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Opinion No. 07-146

Rutherford County Reader as "newspaper" and/or "newspaper of general circulation"

QUESTION

Whether the *Rutherford County Reader* qualifies as a "newspaper" and/or a "newspaper of general circulation" for purposes of publication of legal notices?

OPINION

It is our opinion that the *Rutherford County Reader* does not qualify as a "newspaper" and/ or a "newspaper of general circulation" for purposes of publication of legal notices.

ANALYSIS

You have provided this Office with factual information about the *Rutherford County Reader* and two sample issues to review.[1] The *Rutherford County Reader* began publication in 2000. It is published once a week in a newspaper format. Both of the issues provided to us have thirty-six pages. Each issue has thirty and one-half pages dedicated to display advertisements and classified advertisements. The remaining five and one-half pages contain news articles that primarily pertain to local events and people. The *Rutherford County Reader* is free and is available at all Kroger stores, Food Lion stores, and Exxon on the Run stores in Rutherford County. Additionally, fifty-one people have the *Rutherford County Reader* delivered to their homes.

With the exception of the 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-

[1] The April 20-26, 2006, issue and the April 27-May 3, 2006, issue were provided.

104(a)(13). Because the *Rutherford County Reader* is free and, therefore, not issued for a "definite price," it does not qualify as a "newspaper of general circulation" under the Election Code.[2]

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. Op. Tenn. Att'y Gen. 04-064 (April 15, 2004); Op. Tenn. Att'y Gen. 00-160 (October 17, 2000). 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); Op. Tenn. Att'y Gen. 93-19 (March 11, 1993).

These criteria are supported by the case of *Cook v. McCullough*, 1989 WL 155926 (Tenn. Ct. App.), *p.t.a. denied* (1990). In that case, the Court of Appeals determined that *The Nashville Record* was a newspaper for purposes of publication of tax sale notices pursuant to 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 *7.

The *Rutherford County Reader* is published weekly and is available throughout Rutherford County; therefore, it complies with the first two requirements noted above.[3] However, a problem arises with fulfilling the third requirement, which mandates coverage of news of general interest to the public. While the *Rutherford County Reader* does provide a few pages of coverage of some local events, its content is overwhelmingly display advertisements and classified advertisements. In fact, the paper itself states that it is an advertising paper. On the second page of each of the *Rutherford County Reader* issues provided to us, it states that the paper is "a free classified and paid advertising publication serving Rutherford County." As demonstrated below, courts have found that advertising papers, like the *Rutherford County Reader*, are not "newspapers" and/ or "newspapers of general circulation."

In *Shoppers Guide Publishing Co., Inc. v. Woods*, 547 S.W.2d 561, 563 (Tenn. 1977), the Tennessee Supreme Court considered whether the publisher of an advertising tabloid was a "newspaper" for purposes of exemption from sales taxation. The Court held that the publisher was not entitled to the exemption. *Shoppers Guide Publishing Co., Inc.*, 547 S.W.2d at 563. In so holding, the Court relied on a revenue regulation that defined "newspaper," as well as several cases from this and other jurisdictions that have addressed the question of what constitutes a "newspaper." *Id*. The Court cited *Pope v. Craft*, 1 Tenn.App. 356, 365 (1925), which defined "newspaper," in

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[2] Additionally, the *Rutherford County Reader* does not appear to have a second-class mailing privilege, which is also required under the Election Code.

[3] Based on the information you provided, the *Rutherford County Reader* is also distributed in Shelbyville, Tullahoma, Manchester and Woodbury. The provided information, however, does not state where or how the paper is made available. Accordingly, we limit our opinion to Rutherford County.

part, as a "publication containing a narrative form of certain events and occurrences published regularly." *Id.* The Court also cited with favor *Green v. Home News Publishing Co.*, 90 So.2d 295 (Fla. 1956). *Id*. That case dealt specifically with the issue of whether a publication devoted primarily to commercial advertising was a "newspaper" within the meaning of the sales tax act. *Id*. The Florida Supreme Court held that it was not and stated:

> The 'Shopper Advertiser' unquestionably has for its principal purpose the advertising of business concerns in the area and not the dissemination of news. It is, in practical effect, simply an advertising 'give-away,' even though a modicum of local news and other material found in newspapers is included.

Id. (quoting *Green*, 90 So.2d at 297).

We also note that the Florida Court of Appeals revisited *Green* when it considered whether another advertising paper, nearly identical to the *Rutherford County Reader*, was a "newspaper" and, therefore, exempt from sales tax. *Dept. of Revenue v. Skop*, 383 So.2d 678, 680 (Fla. Ct. App. 1980). In finding that it was not a "newspaper," the court stated:

> Of the samples reviewed by this court, approximately 85% of the publication was devoted to advertising. Of the remaining approximately 15%, some of it was devoted to local news and some to recipes, horoscopes and the like. We must therefore hold, as did the Supreme Court in Green, that the Metro News unquestionably has for its principal purpose the advertising of business concerns in the area and not the dissemination of news. Although perhaps not called a 'shopper', it is in practical effect simply an advertising giveaway.

Skop, 383 So.2d at 680.

Similarly, in *Simpson v. City of Highwood*, 23 N.E.2d 62, 65 (Ill. 1939), the Illinois Supreme Court held that a publication that had some general news content was not a "newspaper" within the meaning of a statute relating to publication of legal notices because it was "more of the nature of a handbill or circular for the benefit of its advertisers than a newspaper." And in *G & B Publishing Co. v. Department of Taxation*, 392 N.Y.S.2d 938, 939-40 (1977), the New York Supreme Court, Appellate Division, held that an advertising weekly was not a "newspaper" because it rarely contained reports of current events or issues of general interest and never contained articles of opinion. Finally, the Arizona Court of Appeals has held that a publication that has as its fundamental purpose the distribution of advertisements to the public does not constitute a "newspaper" as that term is commonly understood. *Arizona Dept. of Revenue v. Great Western Publishing Co.*, 3 P.3d 992, 995 (Ariz. Ct. App. 1999).

Consistent with these cases, this Office has previously opined that a community advertising paper lacking any meaningful news content is not a newspaper of general circulation for the purpose of publishing statutorily required public notices. Op. Tenn. Att'y Gen. 82-470 (October 12, 1982). Similarly, we have opined that a shopper that provided coverage of some local events, but was

primarily devoted to advertisements, was not a newspaper of general circulation for the purposes of publishing official or legal notices. Op. Tenn. Att'y Gen. 93-19 (March 11, 1993). We are of the same opinion with respect to the *Rutherford County Reader*.

In short, the terms "newspaper" and/ or "newspaper of general circulation" are construed in a manner so as to apply to a paper to which the general public resorts in order to be informed of the news of the day so as to render it probable that legal notices will be brought to the attention of the general public. *See* 66 C.J.S. *Newspapers* § 4 (2007). Even though an advertising paper may have extensive circulation in certain local communities, it is not the type of publication that the general public would customarily look to for news of current events. And inclusion of a few items of local interest does not change the fundamental character of the publication, *i.e.*, advertising. Consequently, an advertising paper that lacks meaningful news coverage, like the *Rutherford County Reader*, does not qualify as a "newspaper" and/ or a "newspaper of general circulation" for the purpose of publishing legal notices.

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