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Opinion No. 07-71

Newspaper for Purpose of Publishing Notice Under Tenn. Code Ann. § 67-5-2502

QUESTION

Whether the Kingsport *Daily News* is a newspaper for the purpose of publishing property tax sale notices under Tenn. Code Ann. § 67-5-2502 in Sullivan, Washington and Hawkins counties.

OPINION

Assuming the Kingsport *Daily News* is published at least weekly, it is a newspaper for the purpose of publishing property tax sale notices under Tenn. Code Ann. § 67-5-2502 in Sullivan, Washington and Hawkins counties.

ANALYSIS

You have provided the factual information that follows.

The *Daily News* was established in 1975, incorporating a weekly newspaper, *The Post*, which began in 1963. The *Daily News* has been in continuous publication since it was established and has been in general circulation in Sullivan, Washington and Hawkins Counties since that time.

Each edition contains at least sixteen (16) pages. Local, regional, state and world news are included, along with human interest features, humor and features of historical interest to readers. Reuters International News Service provides wire photos and news from all over the world.

The *Daily News* is distributed to subscribers through home delivery and by mail at the second class periodicals postage rate. Single copies are available in newspaper racks and stores at multiple locations in Sullivan, Washington and Hawkins Counties. The subscription price for mail delivery is listed in each edition in the masthead or publisher's statement, as demonstrated by a copy of the April 12, 2007, issue supplied by your office. In that issue, the publisher's statement gives the mail subscription prices but not a single issue price.[1]

[1]The publisher's statement reads, in pertinent part, as follows:

> *The Daily News* is published daily except national holidays and company vacations, with combined editions on Monday/Tuesday and Friday/Saturday/Sunday by Daily News of Kingsport, Inc., 310 East Sullivan Street, Kingsport, TN 37660. Editions include the *Washington County News*, serving

Tenn. Code Ann. § 67-5-2502(a) (notice of sale of land) states, in pertinent part as follows:

> (1) In the event of a sale under a decree of the court, the property shall be advertised in one (1) sale notice . . . .
> (2) The advertisement may be by publication in a newspaper, as required by subdivision (a)(1), or by printed handbills as the courts may decree.

Tenn. Code Ann. § 67-5-2502(a)(1) and (a)(2).

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 Op. Tenn. Att'y Gen. 06-091 (May 16, 2006).

With respect to other 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. 06-091 (May 16, 2006).

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.

The *Daily News* is in the form of a newspaper. It contains matters of general interest and is intended for circulation among the general public. It is published four times a week, with the exceptions of national holidays and during company vacations. If, in fact, the *Daily News* is published weekly, we could conclude that the Kingsport *Daily News* is a "newspaper" for the purpose of publication of property tax sales under Tenn. Code Ann. § 67-5-2502. We are concerned, however, about the gap in publication dates caused by the fact that the *Daily News* is not published during "company vacations," and we do not know the duration of these periods when no publication

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Washington County, TN and the *Scott County News*, serving Scott County VA. Publication Class Postage is paid at Kingsport, TN (USPS 257-880). Mail subscriptions for the *Daily News* are: $90 per year in Sullivan Co.; $120 per year elsewhere in US; Friday only editions, the *Washington County News* and the *Scott County News* $18 per 6 months; $32 per year.

apparently occurs. If it is a matter of a few days, we do not think such a brief hiatus in publication affects our opinion, because the paper would still be a weekly publication which meets the requirements of *Cook v. MCullough,* 1989 WL 155926 at 7. If, however, the newspaper is not published for a period of time longer than a week, the Kingsport *Daily News*' classification as a "newspaper" under Tenn. Code Ann. § 67-5-2502 would be called into doubt.

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