



ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS

June 19, 1992

FILE NO. 92-010

REVENUE:
Publication of Assessment Lists

Honorable Michael Curran
Chairman, House State Government
Administration Committee
1121 Stratton Building
Springfield, Illinois 62706

Honorable Gary Johnson
State's Attorney, Kane County
719 South Batavia Avenue
Geneva, Illinois 60134

Gentlemen:

I have your letters wherein you inquire whether the schedule of fees set out in section 103 of the Revenue Act of 1939 (Ill. Rev. Stat. 1991, ch. 120, par. 584) for the publication of assessment lists in counties of less than 2,000,000 inhabitants is mandatory, or represents only the maximum rates which may be paid for publication. State's Attorney Johnson has also inquired whether a newspaper may be

Honorable Michael Curran - 2.
Honorable Gary Johnson

"published" simultaneously in several townships, for purposes of the same section. For the reasons hereinafter stated, it is my opinion that the fee schedule set out in section 103 is mandatory, and does not merely set maximum rates. Further, in response to Mr. Johnson's second question, it is my opinion that there is only one publication of a newspaper, which occurs at the place where the actual distribution of bulk deliveries of the newspaper originates.

The final paragraph of section 103 of the Revenue Act of 1939 provides:

" * * *

The newspaper shall furnish to the local assessment officers as many copies of the paper containing the assessment list as he or they may require. The newspaper shall be paid a fee for publishing the assessment list according to the following schedule:

(1) For a parcel listing including the name of the property owner, an index number and the total assessment, 80¢ per parcel;

(2) For a parcel listing including the name of the property owner, an index number, the assessed value of improvements and the total assessment, \$1.20 per parcel;

(3) For a parcel listing including the name of the property owner, a legal description of the property and the total assessment, \$1.20 per parcel;

(4) For a parcel listing including the name of the property owner, an index number, a legal description and the total assessment, \$1.60 per parcel;

(5) For a parcel listing including the name of the property owner, a legal description, the assessed value of improvements and the total assessment, \$1.60 per parcel;

Honorable Michael Curran - 3.
Honorable Gary Johnson

(6) For a parcel listing including the name of the property owner, an index number, a legal description, the assessed value of improvements and the total assessment, \$2.00 per parcel; and

(7) For the preamble, headings, and any other explanatory matter either required by law, or requested by the supervisor of assessments, to be published, the newspaper's published rate for such advertising."

Although there is support for either interpretation, it is my opinion that the use of the phrase "shall be paid" in section 103 indicates a legislative intent to set mandatory, rather than maximum, publication rates.

The last paragraph of section 103 was rewritten by Public Act 84-1031, effective November 21, 1985. Prior to that date, that paragraph had provided that newspapers which published assessment lists "shall be entitled to a fee of 30¢ per column line * * *". (See Ill. Rev. Stat. 1983, ch. 120, par. 584.) The brief legislative remarks prior to the passage of House Bill 1680 (which was enacted as Public Act 84-1031) indicate that the amendment was intended to be revenue neutral, but to reflect a different basis used by newspapers for calculating advertising rates. (Remarks of Senator Netsch, Senate Debate on House Bill 1680, June 18, 1985, at 166, and October 30, 1985, at 30-31.) In addition to changing the basis for calculating the fee, the amendment also changed the language "shall be entitled" to "shall be paid".

Attorney General Scott, in opinion No. S-1404, issued January 10, 1979 (1979 Ill. Att'y Gen. Op. 4), construed the

Honorable Michael Curran - 4.
Honorable Gary Johnson

former provision as providing only for a maximum rate, thereby permitting counties to contract for a lower price. My predecessor found support for his position in several cases reported in other jurisdictions. (See e.g., Cook v. Payne (Okla. 1944), 148 P.2d 174; Democrat Printing Co. v. Logan (Ark. 1933), 56 S.W.2d 1013; Wisner v. Morrill County (Neb. 1928), 220 N.W.280.) As will be explained more fully below, however, I disagree with the conclusion expressed in opinion No. S-1404.

