

1996 Va. Op. Atty. Gen. 24, 1996 WL 717157 (Va.A.G.)

Office of the Attorney General
Commonwealth of Virginia

*1 November 4, 1996

CIVIL REMEDIES AND PROCEDURE: PROCESS.

Change in terminology in Domestic Mail Classification Schedule from “second-class” to “Periodicals” mailing privileges has no effect on qualifications that newspapers in Commonwealth must possess to publish legal notices and related publications.

The Honorable Frank D. Hargrove Sr.
Member, House of Delegates

You ask whether changes in the Domestic Mail Classification Schedule will affect the qualifications that newspapers in the Commonwealth must possess to publish legal notices and related publications.

You note that, effective July 1, 1996, the Domestic Mail Manual was revised to change the term “second-class mail” to “Periodicals.” [FN1] You advise that this change in terminology does not alter the status of authorized publications. [FN2] Furthermore, you advise that second-class mailing privileges will be referred to as Periodicals mailing privileges and will have comparable eligibility standards. [FN3]

Section 8.01-324(A) of the *Code of Virginia* specifies the qualifications a newspaper must possess before it may publish such legal notices as are required by Virginia law. One such qualification is that the newspaper “[h]ave a second-class mailing permit issued by the United States Postal Service.” [FN4] The clear language of the statute requires that such permits be issued only by the United States Postal Service. The term “second-class” is not defined for the purposes of the statute, and there has been no judicial interpretation of the term as used in that statute.

In the absence of any statutory or judicial definition, the term should be given its plain and ordinary meaning, given the context in which it is used. [FN5] Section 1.1 of the Domestic Mail Manual provides the definition intended by the United States Postal Service: “second-class mailing privileges are now referred to as Periodicals mailing privileges and have comparable eligibility standards.” [FN6] The clear language of the Domestic Mail Manual simply changes the term “second-class” to “Periodicals” without changing the definition.

Therefore, I am of the opinion that the change in the Domestic Mail Classification Schedule will have no effect on the qualifications that newspapers in the Commonwealth must possess to publish legal notices and related publications.

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Attorney General

[FN1] *See* 61:49 Fed. Reg. 10,068, 10,115 (1996).

[FN2] *Id.* at 10,123.

[FN3] *Id.* at 10,123-24.

[FN4] Section 8.01-324(A) provides:

“Whenever any ordinance, resolution, notice, or advertisement is required by law to be published in a newspaper, such newspaper, in addition to any qualifications otherwise required by law, shall:

”5. Have a second-class mailing permit issued by the United States Postal Service.“

[FN5] *Commonwealth v. Orange-Madison Coop.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); *Anderson v. Commonwealth*, 182 Va. 560, 565, 29 S.E.2d 838, 840 (1944); 1995 Op. Va. Att’y Gen. 205, 207.

[FN6] 61:49 Fed. Reg. *supra*, at 10,123-24.

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