



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

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MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ROBERT T. STEPHAN  
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION NO. 82- 132

The Honorable John E. Chandler  
State Senator, First District  
105 Lincoln  
Holton, Kansas 66436

Re: Fees and Salaries -- Fees, All Counties; Salaries,  
Certain Counties -- Fees for Publication of Legal  
Notices

Synopsis: 1982 House Bill No. 2694 authorizes publishers of  
legal notices to charge an amount not to exceed  
either the amounts authorized by the schedule  
contained in Section 4(a)(2) or an amount less  
than or equal to the lowest regular classified  
advertising rate for commercial customers. If  
the latter option is selected and the lowest regu-  
lar commercial advertising rates increase in a  
given year beyond 15% of the legal notice rate  
from the immediately preceding year, the rate for  
legal notices shall not increase more than 15%  
per year. Cited herein: K.S.A. 28-137, as  
amended by 1982 House Bill No. 2694.

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Dear Senator Chandler:

You inquire regarding 1982 House Bill No. 2694, as it amends  
K.S.A. 28-137. As of July 1, 1982, K.S.A. 28-137 will read  
in part as follows:

"(a) A newspaper shall charge and receive, for  
publishing a legal advertisement, one of the  
following, as determined by the newspaper:

"(1) A rate not exceeding the lowest regular  
classified advertising rate charged by the  
newspaper to its commercial customers; or

"(2) a rate not exceeding the following rates  
per line:

Size of type	11 pica Col.	11½ pica Col.	12 pica Col.	12½ pica Col.	13 pica Col.
5½ point	27.540¢	28.793¢	30.046¢	31.298¢	32.551¢
6 point	25.250¢	26.395¢	27.541¢	28.685¢	29.840¢
6½ point	23.306¢	24.365¢	25.423¢	26.482¢	27.540¢
7 point	21.643¢	22.626¢	23.609¢	24.592¢	25.574¢
7½ point	20.195¢	21.114¢	22.032¢	22.950¢	23.865¢
8 point	18.932¢	19.796¢	20.660¢	21.514¢	22.378¢
9 point	16.826¢	17.593¢	18.360¢	19.127¢	19.894¢
10 point	15.152¢	15.833¢	16.524¢	17.215¢	17.906¢

"Where column widths are other than those shown above, the rate per line of type should be proportionately increased or decreased.

"(c) On or before July 1 of each year, the publisher of each newspaper which publishes any legal advertisement in this state shall file with the secretary of state a card showing the following, which shall be effective for a period of one year from the July 1 on or before which the filing is made:

"(1) Whether the newspaper's rates for legal advertisements are established pursuant to subsection (a)(1) or (a)(2); and

"(2) if the rates are established pursuant to subsection (a)(1), the newspaper's rates for legal advertisements.

"(d) If a newspaper's rates for legal advertisements are established pursuant to subsection (1)(a) [sic] any contract rates or volume discounts given to commercial customers by the newspaper shall be available to persons or political subdivisions causing publication of legal advertisements, under the same terms and conditions as for commercial advertisements.

"The classified rate for legal advertisements shall not in any year be increased by more than 15% in excess of the rate for the next preceding year."

You express concern that some publishers will "raise immediately to their classified rate and take annual 15% increases in the future." This is alleged to be contrary to the intent of the proponents of the bill and the legislature which enacted it.

We concur in your concern that the will of the legislature be followed. and we believe such intent is adequately expressed in the language of the act itself. Section 4(a)(1), as quoted above, commands the publishers of legal notices to charge no more for such notices than the "lowest regular classified advertising rate" for their commercial customers unless they follow the schedule of rates promulgated in Section 4(a)(2). This command is clear and straight forward.

In addition to the above limitation imposed on charges for legal notices, there is a second limitation imposed by Section 4(d) of House Bill No. 2694. The emphasized language noted above further restricts any increase in legal notice charges to not more than 15% over the previous year's rate. This provision is designed to limit increases in legal notice charges to not more than 15% per year in the event that the lowest commercial rates increase more than 15% per year. In short, the statutory provisions when read together limit legal notice charges to an amount equal to the lowest regular commercial rates with an annual increase ceiling of 15%.

Hence, although the legislature has tied legal notice rates to commercial advertising charges, it has also placed a ceiling on the annual increases permitted for such legal notice charges. Since the legislature does not regulate the amount which newspapers may charge for commercial advertising, the language of Section 4(d) was necessary to limit the potential increases in the amount charged for legal notices.

We would note further that in no event can the legal notice rates exceed the "lowest regular classified advertising rate" charged for commercial customers. Were publishers of legal notices allowed to annually increase the legal notice rate up to 15% per year without reference to the commercial rate being charged, the language of Section 4(a) would be superfluous, and the clear intent of the legislature to tie the legal notice charges to the commercial advertising rates would be ignored.

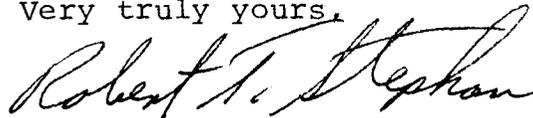
In this context your primary concern arises in the first few years of experience under the new law. The language of Section 4(d) limits increases to 15% of the "rate" for the next preceeding year. Different results occur if the "rate" referred to is the commercial classified advertising rate or the legal notice rate from the previous your. If, for those publishers who elect on July 1, 1982, the option of using the lowest regular commercial classified advertising rate, the use of such rate exceeds the rate currently being charged for legal notices by more than 15%, are such publishers acting contrary to Section 4(d)?

Currently, newspapers may charge for legal notices only those amounts authorized by the schedule contained in K.S.A. 28-137. That schedule is reenacted in House Bill No. 2694. Hence, in the first year (July 1, 1982 through June 30, 1983), publishers may tie their legal notice rates to their lowest regular commercial classified advertising rates, so long as the amount charged is not in excess of 15% above the legal notice rate from the previous year. As a consequence, for the twelve month period commencing July 1, 1982, those publishers, whose commercial rates are more than 15% above the charges currently authorized by K.S.A. 28-137, must charge for legal notices at a rate that will be less than the amount charged for commercial rates.

Naturally, for those publishers whose lowest regular commercial classified advertising rates are substantially greater than the present legal notice rates, it may take a few years for legal notice rates to catch up with the commercial rates, especially if such commercial rates increase drastically. Eventually, however, publishers utilizing the lowest regular commercial classified advertising rate should be able to charge an equal amount for legal notices.

In summary, 1982 House Bill No. 2694 authorizes publishers of legal notices to charge an amount not to exceed either the amounts authorized by the schedule contained in Section 4(a)(2) or an amount less than or equal to the lowest regular classified advertising rate for commercial customers. If the latter option is selected and the lowest regular commercial advertising rates increase in a given year beyond 15% of the legal notice rate from the immediately preceding year, the rate for legal notices shall not increase more than 15% per year.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:hle