



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 143

R. Wayne Lampson
Wyandotte County Counselor
Courthouse
710 N. 7th St.
Kansas City, Kansas 66101

Re: Fees and Salaries -- Fees in All Counties and
Salaries in Certain Counties -- Fees for
Publication of Legal Notices and Legal
Advertisements in Newspapers; Filing Date of Rate
Cards

Synopsis: K.S.A. 1990 Supp. 64-101 does not require the
bidder to comply with K.S.A. 1990 Supp. 28-137 to
be eligible to print legal publications of the
county. Cited herein: K.S.A. 12-2905; K.S.A. 1990
Supp. 28-137; 64-101.

* * *

Dear Mr. Lampson:

As Wyandotte county counselor you request our opinion as to
what effect filing of a rate card by a newspaper after the
July 1 date has under K.S.A. 1990 Supp. 28-137.

The Wyandotte county board of commissioners is in the process
of taking bids from local newspapers so that the board of
Wyandotte county commissioners can decide which paper will
print Wyandotte county's legal publications. However, one of
the bidders did not file their rate card until after July 1

(K.S.A. 1990 Supp. 28-137) and it is argued that this makes the bidder ineligible to print legal publications.

K.S.A. 1990 Supp. 64-101 sets out the qualifications that a newspaper must meet to be able to carry legal notices:

"(c) Except as provided by K.S.A. 12-1651, and amendments thereto, no legal notice, advertisement or publication of any kind required or provided by any of the laws of the state of Kansas, to be published in a newspaper shall have any force or effect as such unless the same be published in a newspaper having the following qualifications:

"(1) It must be published at least weekly 50 times a year and have been so published for at least five years prior to the publication of any official publication;

"(2) it must be entered at the post office of publication as second class mail matter;

"(3) it shall have general paid circulation on a daily, weekly, monthly or yearly basis in the county and shall not be a trade, religious or fraternal publication; and

"(4) it must be printed in the state of Kansas and published in the county publishing the official publication, or if there is no newspaper published in the county, then in a newspaper printed in Kansas and having general paid circulation in the county. The provisions of this section requiring publication for at least five years prior to the publication of any official publication shall not apply to any newspaper which is qualified to publish official publications under the provisions of this section."

There is no dispute that the bidder has met the above criteria. The question raised is whether failure to timely

file a rate card pursuant to K.S.A. 1990 Supp. 28-137 renders the bidder ineligible to print legal publications.

K.S.A. 1990 Supp. 28-137(b) provides as follows:

"On or before July 1 of each year, the publisher of each newspaper that publishes any legal advertisement in this state shall file with the county clerk of the county in which the newspaper is located a card showing the newspaper's rates for legal advertisements, which shall be effective for a period of one year from the July 1 on or before which the filing is made."

K.S.A. 1990 Supp. 28-137 has been amended numerous times. At the time that the July 1st language was included, the focus of the legislative testimony centered on the feasibility of replacing the statutory rate charges with a fee structure that was tied to the lowest regular classified advertising rate charged by the newspaper to its commercial customer, and changing the place for filing the rate card from the secretary of state's office to the county clerk's office. We were unable to locate any legislative testimony that goes to the establishment of the July 1st filing deadline.

The purpose of K.S.A. 1990 Supp. 28-137 as a whole is to establish a workable rate that newspapers can charge for publishing legal advertisements, and ensure that the fee charged for legal advertisements does not exceed the rate charged for classified advertisements.

Neither K.S.A. 1990 Supp. 64-101 nor K.S.A. 1990 Supp. 28-137 references the other statute. Nor is there any sanction that is listed in K.S.A. 1990 Supp. 28-137. In fact, K.S.A. 1990 Supp. 28-137(f) states that:

"[F]ailure to charge rates in accordance with this section shall in no way affect the validity of any official public notice or legal advertisement and shall not subject any such notice or advertisement to legal attack upon such grounds."

The courts look at much more than the statutory language when determining the intent of a statute.

"When determining legislative intent, courts are not limited to mere consideration of language employed but may properly look into historical background of enactment, circumstances attending and subsequent to its passage, purposes to be accomplished, and effect statute may have under various constructions presented. Joe Self Chevrolet, Inc. v. Board of County Com'rs of Sedgwick County, 247 Kan. 625 (1990). In re Petition of City of Moran, 238 Kan. 513 (1986). Garber Enterprises Inc. v. City of Lawrence, 14 K.A.2d 656 (1990).

"Though it can be safely said that the legislature does not intend any statutory provision to be totally disregarded, in determining the consequences of failure to comply with a statute the ultimate object which the legislature sought to serve should be considered. City of Kansas City v. Board of County Comm'rs, 213 Kan. 777, 783 (1974)."

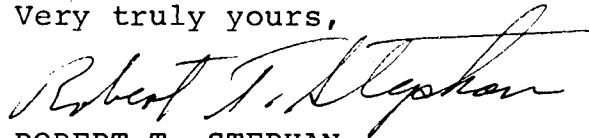
Because of the purpose of K.S.A. 1990 Supp. 28-137 is to establish a reasonable rate for the papers to charge and to allow the governmental agency the ability to be aware of the rate before they publish legal notices, we opine that these purposes can be served without mandating strict compliance with K.S.A. 1990 Supp. 28-137.

We are not comfortable with opining that K.S.A. 1990 Supp. 64-101 requires a bidder to file a rate card pursuant to K.S.A. 1990 Supp. 28-137 since we can find no intent to tie these two statutes together by the legislature and because the effect of making the filing of a rate card mandatory could be that some counties that do not have several qualified newspapers to choose from would be forced to be without a paper that is qualified to carry the county's legal publications. This effect is not consistent with any state legislative purpose for the enactment of this statute nor does reasonable rationale indicate that any purpose can be served by making this provision mandatory since there is no penalty for filing later. Perhaps this was a legislative oversight, but that does not seem to be the case since this statute has been amended numerous times.


We are aware that the Wyandotte county board of commissioners passed a resolution on September 4, 1991, which may require any newspaper which wants to bid for the legal publications to comply with K.S.A. 28-137. However, the Attorney General's policy is to interpret state statutes only and, therefore, this opinion will not address the meaning of the language in the county resolution.

Since K.S.A. 1990 Supp. 64-101 does not require that the bidder comply with K.S.A. 1990 Supp. 28-137 to be an eligible bidder, nor is there any penalty set out in K.S.A. 1990 Supp. 28-137 for non-compliance with the statute, we conclude that failure to file a rate card before July 1 does not render an otherwise qualified ineligible candidate to carry Wyandotte county's legal publications.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann
Assistant Attorney General

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