

at the time of termination of employment, was not intended to apply to the increase in the retirement allowance benefit formula contained in Section 15a of 1945 PA 136, as amended by 1974 PA 244, *supra*. Finally, it is also clear that the legislature did not intend to provide increased deferred retirement allowances under Section 15b while denying such increase under Section 15a to persons who had terminated their public school employment prior to July 1, 1974 and were entitled to a deferred retirement allowance under the provisions of 1945 PA 136, *supra*, prior to its amendment by 1974 PA 244, *supra*.

In summary, it is my opinion that the increased retirement allowance benefit formulas in Sections 15b and 15a of 1945 PA 136, as amended by 1974 PA 244, *supra*, are to be used in computing the retirement allowances for members who terminated public school employment prior to July 1, 1974 and are entitled to a deferred retirement allowance after July 1, 1974.

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WORDS AND PHRASES: "Circulate," "print," "publish," "qualified newspaper"

NEWSPAPERS: Publication of ordinances.

MUNICIPALITIES: Publication of ordinances.

Municipalities must publish ordinances in a qualified newspaper that circulates within their municipalities. Fourth class cities and villages, however, are additionally obligated to publish ordinances in a newspaper printed within such municipality.

The terms "publish" and "circulate" within the context of notice statutes are synonymous and refer to the act of making known to the general public. The term "print," however, refers to the mechanical process whereby the impression of words are stamped upon paper.

Opinion No. 4891

October 23, 1975.

Honorable Jack Welborn
State Senator
Capitol Building
Lansing, Michigan

You have requested my opinion, in effect, of the following question:

"Must a municipality publish its official ordinances and legal notices in the only 'qualified' newspaper located within the municipality?"

The term "publish" as used herein refers to the act of making information known to the general public,¹ as distinguished from the term "print"²

¹ 73 CJS, Publish, pp 1250-1251.

² 72 CJS, Print, pp 843-846 and Black's Law Dictionary, 3rd Ed, pp 1417-1418.

which properly refers to the mechanical process whereby the impression of words are stamped upon paper. "Circulate,"³ which has been held synonymous with "publish," refers to the passing from one person or place to another person or place. The concept of publishing and circulating is therefore not to be equated with printing.

In OAG 1928-30, pp 502, 504 (July 26, 1929), the following quotation from *Hinchman, et al v Barns*, 21 Mich 556 (1870), was quoted with approval:

"* * * In endeavoring to ascertain what is meant in this statute by the publication of a newspaper, we have no difficulty in perceiving that it is not the mere printing thereof. Some other act is obviously essential to complete publication. The idea of publication includes the putting the paper in some form before the public. It has its inception with the printing, but it is only completed when the paper passes from the hands of the publishers into the hands of the public; or of such public agencies as are appointed for the distribution. When a paper is distributed exclusively through the mail, it could not be said to be *published* until delivery is made at the post office; and if the edition should be accidentally destroyed while on its way from the printing office to the post office, it is quite evident that the printer could not truthfully make affidavit that a legal notice which it contained had been published, nor could one against whom it contained a libelous article maintain an action on the ground that the publication of the libel was complete, notwithstanding no one had yet seen it. So, if the paper is distributed through the agents of the proprietors, it is obvious, whatever may be the legal meaning of the term publication, that the act which it indicates is not complete until the paper reaches the hands of subscribers, or the place where it is to be deposited for their reception. If, therefore, we are to give to the word "published" in the statute the narrow meaning claimed for it on the part of the plaintiffs, and hold that it has reference to the particular spot or building where the publication becomes complete, we should be obliged, we think, to find that place at the post office in the one case, or the dwelling of the subscriber in the other, rather than, as the plaintiffs claim, at the office of the proprietor, where the steps preliminary to publication were taken. There can be no doubt, however, that this construction would be opposed to the common understanding of the people, and no one would insist upon it as correct. * * *" (Pages 557 and 558.)"

A semantic problem arises from the fact that, on occasion, the legislature has used the term "publish" where it must have intended to mean "print". For example, 1895 PA 3 c. XI, § 4; MCLA 66.4; MSA 5.1274 concerning villages provides that ordinances "shall be *published* in a newspaper *printed* in the village, if any is *published* therein. . . ." Obviously, the legislature intended the second "published" to mean "printed".

³ 14 CJS, Circulate, pp 1121-1122.

The term "newspaper" in which legal notices⁴ may be published is set forth in RJA, § 1461; MCLA 600.1461; MSA 27A.1461,⁵ which provides in pertinent part:

"(1) The term 'newspaper' as used in the revised judicature act of 1961 shall be construed to refer only to a newspaper . . . , which

"* * *

"(b) has been established, published, and circulated at not less than weekly intervals without interruption for at least 1 year in the county where the court is situated. . . .

"* * *

"(2) If no newspaper so qualifies in the county where the court is situated, the term 'newspaper' shall include any newspaper in an adjoining county which by this section is qualified to publish notice of actions commenced therein."

Clearly, counties have the initial obligation of publishing their legal notices in a "qualified" newspaper published within their jurisdiction, "qualified" as referring to compliance with the applicable statutory provisions, in this case RJA, § 1461, *supra*. If only one "qualified" newspaper is published in the county, then the county's legal notices must be published in that newspaper.

