

2001 Nev. Op. Atty. Gen. No. 7, 2001 WL 1660148 (Nev.A.G.)

Office of the Attorney General
State of Nevada

Opinion No. 2001-07

April 17, 2001

NEWSPAPERS; LEGAL NOTICES:

A newspaper of “general circulation” that publishes material of “general interest” to the community it serves is qualified to publish legal notices on the date such notices are legally required to be published.

Janet Hess
District Attorney

Dear Ms. Hess:

This letter is in response to your letter dated December 4, 2000, requesting a written opinion regarding whether a newspaper is established when it commences publication or when the only other newspaper in the county ceases publication.

FACTUAL BACKGROUND

You have advised the Office of the Attorney General that as of the date of your letter two newspapers, the Comstock Chronicle (Chronicle) and the Virginia City Register (Register), were being published, in whole or in part, within Storey County. Moreover, the Chronicle was the sole publisher of all legal notices in Storey County from January 1, 1988 to December 22, 2000, the date it ceased publication. However, sometime before the Chronicle ceased publication, the Register began publishing and distributing newspapers within Storey County. As of December 1, 2000, the Register had published only 26 weekly issues.

QUESTION

Whether a newspaper is established when it commences publication or is it established when the only other newspaper in the county ceases publication?

ANALYSIS

While your letter specifically requests a written opinion addressing when a newspaper publication is established, your question essentially concerns whether the only newspaper presently publishing and distributing issues in Storey County is legally qualified to publish legal notices and advertisements pursuant to Nevada law. As you are aware, the statutory framework for determining whether a newspaper is qualified to publish legal notices and advertisements is set forth in Nevada Revised Statutes chapter 238. Specifically, [NRS 238.030\(1\)](#) provides that all qualified legal notices shall be published “only in a daily, a tri-weekly, a semi-weekly, a semi-monthly or a

weekly newspaper of general circulation” and “printed in whole or part in the county in which the notice or advertisement is required to be published.” [NRS 238.030](#) further provides that any of the newspapers published with the required frequency must: (1) have a valid second-class mail permit; (2) be one of general circulation; (3) be published within the county for 104 consecutive weeks; and (4) be printed in whole or in part in the county in which the legal notice is required to be published. *See* [Butler v. Lahonton Valley News](#), 91 Nev. 421, 422, 537 P.2d 320, 321 (1975). All legal notices published by a newspaper not qualified or in violation of chapter 238 are void. [NRS 238.080](#).

However, in the event the foregoing standard has not been satisfied, [NRS 238.030\(4\)](#) sets forth an alternate standard for newspapers not otherwise qualified to publish legal notices. In particular, subsection 4 provides that a newly established newspaper, not otherwise qualified to publish legal notices, may do so when, at the time legal notice is required to be published, such newspaper has a “general circulation” and is “printed and published in whole or in part” in the particular county served. *See also* Op. Att’y Gen. 82-3 (March 23, 1982). Additionally, strictly construing a newspaper’s qualifications would render too harsh a result when substantial compliance has been achieved. *Id.* The purpose of chapter 238 is to publish public notices “so as fairly to express [public notices] to the particular community intended to be reached.” [Butler](#), 91 Nev. at 422, 537 P.2d at 321. Although chapter 238 does not further define the terms within subsection 4, Nevada case law and sister jurisdictions have construed these terms within the context of similar public notice statutes.

*2 For example, the Nevada Supreme Court has determined that for a publication to be a “newspaper of general circulation...it [must] also publish new of a general character and of a general interest, and to some extent circulate[] among the general public.” [Nevada State Press Assoc. v. Fax, Inc.](#), 79 Nev. 82, 84, 378 P.2d 674, 675 (1963). Thus, the Nevada Supreme Court held that a newspaper, which did not contain any news of a political, religious, commercial or social nature, was not a newspaper of general circulation within the meaning of [NRS 238.030](#). *Id.*; *see also*, [In Re Application of Herman](#), 183 Cal 153, 163, 191 P. 934, 939 (Cal. 1920) (holding similarly and stating: “It is clear to us that the purpose of this paper was not ‘the dissemination of local or telegraphic news and intelligence of a general character,’ and that the contents did not come within this description.”) (quoting [In re Green](#), 21 Cal. App. 138, 142, 131 P. 91, 94 (Cal. Ct. App. 1913)).

Courts have further held that even though a newspaper is devoted more or less to a particular class, profession or trade, it will not be deprived of its character as a “newspaper of general circulation” as long as the newspaper publishes “intelligence of passing events” and news “items of interest” to the general public, together with news of interest to such particular class of persons. [In re Green](#), 21 Cal. App. at 144, 131 P. at 93; *see also*, [In re Labor Journal](#), 190 Cal. 500, 504, 213 P. 498, 499 (Cal. 1923).

Additionally, the Nevada Supreme Court has previously determined the issue of whether a newspaper was “printed in whole or in part” in the county as required by [NRS 238.030\(1\)](#). [Butler](#), 91 Nev. at 422, 537 P.2d at 321. In [Butler](#), the newspaper seeking qualification performed its “duplication process” in Sparks, Nevada, as opposed to Churchill County, where the newspaper was to be distributed to the community. The newspaper’s office, however, was located in Churchill County, where some of the typesetting occurred, where some work on headlines and pictures occurred and where page layout preparation occurred. Accordingly, the Nevada Supreme Court determined that “the processes performed in [Churchill County], in their totality, constituted a substantial and integral part of the ‘printing.’” 91 Nev. at 423, 527 P.2d at 321. Thus the Nevada Supreme Court held that the newspaper was “printed in whole or in part” within Churchill County. *Id.*

Based on the factual representations provided by you and as set forth above, the Chronicle ceased publication in

Storey County on December 22, 2000. As such, the Register is the sole newspaper currently in existence and operation in Storey County. We have been informed of no facts that indicate the nature and content of the written material published by the Register. However, your letter indicates that the Register is “printed in whole or in part” in Storey County. As long as the Register is a newspaper of “general circulation” that publishes material of “general interest” to the community it serves, pursuant to [NRS 238.030\(4\)](#), the Register is qualified to publish legal notices and advertisements on the date such notices are legally required to be published.

CONCLUSION

*3 You have requested an opinion regarding whether a newspaper is established when it commences publication or when the only other newspaper in the county ceases publication. Based upon the foregoing authorities and factual representations, it is the opinion of the Office of the Attorney General that the Register, pursuant to [NRS 238.030\(4\)](#), is qualified to publish legal notices and advertisements within Storey County at the time such notices and advertisements are legally required to be published; provided, however, that the Register is a newspaper of “general circulation” and is printed in “whole or in part” within Storey County, as these terms are defined by the pertinent case law.

Sincerely,
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Attorney General

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