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JUDICIAL SYSTEM:
Service By Publication
In Divorce Actions

Honorable Thomas J. Fahey
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Dear Mr. Fahey:

I have your letter wherein you inquire whether the exception to the rules for service by publication contained in section 6 of "AN ACT to revise the law in relation to divorce" (Ill. Rev. Stat. 1975, ch. 40, par. 7) applies when the parties to a divorce action resided in a municipality outside of Illinois at the time the cause of action arose. For the reasons hereinafter stated, it is my opinion that the aforementioned exception applies only in

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cases where the parties resided in a municipality within Illinois at the time the cause of action arose, and then only if they resided in a municipality in which a newspaper is published. In all other circumstances the general rules for service by publication apply.

The general rules relating to service by publication are set forth in section 1 of "AN ACT to regulate service by publication" (Ill. Rev. Stat. 1975, ch. 100, par. 9) as follows:

"§ 1. In all civil actions in courts in this State where service by publication is required or against nonresident defendants, who reside or have gone out of the State or on due inquiry cannot be found or are concealed within this State so that process cannot be served upon them, it shall be sufficient publication if such notice shall be published at least once in each week for 3 successive weeks the first publication to be at least 30 days prior to the return day at which the defendants are required to appear in some newspaper of general circulation in the county in which such suit may be brought, unless otherwise specified by law.

And the clerk of the court shall mail to the defendants at their last known place of residence, as stated in the affidavit, a copy of the notice, within 10 days after the first day of the publication."

The exception to the general rules is set forth in section 6

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of "AN ACT to revise the law in relation to divorce" (Ill. Rev. Stat. 1975, ch. 40, par. 7) as follows:

"§ 6. The process, practice and proceedings under this Act shall be the same as in other civil cases, except as otherwise provided by this Act, or by any law or rule of court, and except that when the parties resided in a municipality in a county with a population under 2,000,000 at the time the cause of action arose, and if service by publication is necessary, publication shall be in a newspaper published in such municipality if there is one." (Emphasis added.)

As an exception to the general rules, the foregoing language must be strictly construed, but it must be applied so as to accomplish the purpose of the law. People v. Charles Levy Circulating Co. (1959), 17 Ill. 2d 168, 171; People ex rel. Bowen v. Hughes (1939), 370 Ill. 255, 258; Winner v. Cadow (1940), 373 Ill. 192, 195.

The terms "county" and "municipality" appear in unqualified form throughout the statutes. In the absence of qualification, those terms refer to counties and municipalities of the State of Illinois. Since the exception contained in section 6 must be strictly construed, a requirement to publish in foreign States cannot be implied from the use of the terms "county" and "municipality" in that section.

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The purpose of the exception appears to be to maximize the effectiveness of service by publication in divorce actions. That concern, however, would not, in the absence of express language so providing, require a party to a divorce action to publish outside the boundaries of the State in order to obtain service by publication.

Therefore, it is my opinion that, if service by publication is necessary in a divorce action, publication must be made in the Illinois municipality in which the parties resided at the time the cause of action arose if that municipality is located in a county with less than 2,000,000 people and if a newspaper is published there. If the parties did not reside in an Illinois municipality in a county with less than 2,000,000 people, or if they resided in an Illinois municipality in which no newspaper is published, service by publication can be accomplished by publication in a newspaper of general circulation in the county in which the divorce action is brought.

Very truly yours,

A T T O R N E Y G E N E R A L