The Illinois Supreme Court has held that the General Assembly has the right to fix the rate for publication of assessment lists, provided that the rate set is not so unreasonable as to be unconstitutional. (Lee Publishing Co. v. County of St. Clair (1930), 341 Ill. 257, 262.) In that case, the court treated the phrase "shall be entitled" in section 26 of the Revenue Act of 1898 (see Ill. Rev. Stat. 1929, ch. 120, par. 308), the predecessor of section 103 of the Revenue Act of 1939, as mandatory, requiring the payment of the rate of 10¢ per line for publication of assessment lists. Citing that case, Attorney General Clark, in opinion No. UP 993, issued September 9, 1963, concluded that the rate set in section 103 was mandatory. While it is true, as Attorney General Scott later suggested, that the word "shall" can be construed as permissive, depending upon the legislative intent, when "shall" is used in a statute with reference to any right or benefit,

Honorable Michael Curran - 5.
Honorable Gary Johnson

and the right or benefit depends upon giving the word a mandatory meaning, it cannot be given a permissive meaning. Andrews v. Foxworthy (1978), 71 Ill. 2d 13.

Moreover, as previously noted, the last paragraph of section 103 was amended significantly after the issuance of opinion No. S-1404. In the amendatory language, the General Assembly continued the use of the term "shall", but changed the phrase "shall be entitled" to "shall be paid". The latter phrase connotes not only a private entitlement to payment for the publisher, but also a command to the several assessors, supervisors of assessment and boards of assessors, as the case may be, to pay those amounts specified in the statute. Where the term "shall" is used in a statute directing the performance of an act by public officials, it will be accorded a mandatory and imperative meaning. See DeYoung v. DeYoung (1978), 62 Ill. App. 3d 837, 841; People v. Nicholls (1977), 45 Ill. App. 3d 312, 316.

In view of the authorities which have construed the section as mandatory, as well as the recent amendment thereto which used language generally construed as mandatory, it would be contrary to the established rules of statutory construction and the apparent legislative intent to construe section 103 otherwise. A mandatory construction, based upon similar language, has also been followed in other jurisdictions. (See Steuben Advocate v. Bd. of Supervisors (1957), 161 N.Y.S. 2d

Honorable Michael Curran - 6.
Honorable Gary Johnson

199; Hoffman v. Chippewa Co. (Wis. 1890), 45 N.W. 1083.) Therefore, it is my opinion that the rate schedule fixed in section 103 of the Revenue Act of 1939 is mandatory, and that a county is required to pay the requisite fee for publication of its assessment lists.

Mr. Johnson's second question relates to the place of publication of a newspaper which is printed outside the county, shipped to a township within the county and there labeled and sent to various post offices in other townships for distribution by mail. The last sentence of the third paragraph of section 103 of the Revenue Act of 1939 provides:

" * * *

* * * In every township or assessment district in which there is published one or more newspapers of general circulation, the list [of assessments] of such township shall be published in one of the newspapers.

* * * "

The publisher contends that "publication", for purposes of section 103, occurs in each township in which the publisher's truck delivers the papers to a post office. This contention was rejected in opinion No. F-1287, issued November 6, 1964 (1964 Ill. Att'y Gen. Op. 249), wherein Attorney General Clark concluded that a newspaper could have only one place of publication. The publication of a newspaper takes place where it is first issued to the public, i.e., where the

Honorable Michael Curran - 7.
Honorable Gary Johnson

first actual distribution of bulk deliveries of the newspaper originates. This conclusion is supported by the opinion in Garcia v. Tully (1978), 72 Ill. 2d 1, wherein the court distinguished between "publication" and "circulation" of a newspaper, concluding that simultaneous circulation of a newspaper within several townships is not the equivalent of publication in each township. Accordingly, it is my opinion that the newspaper in question is published, for purposes of section 103 of the Revenue Act of 1939, only in the township to which it is delivered for labeling and distribution to post offices.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL