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Opinion No. 09-65

The City Paper, if Revised, as a Newspaper of General Circulation

QUESTION

Whether *The City Paper*, following proposed revisions of its paper stock and one edition's brand name, would qualify as a "newspaper" and/or "newspaper of general circulation" for the purposes of publication of official notices.

OPINION

The City Paper, following proposed revisions of its paper stock and one edition's brand name, would qualify as a "newspaper" and/or "newspaper of general circulation" for the purposes of publication of non-election official notices in Davidson and Williamson Counties.

ANALYSIS

This Office has opined that *The City Paper*, which was being published daily in a newspaper format, qualified as "a newspaper of general circulation" for purposes of publishing non-election official notices in Davidson County." Op. Tenn. Att'y Gen. 02-050 (April 17, 2002). Information submitted in this current opinion request states that the publisher is contemplating a change in paper stock from newsprint to a coated stock. Further, *The City Paper* is presently published on Monday and Thursday (the weekend edition). The publisher is contemplating changing the name of the Monday edition to *Nashville Post*. This Monday edition would focus on government and business news. The weekend edition would continue to publish coverage of local news, opinion, sports, and entertainment. The question is whether these proposed changes would affect *The City Paper's* status as a "newspaper of general circulation."

Tennessee statutes contain several references to the terms "newspaper" and "newspaper of general circulation,"[1] but the terms are only defined in the Election Code.[2] Because *The City*

[1] For example, *see* Tenn. Code Ann. §§ 4-13-302 and 5-8-507 (state and county government notices); Tenn. Code Ann. § 9-21-903 (notices of public bonds); and Tenn. Code. Ann. § 40-12-105 (notices in grand jury proceedings).

[2] For any given election, each county's election commission determines in which paper(s) it may publish such notices consistent with the statutory factors for determining what qualifies as a "newspaper" or "newspaper of

Paper is issued for free, instead of for a "definite price," it does not comply with the Election Code's definition of a "newspaper of general circulation." 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. *See* Op. Tenn. Att'y Gen. 09-07 (January 26, 2009); Op. Tenn. Att'y Gen. 06-166 (November 9, 2006); Op. Tenn. Att'y Gen. 06-158 (October 9, 2006); Op. Tenn. Att'y Gen. 02-050 (April 17, 2002). 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. *See also* 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.), *perm app. 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 of Appeals 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 Court of Appeals rejected the complaint that the publication had limited interest and circulation. "The fact that it circulates primarily among business and professional people having an interest in 'legal intelligence' does not make it any the less a newspaper." *Id.* *See also Moore v Memphis*, 184 Tenn. 92, 195 S.W.2d 623 (1946)(rejecting the complaint that publication in the *Daily News* of Memphis was not sufficient notice because allegedly the newspaper only had a circulation among business and professional persons).

In connection with the issuance of this opinion, this Office has reviewed some recent issues of *The City Paper*. Presently *The City Paper* is published in Nashville each Monday and Thursday and distributed to the public for free. *The City Paper* is in newspaper format with an average range of between 24 pages to 48 pages. Editions include a variety of feature topics, such as: front page layouts, state and local news, sports, lifestyle, arts and entertainment, opinion, business, classifieds, and advertisements. *The City Paper* contains primarily local and state news, with some national and international news and matters of general interest. A sampling of the headlines found in recent issues indicates that both editions of the paper contain matters of interest to the general public.

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general circulation." Tenn. Code Ann. § 2-12-111. To meet the Election Code requirements 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 once-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).

The other determining criterion is whether the paper is available throughout a county. The opinion request states that the paper is and would continue to be widely distributed in Davidson and northern Williamson Counties. The opinion request provides information that approximately 40,000 copies of each edition of *The City Paper* are distributed at over 1,200 locations throughout 28 zip codes within Davidson County. Further, the publisher estimates a pass-along rate at approximately 2.5 readers per copy or a total per-issue readership of around 120,000 for all counties. Assuming that this information is accurate, it appears that *The City Paper* would continue to be available at multiple locations and be intended for circulation among the general public throughout Davidson County, so as to satisfy this criterion.

Over 6,000 copies of each edition of *The City* Paper are distributed at approximately 175 locations within four zip codes located in the northern portion of Williamson County. These zip codes include the cities of Brentwood and Franklin, the county seat. Williamson County contains approximately 582 square miles and had a population of 126,638 according to the 2000 census.[3] According to that census, 65,287 people, or approximately 51.5% of the county's population, lived in Brentwood and Franklin. Assuming that the distribution information is accurate, it appears that *The City Paper* would continue to be available at multiple locations and be intended for substantial circulation among the general public in Williamson County, so as to satisfy this criterion. *Cf.* Op. Tenn. Att'y Gen. 09-07, at 3 (Jan. 26, 2009)(concluding that even in geographically large county, relatively high number of single-copy purchase locations in principal city of county justified conclusion that newspaper was available throughout county).

Assuming that *The City Paper* continues to be published in a newspaper format, in this Office's opinion a proposed change in paper stock from newsprint to a coated stock, supposedly to improve the look of the publications, would not change the publication's status as a newspaper of general circulation. Although the Court of Appeals noted that the publication at issue in *Cook v. McCullough*, 1989 WL 155926 at *3, was printed on newsprint, the use of a particular type of paper does not appear to be a required criteria for a newspaper to qualify as being of general circulation.

Likewise, the proposed change in the brand name of the weekly Monday edition of *The City Paper* to *Nashville Post* in the opinion of this Office would not change the publication's status as a "newspaper of general circulation." Purportedly the *Nashville Post* Monday edition would focus on government and business news, while *The City Paper* weekend edition would continue to publish primarily coverage of local news, opinion, sports, and entertainment. Both editions would continue to be published weekly. Courts have found that newspapers which primarily publish legal and business news, although excluding other topics, such as religion, social, or sports columns on a regular basis, qualify as "newspapers of general circulation." *See Cook v. McCullough*, 1989 WL 155926 at *3-8 (citations omitted).

Based on the information supplied with your request, this Office opines that *The City Paper*, if revised as proposed, would continue to meet the general and statutory definitions of

3 The population and land mass figures used in this opinion come from the Tennessee Blue Book. *See* http://Tennessee.gov/sos/bluebook.

"newspaper" and/or "newspaper of general circulation" for purposes of publication of non-election official notices in Davidson and Williamson Counties.

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