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. 06-127

Newspaper of General Circulation: The Commercial Appeal

QUESTION

Whether the Commercial Appeal, which has been published since 1840, qualifies as a "newspaper" or "newspaper of general circulation" for purposes of publication of official notices within the following Tennessee counties: Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton and Weakley.

OPINION

The Commercial Appeal qualifies as a "newspaper" or "newspaper of general circulation" for purposes of publication of official notices in all counties listed above, with the possible exceptions of Benton, Decatur and Henderson counties where the Commercial Appeal's availability is so limited that it may not be available in all parts of the county, as required by law.

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 state statutes that require publication of official notices in a "newspaper" or "newspaper of general circulation." Op. Tenn. Att'y Gen. 00-160 (October 17, 2000). The Election Code, however, does define the term "newspaper of general circulation" and lists the requirements for meeting that definition. The publication must bear a title or name, be regularly issued at least as frequently as once a week for a definite price, and have a second-class mailing privilege. It must be not less than four pages, be published continuously during the immediately preceding one-year period, and be published for the dissemination of news of general interest. Finally, it must be circulated generally in the political subdivision in which it is published and in which notice is to be given. Tenn. Code Ann. § 2-1-104(a)(13).

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 those various statutes. First, the publication should be available in all parts of

the county. Second, it should be published at least weekly. Third, it should contain news of general interest to the public. Op. Tenn. Att'y Gen. 04-064 (April 15, 2004).

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

> The Nashville Record is a "newspaper" within 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 8.

We have looked at the May 10, 2006, issue of the Commercial Appeal ("issue" or "the paper"). Based on this issue, this Office notes that the Commercial Appeal is in a newspaper format with six multi-page sections: front page, local news, business, food, sports and classified advertisements. It is published in Memphis and is issued daily, at a single copy price of fifty cents (50¢) or a four-week subscription period price of $17.25. The issue does not state the publication's founding date but states on its masthead, "166th Year."

The Commercial Appeal contains local, state, national and international news. Examples from the May 10 issue are these front page headlines: "Monster Truck," "Businesses Desperate as Crime Soars," "Parks Budget Closes Golf Course, 4 Pools," "Iranian's Sermon to Bush," "Hundreds of Schools Wipe Slate," and "Too Much Love for Majestic Orcas." The issue also includes display advertisements. The paper contains, then, news of general interest.

Information on page 2 of the May 10 issue shows that the Commercial Appeal is distributed to subscribers through home delivery and by mail, using "periodical postage" rates.[1] The paper is also available for single-copy purchase at multiple locations in eighteen (18) counties: Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton and Weakley. Thus, the newspaper is intended for circulation among the general public, and based upon multiple single-copy purchase locations, should be available throughout the counties.

The Commercial Appeal's limited availability in Benton, Decatur and Henderson counties may mean that the newspaper may not be available throughout the county, as required by statute and case law. Benton County has three single purchase locations, all in the central part of the county. Because, however, Benton County has few cities, it may be that the three locations are sufficient. Decatur County has one single-copy purchase location, in Parsons. Decatur County has a population

[1] This Office has previously noted that "periodical postage" rate is the equivalent of "second class mailing privilege." Op. Tenn. Att'y Gen. 04-011 (February 3, 2004) at fn.1.

of 11,629; Parsons' population is 2503.[2] Thus, Decatur County may have less than county-wide availability. Henderson County has three single-copy purchase locations, all in the Lexington area. Henderson County has a population of 25,733; Lexington has a population of 7393. Thus, Henderson County also may have insufficient countywide availability. This Office concludes that the question of whether the Commercial Appeal is available throughout these three counties for the purpose of publishing official notices is debatable.

Based on information you provided and on information gleaned from the May 10 issue, this Office has determined that the Commercial Appeal meets the general and statutory definitions of "newspaper" and/or "newspaper of general circulation" for purposes of publication of official notices in all counties listed in your question, with the possible exceptions of Benton, Decatur and Henderson.

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[2]All population figures used in this opinion come from the Tennessee Blue Book. *See* http://Tennessee.gov/sos/bluebook.