



STATE OF KANSAS

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September 14, 1982

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ATTORNEY GENERAL OPINION NO. 82- 203

Howard Schwartz
Judicial Administrator
Kansas Judicial Center
301 West Tenth
Topeka, Kansas 66612

Re: Fees and Salaries -- Fees for Publishing Legal
Notices -- Responsibility for Payment

Synopsis: Pursuant to K.S.A. 28-137 (as amended by L. 1982, ch. 166, §4), the party requesting publication of a legal notice in any court action or proceeding is responsible for payment of the fees and charges of the publisher, and a publisher may properly refuse to publish any such notice or to file proof of publication of the notice, unless such payment is made. However, there is nothing to preclude a publisher from accommodating the party requesting such publication and awaiting payment of the publication fees and charges until such time as costs are taxed in the action or proceeding. Cited herein: K.S.A. 28-137 (as amended by L. 1982, ch. 166, §4).

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Dear Mr. Schwartz:

You have requested our opinion as to the interpretation of K.S.A. 28-137 (as amended by L. 1982, ch. 166, §4), which provides for the fees for publication of legal notices and legal advertisements in newspapers. The portion of this statute prompting your inquiry is subsection (e), which states:

"Proof of the publication of all such notices shall be made in the manner required by law or the order or citation of court or summons,

and each such proof of publication shall be accompanied by a verified statement of the fees and charges therefor. The fees and charges of all such publications when made in any action or proceeding in any court of this state shall be taxed as costs and collected in the same manner as other costs in the action or proceeding."

Your specific question is prompted by a letter to you from the court administrator of the Thirteenth Judicial District, in which he notes that a segment of the local bar association believes that the foregoing provisions, particularly as they have application to probate proceedings, do not create any obligation for the payment of publication fees and charges until the close of such proceedings or adjudication of the proceedings. In other words, under this interpretation, a newspaper is required to await payment of its fees and charges for publishing legal notices in any action or proceeding until such fees and charges have been taxed as costs in such action or proceeding.

On the other hand, the court administrator indicates his belief that publication fees and charges are the initial responsibility of the party requesting such publication, and that upon adjudication or close of the proceedings, the court will determine who is to bear the ultimate burden for such costs. He further indicates that this is the procedure currently utilized by the court in the Thirteenth Judicial District.

We concur with the interpretation presented by the court administrator. We find nothing in the above-quoted provisions of K.S.A. 28-137 (as amended) which indicates a legislative intent that publishers are to extend credit regarding fees and charges for publishing legal notices in any court action or proceeding. To the contrary, it is our opinion that, under these statutory provisions, the party requesting publication is responsible for paying the publication fees and charges to the publisher, and that a publisher may properly refuse to publish or to file proof of publication of any legal notice unless such fees and charges are paid. We are persuaded to this conclusion by two early opinions of the Kansas Supreme Court.

In Bennett v. Kroth, 37 Kan. 235 (1887), the Court discussed court costs, generally, as follows:

"This court has held 'that costs are unknown at common law, and are only given by statutory direction.' (The State v. Campbell, 19 Kas. 481.) It is well enough, therefore, for us

to understand what is meant by costs: they are the statutory allowance to a party to an action for his expenses in conducting such action; they have reference only to the parties, and the amounts paid or presumed to have been paid by the party seeking to recover such expenses." (Emphasis added.) Id. at 236.

In Baker v. Wade, 25 Kan. 531 (1881), the issue was whether the sheriff was personally liable to a publisher of a newspaper for the charges for publishing certain notices of land sales pursuant to executions and orders of sales. In concluding that the sheriff was not personally liable for such fees, in the absence of any special contract to the contrary, the Court had occasion to construe a predecessor of K.S.A. 28-137 (as amended) (see G.S. 1868, ch. 39, §17), which contained provisions similar to those considered here. There, the Court stated:

"Generally, these fees are collected as costs from the proceeds of the sales of lands, or from the judgment debtor. But if not so collected, the party for whose benefit the advertisement is made, if he has not already advanced them, must pay them. The publisher, on receiving the notice of sale, may refuse to publish it until he is paid." (Emphasis added.) Id. at 533.

In researching your inquiry, it has come to our attention that the current procedure regarding this matter in some of the judicial districts has developed by custom over many years, while in others it is prescribed by local court rule. We also note that this matter is not handled uniformly throughout the state. In some instances, the party requesting publication of a legal notice in any action or proceeding pays the fees and charges of the publisher in advance of publication or upon receipt of a bill from the publisher, and in other locales such fees and charges are not paid until costs are taxed in the action or proceeding. We do not find such variance to be necessarily inappropriate, and our opinion should not be construed as requiring a uniform procedure throughout the state.

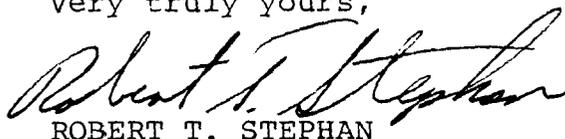
While it is our opinion that the party requesting publication of a legal notice in any action or proceeding is legally responsible for the publisher's fees and charges therefor, we are not suggesting that it is inappropriate for a publisher to submit to the requesting party a bill for these fees and charges and await payment thereof until such time as the costs are taxed in such action or proceeding. However, this

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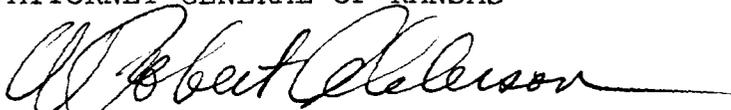
is a matter of choice for the publisher. In our judgment, the publisher has the right to determine when such fees and charges are to be paid. A publisher may choose to accommodate a party requesting publication of a legal notice and await payment of the fees and charges for such publication until costs are taxed in the action or proceeding; however, a publisher also may properly refuse to publish a legal notice, unless such payment is made in advance, or may refuse to file proof of publication until the fees and charges are paid.

In summary, therefore, it is our opinion that, pursuant to K.S.A. 28-137 (as amended by L. 1982, ch. 166, §4), the party requesting publication of a legal notice in any court action or proceeding is responsible for payment of the fees and charges of the publisher, and a publisher may properly refuse to publish any such notice or to file proof of publication of the notice, unless such payment is made. However, there is nothing to preclude a publisher from accommodating the party requesting such publication and awaiting payment of the publication fees and charges until such time as costs are taxed in the action or proceeding.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



W. Robert Alderson
First Deputy Attorney General

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