With regard to the publication of official ordinances, the statutory provisions for each type of municipality are as follows:

Counties—1851 PA 156, § 11; MCLA 46.11; MSA 5.331, provides in pertinent part:

". . . All the laws, ordinances, regulations and acts of incorporation provided for in this paragraph shall not take effect until notice of such adoption has been published at least once in a newspaper of general circulation in the county, . . ."

Townships—1939 PA 191, § 1; MCLA 41.191; MSA 5.6(1), provides in pertinent part:

"Publication of the ordinance shall be made by causing a true copy thereof to be inserted once in some newspaper circulating within the township, which insertion shall be made within 30 days after the passage of the ordinance."

Charter Townships—1947 PA 359, § 22; MCLA 42.22; MSA 5.46(22), provides in pertinent part:

"Each ordinance passed by a township board shall be published at least once and all such ordinances shall become effective immediately upon the publication thereof, . . . The publication of any

⁴ "Legal notices" are those notices which are required to be published in connection with any court proceeding.

⁵ 1963 PA 247; MCLA 691.1051; MSA 27.803 contains essentially the same provision as does RJA, § 1461, *supra*. The reason for enacting 1963 PA 247, *supra*, is that the applicability of RJA, § 1461, *supra*, is limited by the title of the act to notices which are required to be published incident to civil court proceedings. 1963 PA 247, *supra*, applies to all legal notices.

ordinance in full after its final passage as a part of the published proceedings of the township board shall constitute publication of such ordinance as required herein."

—1947 PA 359, § 1; MCLA 42.8; MSA 5.46(8), provides in pertinent part:

" . . . The said board shall determine the method of publication of all notices, ordinances, and proceedings for which a mode of publication is not prescribed by this act or ordinance. The said board shall determine that such publication shall be made in a newspaper,⁶ as defined by state law, which is published and circulated in the township, if there be one so published and circulated, or in the event that there be no such newspaper, then in one published in the county in which the township is located, or that such publication shall be made by posting in the office of the clerk and in 5 other public places in the township. In case publication is made by posting, a notice of such posting, setting forth by a descriptive phrase the purpose or nature of the notice, ordinance, or proceeding posted, and location of the places where posted, shall be published at least once in a newspaper, as above required, within 7 days after such posting was done."

Home Rule Cities—1909 PA 279, § 3; MCLA 117.3(k); MSA 5.2073(k), provides in pertinent part:

"Each city charter shall provide:

"* * *

"(k) For adopting, continuing, amending, and repealing the city ordinances and for the publication of all ordinances before they become operative . . ."

—1909 PA 279, § 5b; MCLA 117.5b; MSA 5.2084(2), provides in pertinent part:

"Each city shall have power, whether provided in its charter or not, to codify, recodify and continue in code its municipal ordinances, in whole or in part, without the necessity of publishing the entire code in full. The ordinance adopting the code, as well as subsequent

⁶ Reference is made to 1963 PA 247; MCLA 691.1051; MSA 27.803, which provides in pertinent part:

"The term 'newspaper' as used in any statute of this state, except the revised judicature act of 1961 relative to the publication of a notice of any kind, shall be construed to refer only to a newspaper . . . which

"* * *

"(b) has been published and of general circulation at not less than weekly intervals without interruption for at least 1 year in the county, township, city, village or district where the notice is required to be published. . . .

"* * *

"If no newspaper so qualifies in the county where the court is situated, the term 'newspaper' shall include any newspaper in an adjoining county which by this act is qualified to publish notice of actions commenced therein."

ordinances repealing, amending, continuing or adding to the code, shall be published as required by law. . . ."⁷

Fourth Class Cities—1895 PA 215 c. IX, § 6; MCLA 89.6; MSA 5.1722, provides in pertinent part:

"Within 1 week after the passage of any ordinance the same shall be published in some newspaper printed and circulated within the city, . . ."

Villages—1895 PA 3 c. XI, § 4; MCLA 66.4; MSA 5.1274, provides in pertinent part:

"Within 1 week after the passage of any ordinance, the same shall be published in a newspaper printed in the village, if any is published therein, otherwise copies of the ordinance shall, within the same time, be posted in 3 of the most public places in the village; . . ."

Thus, as in the case of legal notices, municipalities must publish ordinances in a "qualified" newspaper published within their municipality. The term "qualified" refers to compliance with the statutory requirements. Fourth class cities and villages, however, have the added obligation of publishing their ordinances in a newspaper that is printed within such municipality.

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CONSTITUTION OF MICHIGAN: Art 5, § 5.

PROFESSIONS AND OCCUPATIONS: Const 1963, art 5, § 5.

WORDS AND PHRASES: "Professions"; "occupations."

Where the legislature creates a regulatory board with power to license and regulate an occupation, that occupation becomes a profession within the meaning of Const 1963, art 5, § 5.

Opinion No. 4899

October 23, 1975.

Honorable William Faust
State Senator
Capitol Building
Lansing, Michigan

You have requested my opinion on the following questions:

1. Does the word "profession" as used in Const 1963, art 5, § 5, include both "professional" and "occupational" licensing boards?

⁷ Ibid.