smith:

You have advised that the Board of County Commissioners of Lewis and Clark County, pursuant to the provisions of Chapter 134, Laws of 1939, has adopted a resolution consolidating the offices of sheriff and coroner, and requests my opinion whether it will be necessary to publish the order daily for six weeks or if publication once a week for a period of six weeks will sufficiently comply with the statute.

Chapter 134, Laws of 1939, amends Section 4728, Revised Codes of Montana, 1935, and—after providing for the adoption of a resolution by the county commissioners consolidating the offices—provides the commissioners:

“ . . . shall make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county for a period of six (6) weeks next following the date of entry of said order.”

This question has many times been considered by our Supreme Court. In the case of *Garry v. Martin*, 70 Mont. 587, 592, 227 Pac. 573, the Court said:

“The subject of publication of notice has given the courts much trouble resulting in much contrariety of decision. This has been caused in the main by difference in the wording of the statutes under consideration by the respective courts, and, as observed by the Supreme Court of Florida in *Myakka Co. v. Edwards*, 68 Fla. 372, 67 South 217, Ann. Cas. 1917B, 201: ‘In each case some word or phrase contained in the particular statute, or the character of the proceedings, leads the court to its particular conclusion.’”

In the *Myakka v. Edwards* case, cited by our court in the *Garry v. Martin* case, *supra*, the statute under consideration provided for publication of the notice once each week for four consecutive weeks. The Supreme Court of Florida said,

“The language is not that the order shall be published four times. . . . It specifies the number of weeks not the number of times.”

Section 9833, Revised Codes of Montana, 1935, provides:

“Where not otherwise expressly prescribed by law, all rules, orders, and decrees of court, summons, and notices of all kinds, whether given by any court, judge, or clerk thereof, or by any other officer, board or commission, which by the laws of this state are required to be published in any newspaper, shall be published once a week during the time prescribed by law for publication thereof, whether such publication be made in a weekly, semi-weekly, tri-weekly or daily newspaper.”

In the case of *Snidow v. Montana Home for the Aged*, 88 Mont. 337, 292 Pac. 722, the Court was considering the language relative to publication of notice contained in Section 2235, Revised Codes of Montana, 1921 (same section Revised Codes of Montana, 1935), and said on page 342 of the Montana Report:

“The board thought that the provision ‘that thirty (30) days notice of such sale shall be given by the board of county commissioners by publication in a newspaper printed in the county’ would be satisfied with one publication made thirty days prior to the day of sale. This construction of the statute was palpably erroneous.”

And after referring to the provisions of Section 9833, Revised Codes of Montana, 1935, *supra*, the court continued,

"Plainly, the statute requires the publication of the notice once a week during the thirty day period. This is consistent with the practice generally. (See Bancroft's Code Pleading, p. 7730; *Scott v. Paulen*, 15 Kan. 162; *State v. Hanson*, 80 Neb. 724, 115 N. W. 294.)"

While the error in publication pointed out in the *Garry v. Martin* case, *supra*, was later specifically remedied by the enactment of Section 9833.1, Revised Codes of Montana, 1935, that statute can have no application to the particular language used in Chapter 134, Laws of 1939.

Chapter 134, *supra*, requires the order be published "for a period of six (6) weeks." It specifies the duration of publication, but not the number of times.

In the case of *Garry v. Martin*, *supra*, our Supreme Court was considering the meaning of the phrase "at least once a week for two weeks," used in Section 2161, Revised Codes of Montana, 1921, and there said at page 594:

"An examination of the cases construing language similar to that last above quoted will disclose that where a notice is required to be published at least once a week for a period next preceding a certain date, the word "for" means "throughout" or "during the continuance of" the period prescribed, which in this case is fourteen days." (Citing cases.)

The Court cites with approval the holding of the United States Court in the case of *Early v. Doe*, 16 How. (U. S.) 610, 14 L. Ed. 1079, where the phrase, "once in each week for twelve successive weeks," was held to mean publication for twelve full weeks or eighty-four days. The Court there said,

"The preposition, *for*, means of itself duration when it is put in connection with time, and as all of us use it in that way, in our every day conversation, it cannot be presumed that the legislator, in making this statute, did not mean to use it in the same way."

In the case of *State v. Hansen*, 80 Neb. 724, 115 N. W. 294, cited with approval by our Supreme Court in *Snidow v. Montana Home for the Aged*, *supra*, and also in the case of *Scillery v. Red Lodge—Rosebud Irr. Dist.*, 83 Mont. 282, 272 Pac. 543, the Supreme Court of Nebraska said:

"Where the time mentioned by the statute expresses the duration of the notice, the same must be published for and during the time mentioned."

Hence, as the statute here (Chapter 134, Laws of 1939) expresses the duration, *viz.*, six weeks, it follows—from the authorities cited above—the publication must be for six full weeks, or forty-two days. And as under Section 9833, Revised Codes of Montana, 1935, as construed in the *Snidow* case, *supra*, publication may be made once in each week, it follows that to cover the period of six full weeks, or forty-two days, there must be seven publications.

It is therefore my opinion that, under a statute prescribing the period of time during which a publication is to be made and not prescribing the number of times of publication, publication once a week during the full period prescribed is sufficient.

Therefore, publication of the order as required by Chapter 134, Laws of 1939, for six weeks, sufficiently meets the requirements of the statute if published once each week for seven publications.

Sincerely yours,

JOHN W. BONNER
Attorney General