

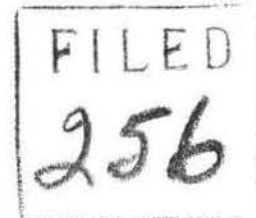
COUNTY OPTION DUMPING
GROUND LAW:
NOTICE:
HEARING:

If published as described in Section 64.550, RSMo 1959, in at least one newspaper having general circulation within the county, and if posted fifteen days in advance of the hearing, in at least four conspicuous places in each township.

The county court must make a reasonable effort to hear arguments and evidence, pro and con, on the adoption the County Dumping Ground ordinance. The county court, in its discretion exercised in a reasonable manner may control and limit such presentation.

OPINION NO. 256

December 21, 1965



Honorable Lon J. Levvis
Prosecuting Attorney
Audrain County Courthouse
Mexico, Missouri

Dear Mr. Levvis:

This is in response to your request for an opinion of this office, reading as follows:

"Our County Court wishes to bring our county under the county option dumping ground laws. Section 64.483 provides that this law 'shall not be operative in any county until the county court, after notice and hearing by order entered of record, so orders.'

"I have read the other sections of this law, and it appears that nowhere does it specify the kind of notice that shall be given or the kind of hearing that shall be had.

"Will you please let me have your opinion as to the kinds of notice and hearing that are necessary to make this law operative in our county?"

Section 64.483, RSMo 1959, states as follows:

"Sections 64.460 to 64.487 shall not be operative in any county until the county

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court, after notice and hearing, by order entered of record, so orders."

While the statute does not describe the character of notice, the situation is such as to require the giving of a reasonable notice of some description. Thomson v. Tafel, Ky., 218 S.W.2d 977. The form and contents of a notice required by a statute are dependent on the wording of the statute construed in the light of the subject matter. Hunter v. Harlan, 34 N.E.2d 467. Where a statute requires notice to be given but does not specify the length of time, it will be construed as a reasonable length of time. People v. Frost, 32 Ill. App. 242; Burden v. Stein, 25 Ala. 455, 66 C.J.S.

Reasonable notice is such notice or information as may generally and properly be expected or required in the particular circumstances.

Reasonable notice was also defined in Baker v. Baker, Mo.App., 274 S.W.2d 322, l.c. 326, as follows:

"Since the requirement imposed by 'reasonable notice' is flexible and pliable, not rigid and unyielding [Kleinschmidt v. Hoctor, 361 Mo. 29 233 S.W.2d 649; Padberg v. Padberg, Mo.App., 78 S.W.2d 555, 559], definition of the term 'reasonable notice' in precise, delimiting and restrictive language is neither appropriate nor desirable. 'Reasonable notice' has been said to be 'such notice or information of a fact as may fairly and properly be expected or required in the particular circumstances' [Black's Law Dictionary 4th Ed., p. 1211; Sterling Mfg. Co. v. Hough, 49 Neb. 618, 68 N.W. 1019, 1020] or, in even more general language, 'notice "suitable to the case"' [Commonwealth ex rel. McIver v. Central Dist. Telephone Co., 243 Pa. 586, 90 A. 338, 340 (2)]. And, in considering whether the requirement of 'reasonable notice' has been satisfied in a wide variety of situations, our courts have held uniformly over a long period of years that whether 'reasonable notice' has been given in any particular case depends upon, and must be determined in the light of the facts of that case"

Reasonable notice in the instant case would be sufficient if it properly advises the citizens of your county as to the hearing held in accordance with Section 64.483.

The Legislature failed to prescribe the exact character of the notice to be given in this situation; however, they did prescribe the precise notice to be given for two other situations

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dealing with the functions of county government.

Such notice is described in Section 64.550, RSMo 1959, as follows:

" * * * notice of the time and place of which [hearing] shall be published in at least one newspaper having general circulation within the county, and notice of such hearing shall also be posted at least fifteen days in advance thereof in at least four conspicuous places in each township. * * * "

The above notice is incorporated by reference into Section 64.640, RSMo 1959. Since the Legislature has deemed this notice to be sufficient in two other instances dealing with matters of county government, such notice would be adequate and reasonable, but possibly not necessary, in the instant case.

As to the requirements of the hearing, it is important to note that the hearing required by Section 64.483, RSMo 1959, is not an adversary proceeding. It is simply a matter of whether a law is to become effective in a county. The county court, as an administrative agency of the county, conducts the hearing as an administrative proceeding. ". . . under the [Constitution] county courts are no longer 'courts' in a juridical sense, but are ministerial bodies managing the county's business, with certain taxing and districting power. . . ." Bradford v. Phelps County, Mo., 210 S.W.2d 996, 1.c. 999. (Emphasis added)

"No particular form of procedure is required to constitute due process in administrative proceedings The cardinal test of the presence or absence of due process of law in an administrative proceeding is the presence or absence of rudiments of fair play long known to the law" 16A C.J.S. 851.

Fair play dictates that the hearing be conducted in an orderly manner, and that the county court provide reasonable opportunity for proponents and/or opponents of the Dumping Ground ordinance to be heard. However, the court has the power to limit such presentation.

"A large amount of discretion in the conduct of a hearing is necessarily reposed in the administrative body or the person conducting the hearing," 73 C.J.S. Section 136, 1.c. 461.

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The foregoing C.J.S. citations were incorporated by the Kansas City Court of Appeals, into that court's decision in an adversary proceeding (Jones v. State Department of Public Health and Welfare, Mo. App., 354 S.W.2d 37), indicating that the "fair-play" requirement of administrative proceeding is acceptable in Missouri.

CONCLUSION

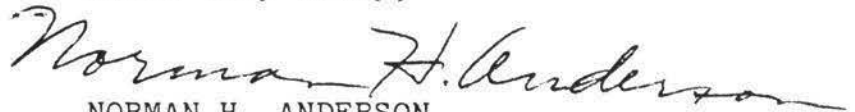
Therefore, based on the foregoing authority, it is the opinion of this office that:

(1) Notice of the hearing pursuant to Section 64.483, RSMo 1959, would be sufficient if published as described in Section 64.550, RSMo 1959, in at least one newspaper having general circulation within the county, and if posted fifteen days in advance of the hearing in at least four conspicuous places in each township.

(2) The county court must make a reasonable effort to hear arguments and evidence, pro and con, on the adoption of the County Dumping Ground Ordinance. The county court in its discretion, exercised in a reasonable manner, may control and limit such presentation.

The foregoing opinion, which I hereby approve, was prepared by my assistant, J. Gordon Siddens.

Yours very truly,


NORMAN H. ANDERSON
Attorney General