S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 00-160

West Tennessee Examiner as "newspaper"for purposes of publication of official notices

QUESTION

Does *The West Tennessee Examiner* qualify as a "newspaper" and/or "newspaper of general circulation" for purposes of publication of official notices?

OPINION

In most aspects *The West Tennessee Examiner* qualifies as a newspaper for purposes of publication of official notices. However, *The West Tennessee Examiner* is not suitable for publication of official notices under the Election Code because it does not meet the criteria set forth in Tenn. Code Ann. § 2-1-104(a)(13).

ANALYSIS

With the exception of a definition in the Election Code, Tenn. Code Ann. §§ 2-1-101, *et. seq*, the terms "newspaper" and "newspaper of general circulation" are not defined in any of the state statutes that require publication of official notices in a "newspaper" or "newspaper of general circulation." *See generally* Op. Tenn. Atty. Gen. U93-112 (November 30, 1993) and Op. Tenn. Atty. Gen. U92-99 (September 1, 1992). However, the Election Code does define the term "newspaper of general circulation" and lists among a number of factors the requirement that the publication be issued for a definite price. Tenn. Code Ann. § 2-1-104(a)(13). Because *The West Tennessee Examiner* is a free publication, it does not comply with the Election Code's definition of a "newspaper of general circulation." *See, e.g.*, Op. Tenn. Atty. Gen. 93-19 (March 11, 1993); Op. Tenn. Atty. Gen. U-92-99 (September 1, 1992); Op. Tenn. Atty. Gen. 84-289 (October 25, 1984); Op. Tenn. Atty. Gen. 83-442 (October 6, 1983). Thus, the paper is not suitable for the publication of notices required under the Election Code.

With respect to the statutes in which the terms "newspaper" or "newspaper of general circulation" are not defined, three criteria have been established in order for a publication to satisfy the requirements of the various statutes. *See* Op. Tenn. Atty. Gen. U91-164 (December 23, 1991). First, the publication should be available in all parts of the county. Op. Tenn. Atty. Gen. U92-99 (September 1, 1992). Second, it should be published at least weekly. Op. Tenn. Atty. Gen. U91-164 (December 23, 1991);

Op. Tenn. Atty. Gen. U91-09 (January 22, 1991). Third, it should contain news of general interest to the public. Op. Tenn. Atty. Gen. 93-19 (March 11, 1993); Op. Tenn. Atty. Gen. U92-99 (September 1, 1992); Op. Tenn. Atty. Gen. U91-09 (January 22, 1991); Op. Tenn. Atty. Gen. U90-118 (August 15, 1990); Op. Tenn. Atty. Gen. U90-55 (March 28, 1990).

These criteria are supported by the case of *Cook v. McCullough*, 1989 WL 155926 (M.S. Tenn. Ct. App. December 29, 1989), *p.t.a denied* (1990). In that case, the Court of Appeals determined that *The Nashville Record* was a newspaper for purposes of Tenn. Code Ann. § 67-5-2502. The Court stated:

> *The Nashville Record* is a "newspaper" in the sense of the applicable statute. It is published weekly. It is intended for circulation among the general public. It contains matters of general interest. It is in the form of a newspaper.

Cook v. McCullough, 1989 WL 155926 at 7.

According to information supplied with the opinion request, *The West Tennessee Examiner* is published in Jackson, Tennessee, and is distributed weekly throughout Gibson and Hardeman Counties. The information also refers to North and South Madison, and, thus, we are not certain whether the paper is distributed throughout all of Madison County, or only portions of the county. The publication therefore complies with the first two requirements noted above as to Gibson and Hardeman Counties. It would also comply with respect to Madison County if, in fact, it is distributed throughout the county. Further, *The West Tennessee Examiner* appears to meet the third requirement in that it covers news of general interest to the public. According to information accompanying the request, it currently covers a wide variety of local, state and national news, along with a highlighting of the accomplishments of local and regional individuals and upcoming local and regional events. The information states that the paper regularly features news stories of general interest to the public, including stories about the United Way of West Tennessee and news releases from area colleges and universities. Reportedly, the publication's sports section features news from the West Tennessee Diamond Jaxx, Memphis Redbirds and local area sports teams.

Based on the information supplied to this Office, it is our opinion that *The West Tennessee Examiner* qualifies as a "newspaper of general circulation" and/or "newspaper" for the purposes of publication of statutorily required notices, other than those required under the Election Code.

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