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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984



ENROLLED

Com. Sub. for
HOUSE BILL No. 1333.

(By MR. *Del Murphy & Del Doyle*)



Passed *March 10,* 1984

In Effect *From* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1333

(By DELEGATE MURPHY and DELEGATE DOYLE)

[Passed March 10, 1984; in effect from passage.]

AN ACT to amend and reenact sections one and three, article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions and general provisions of newspaper legal advertising; redefining the term "qualified newspaper"; establishing rates for newspaper legal advertising; filing affidavits with the secretary of state; notifying county commissions, boards of education and municipalities.

Be it enacted by the Legislature of West Virginia:

That sections one and three, article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. NEWSPAPERS AND LEGAL ADVERTISEMENTS.

§59-3-1. Definitions and general provisions.

1 (a) As used in this article, elsewhere in this code or in
2 any other provision of law:

3 (1) "Legal advertisement" means any notice, advertise-
4 ment, statement, information or other matter required by law
5 or court to be published.

6 (2) "Publication area" means the area or areas for which
7 a legal advertisement is required by law or court to be made.

8 (3) "Once a week for two successive weeks" means two
9 publications of a legal advertisement in a qualified newspaper
10 occurring within a period of fourteen consecutive days with
11 at least an interval of six full days within such period between
12 the date of the first publication and the date of the second
13 publication.

14 (4) "Once a week for three successive weeks" means three
15 publications of a legal advertisement in a qualified newspaper
16 occurring within a period of twenty-one consecutive days with
17 at least an interval of six full days within such period be-
18 tween the date of the first publication and the date of the
19 second publication and with at least an interval of six full
20 days within such period between the date of the second
21 publication and the date of the third publication.

22 (5) "Publication date" means the date on which a quali-
23 fied newspaper is first placed in circulation.

24 (6) "General circulation" means not only a newspaper
25 meeting the other qualifications specified in subsection (b)
26 of this section and circulated among and of interest to the
27 general public in the area in which it circulates, but also
28 a newspaper meeting said other qualifications, the actual
29 circulation of which throughout the publication area is large
30 enough to give basis for a reasonable belief that publication
31 of a legal advertisement therein will give effective notice to
32 the residents or the publication area.

33 (b) Wherever the term "qualified newspaper" or "qualified
34 newspapers" is used in this article, or the term "newspaper"
35 or "newspapers" is used elsewhere in this code or in any other
36 provision of law in connection with a legal advertisement as
37 herein defined, the terms shall be taken to mean only a
38 newspaper or newspapers, as the case may be, published (un-
39 less otherwise expressly provided) in the state of West Vir-
40 ginia, and which meet the following qualifications:

41 (1) Any such newspaper must be of regular issue and
42 must have a bona fide, general circulation in the publication
43 area. A newspaper shall be deemed to be of regular issue if
44 it is published regularly, as frequently as once a week, for at
45 least fifty weeks during the calendar year as prescribed by

46 its mailing permit, and (a) has been so published for at least
47 one year immediately preceding the date on which the legal
48 advertisement is delivered to the newspaper for publication,
49 or; (b) has suspended publication on or within one year
50 immediately preceding the effective date of this section, and
51 has reinstated publication within two years of the date of
52 suspension, and was published for at least one year immediate-
53 ly preceding the date of suspension. A newspaper shall be
54 deemed to be of bona fide, general circulation in the publica-
55 tion area if it meets the definition of "general circulation" as
56 defined above and is circulated to the general public at a
57 definite price or consideration.

58 (2) Any such newspaper must bear a title or name, con-
59 sist of not less than four pages without a cover, and be a
60 newspaper to which the general public resorts for passing
61 events of a political, religious, commercial and social nature,
62 and for current happenings, announcements, miscellaneous
63 reading matters, advertisements and other notices.

64 (c) Notwithstanding any other provision of this code or
65 law to the contrary, a qualified newspaper shall for all pur-
66 poses be considered to be published where it is first placed in
67 circulation.

