

Ala. Op. Atty. Gen. No. 2002-043, 2001 WL 1421642 (Ala.A.G.)

Office of the Attorney General
State of Alabama

Opinion No. 2002-043

October 30, 2001

Newspapers - Legal Notices

Based upon the information provided to this Office, the *Mobile Record* is a newspaper of general circulation in Mobile County in which legal notices may be published.

Honorable Don Davis
Mobile County Probate Judge

Dear Judge Davis:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

1. Is the *Mobile Record* a newspaper?
2. Is the *Mobile Record* a newspaper of general circulation in Mobile County within the meaning of Alabama law?
3. If the above questions are both answered in the affirmative, then is it correct to conclude that publication of a legal notice in the *Mobile Record* meets the legal notice requirements by publication?

FACTS AND ANALYSIS

Legal notices must be published in accordance with the requirements of [section 6-8-60 of the Code of Alabama](#), which provides:

The party in interest or at whose instance the publication of notice is to be given by advertisement in a newspaper may designate the newspaper in which such advertisement shall be made. If the officer charged with the duty of making the advertisement disregards such designation and makes advertisement in some other paper, he must pay the cost thereof and shall not be entitled to reimbursement; but all publications required by any law, mortgage or other contract to be published in a newspaper must be published in any newspaper printed in the English language which has a general circulation in the county, regardless of where the paper is printed, if the principal editorial office of the newspaper is located within the county and which newspaper shall have been mailed under the second class mailing privilege of the United States postal service from the post office where it is published for at least 51 weeks a year.

[ALA. CODE § 6-8-60 \(1993\)](#).

The publication requirements imposed by [section 6-8-60](#) for a newspaper in which legal notices are to be pub-

lished are, basically, the newspaper must be: (1) printed in English, (2) of general circulation in the county, (3) published in the county, and (4) must hold a second class mailing permit for a minimum of 51 weeks a year. This Office discussed these requirements in the opinion of the Attorney General to Honorable C. Wade Johnson, Attorney for the Utilities Board of the City of Bridgeport, dated August 1, 1997, A.G. No. 97-00247, as follows:

In this state the term “general circulation” has not been the subject of much controversy. It has been referred to, but not defined in two cases that we could find, [Washington v. City of Birmingham](#), 364 So. 2d 1151 (Ala. 1978), and [Holland v. City of Alabaster](#), 595 So. 2d 483 (C.C.A. Ala. 1991). It is discussed at length in a case from North Carolina, [Great Southern Media, Inc. v. McDowell County](#), 284 S.E.2d 457 (N.C. 1981), 24 ALR 4th 803. In this case, the Supreme Court of North Carolina discussed cases from many jurisdictions and developed a four-prong test that a newspaper must meet to be considered to be of general circulation. It must publish some items of interest to the general public. It must have more than a de minimus number of paid subscribers. Its readers must not be located entirely within an isolated community or geographic section. It must be available to any member of the public within the jurisdiction in question. 24 ALR 4th at 817, 819.

* * *

*2 Accordingly, it is the opinion of this Office that a newspaper that publishes at least some items of interest to the general public has more than a de minimus number of subscribers, with readers not confined to an isolated community or geographic section, and is available to any member of the public within the state is a newspaper of general circulation through the state.

The publication Dodge, as described in your question, “is generally known to contractors and circulated in the industry.” It does not carry items of interest to the general public, and its readers are within the community of contractors. While it may be available to members of the public if they seek it out, it is not directed to the general public. For these reasons, it is the opinion of this Office that Dodge is not a newspaper of general circulation.

Id. at 3.

A newspaper of general circulation must contain some items of general interest. It was stated in *Great Southern Media v. McDowell County*:

To have a content that appeals to the public generally, the newspaper should contain items of general interest. Although a newspaper may be primarily directed to a particular locality or group, it must nevertheless contain some items of interest to persons who do not live in that locality or who are not members of that group. These items of general interest may include national, state, or county news; editorials; human interest stories; and advice columns, among others. The possibilities are endless.

284 S.E.2d at 466, 24 ALR 4th at 817.

According to its owner and publisher, the *Mobile Record* was founded in 1983 and is published in Mobile County. It has been published since that time continuously on weekdays except for public holidays. A second class postal permit was granted the *Mobile Record* in 1984. It is circulated to paid subscribers who include the general public.

In an opinion issued in 1999, this Office opined that, as a matter of law, the *Mobile Record* was not a newspaper of general circulation because it lacked items of general interest to the public. Opinion to Honorable L.W. Noonan, Probate Judge, Mobile County, dated June 28, 1999, A.G. No. 99-00238. At the time that opinion was issued, the *Mobile Record* contained only statistical information related to suits filed in the county courts, di-

voices, building permits and business licenses issued, recorded deeds, mortgages, liens, judgments, and information regarding corporations in the county. *Id.* at 4.

According to the information provided in this request, the *Mobile Record* has altered the format of the newspaper to include a Wednesday edition that contains editorial material and articles that are of general interest to the public. Three issues of the Wednesday edition of the *Mobile Record* are included in the request. These issues contain an editorial page concerning various state and local issues, articles concerning state and local news, human-interest stories, local events, and food columns. Based upon these additions to the *Mobile Record*, it is the opinion of this Office that the *Mobile Record* is a newspaper of general circulation in Mobile County, and legal notices may be published therein. The ultimate decision, however, as to the newspaper in which legal notices are to be published rests with the proper county official. *Washington v. City of Birmingham*, 364 So. 2d 1151, 1154 (Ala. 1978).

CONCLUSION

*3 Based upon the information provided to this Office, the *Mobile Record* is a newspaper of general circulation in Mobile County in which legal notices may be published.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,
Bill Pryor
Attorney General

By: Carol Jean Smith
Chief
Opinions Division

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