

SMACKOVER JOURNAL *v.* NEWS TIMES PUBLISHING COMPANY.

Opinion delivered April 4, 1932.

1. NEWSPAPERS—SYNOPSIS OF LEGISLATIVE ACTS.—Where there is a city of the first class with a daily paper published in a county, the Secretary of State cannot have a synopsis of legislative acts published in a weekly newspaper published therein.
2. NEWSPAPERS—MEDIUM OF PUBLICATION.—The people had a right to prescribe in the initiated act requiring publication of a synopsis of legislative acts what newspapers the synopsis should be printed in (Acts 1915, p. 1511).
3. CONSTITUTIONAL LAW—EQUAL PROTECTION OF LAW.—Acts 1911, p. 1511, requiring the synopsis of legislative acts to be published in daily papers in counties having a city of first class and a daily paper, *held* not to deny equal protection of the law.

—Appeal from Pulaski Chancery Court; *Frank H. Dodge*, Chancellor; affirmed.

STATEMENT BY THE COURT.

The question for determination here is whether the Secretary of State, in apparent disregard of the statute relating to the publication of a synopsis of the acts of the Legislature, can have the publication made in a county having a city of the first class with a daily paper published therein in weekly newspapers of the county.

The appellee brought suit against the State Auditor and Treasurer for an injunction to prevent payment to appellants, owners of weekly newspapers, for the publication of a synopsis of the acts of the Legislature in weekly newspapers in the county where there were cities of the first class with daily newspapers published therein.

It is stipulated that the Secretary of State, over the protests of appellee, caused the publication of the synopsis of the acts of the Legislature to be made in the Smackover Journal, the Huttig News of Huttig, Arkansas, and the Junction City News, of Junction City, Arkansas, all weekly newspapers published in said county which had two cities of the first class, El Dorado and Smackover, with two daily papers published in the city of El Dorado, the News and the Times, all of the newspapers mentioned having a *bona fide* circulation in Union County at the time of the publication of the synopsis.

That the El Dorado Daily News had a circulation of 6307 copies on week days and 7107 on Sunday. The circulation of the weekly newspapers, in which the synopsis appeared, was, Huttig News, 875; Junction City News, 350, and Smackover Journal, 1,485.

It was also shown that the legal one-half rate allowed for making publications involved in the suit was \$312, which was divided equally among the three weekly newspapers; and that the full legal rate for the publication in either of the daily papers, the Times or the News of El Dorado, would have been \$624.

The court found that the publication was not made in accordance with the statute, was without authority of law, and that the State was not bound to pay for it, and enjoined the State Auditor from issuing warrants for the payment of the publication and the State Treasurer from cashing same.

On November 4, 1931, interveners filed a bill for review of the decree, alleging that that part of § 12 of Initiative Act No. 2, of 1914, pages 1511-15, inclusive of the Acts of 1915, is directory and not mandatory, and that the Secretary of State had the right to exercise discretion about publishing this synopsis in daily or weekly newspapers; that said act was unconstitutional in violation of the Constitution of the State and also violative of § 1, art. 14, of the Constitution of the United

States, denying persons within its jurisdiction equal protection of the laws.

The court upon the record already made and the bill of review, after argument, denied the petition and dismissed it for want of equity, and the appeal comes from this decree.

J. S. Utley and *Wm. T. Hammock*, for appellant.

Owens & Ehrman, for appellee.

KIRBY, J., (after stating the facts). The statute upon which the action is based, Initiative Act No. 2 of 1914, at pages 1511-15 of Acts of 1915, relating to the publication of a synopsis of the acts of the Legislature, provides for the fees to be paid therefor, the number of newspapers in which the synopsis can be published, and § 12 thereof provides:

“In all counties in which there are cities of the first class, the publications herein provided for shall be made in one established daily newspaper of general circulation, provided such a newspaper exists, and, in the absence of such a newspaper, publication shall be made in a weekly newspaper published in said county.”

The language of the statute is plain, requiring that in counties where there are cities of the first class the publication provided for “shall be made in one established daily newspaper of general circulation, provided such a newspaper exists, etc.”. This language is plain and mandatory, leaving no discretion to the Secretary of State in counties where there are cities of the first class having a daily newspaper of general circulation to cause such publication to be made in other than a daily newspaper. *Washington County v. Davis*, 162 Ark. 335, 258 S. W. 324.

The people had the right to prescribe in said act for the publication of the synopsis and to determine what medium should be used for bringing it to the people's attention; and, having done so, the officer authorized to cause the publication to be made could exercise no discretion about the selection of a newspaper other than as prescribed by the statute for the publication.

Neither is the act violative of the Constitutions of the State nor of the United States; and the publication, having been made contrary to the statute authorizing it, created no valid obligation against the State for its payment, and no error was committed in granting the injunction prayed for. The decree is accordingly affirmed.