**§59-3-3. Rates for legal advertisements; computation; filing affi-
davits with secretary of state.**

1 (a) The rates which a publisher or proprietor of a quali-
2 fied newspaper in West Virginia may charge and receive for
3 a single or first publication of any legal advertisement set
4 solid shall depend upon the bona fide circulation of such
5 newspaper, as follows:

6 (1) Four cents per word if the qualified newspaper has
7 reinstated publication within the limits prescribed by
8 subdivision (1), subsection (b), section one of this article,
9 less than two years immediately preceding the date on
10 which a legal advertisement is delivered to the newspaper for
11 publication and has a bona fide circulation of less than one
12 thousand;

13 (2) Two cents per word if the qualified newspaper has

14 a bona fide circulation of one thousand or less, except as
15 provided in subdivision (1), subsection (a) of this section;

16 (3) Five cents per word if the qualified newspaper has
17 a bona fide circulation of one thousand to ten thousand;

18 (4) Six and one-fourth cents per word if the qualified
19 newspaper has a bona fide circulation of more than ten
20 thousand but less than forty thousand; or

21 (5) Seven and one-fourth cents per word if the qualified
22 newspaper has a bona fide circulation of forty thousand or
23 more.

24 (b) In computing the number of words in a legal advertise-
25 ment, not set solid, the basis shall be upon the size of type
26 in which legal advertising is set by the qualified newspaper
27 making the publication, and shall be computed at the legal
28 rate as though the matter was solid type, that is to say, on the
29 basis of eighty-four words to the single column inch in six
30 point type, and fifty-four words to the single column inch in
31 eight point type and any other size type in proportion.

32 (c) In determining the cost of a legal advertisement which
33 is to appear more than once in the same qualified newspaper,
34 the cost for the first publication shall be computed as spcci-
35 fied in subsections (a) and (b) of this section, and the cost
36 of the second and each subsequent publication shall be
37 seventy-five percent of the cost of the first publication com-
38 puted as aforesaid.

39 (d) The rates provided for in this section may be charged
40 on and after the first day of July, one thousand nine hundred
41 eighty-four. Between the effective date of this section and
42 the said first day of July, one thousand nine hundred eighty-
43 four, the rates for publishing legal advertisements shall be
44 those in effect immediately prior to the effective date of this
45 section. The average bona fide circulation stated by each
46 qualified newspaper in the statement filed by such newspaper
47 with the United States post-office department in November,
48 one thousand nine hundred eighty-three, shall control the rate
49 circulation classification of such qualified newspaper for the
50 period from the first day of July, one thousand nine hundred

51 eighty-four, until the first day of July, one thousand nine
52 hundred eighty-five. On or before the first day of November,
53 one thousand nine hundred eighty-four, the publisher or
54 proprietor of each newspaper desiring to publish any legal
55 advertisement during the ensuing fiscal year shall file with
56 the secretary of state an affidavit stating the average bona
57 fide circulation of such newspaper during the preceding calen-
58 dar year, and sufficient facts shall be set forth in the affidavit
59 to show whether such newspaper is a qualified newspaper.
60 The average bona fide circulation stated in such affidavit by
61 each qualified newspaper shall control the rate circulation
62 classification of such qualified newspaper for the ensuing
63 fiscal year, beginning on the first day of July, one thousand
64 nine hundred eighty-five. The publisher or proprietor of each
65 newspaper desiring to publish any legal advertisement during
66 the ensuing fiscal year shall file an affidavit as aforesaid
67 on or before the first day of November of each succeeding
68 year, and such affidavit shall control the rate circulation
69 classification of such newspaper, if it is a qualified news-
70 paper, for the ensuing fiscal year. Any qualified newspaper,
71 for which the required affidavit is not filed on or before the
72 first day of March of any calendar year after the year one
73 thousand nine hundred eighty-five, shall be conclusively
74 presumed to have for the ensuing fiscal year a bona fide
75 circulation of less than one thousand. At the time a publisher
76 or proprietor of a qualified newspaper files an affidavit with
77 the secretary of state, as aforesaid, such publisher or pro-
78 prietor shall notify the clerk of the county commission and
79 the board of education of the county in which such qualified
80 newspaper is published of the circulation classification of such
81 qualified newspaper and of the applicable rate for publishing
82 legal advertisements in such qualified newspaper during the
83 ensuing fiscal year. If the qualified newspaper is published
84 in a municipality, the publisher or proprietor shall at the
85 same time also furnish the same notification to the clerk or
86 recorder of such municipality.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis

Chairman Senate Committee

Donald Anello

Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Stella

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Waverly P. McHraw

President of the Senate

W. M. Lee, Jr.

Speaker House of Delegates

The within *is approved* this the *31*
day of *March* , 1984.

Robert R. Lytle

Governor

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