

2002 WL 1833305 (Miss.A.G.)

Office of the Attorney General
State of Mississippi

Opinion No. 2002-0425

July 26, 2002

Re: [Miss. Code Ann. 13-3-31](#)

Robert P. Chamberlin, Esquire

Dear Mr. Chamberlin:

Attorney General Mike Moore has received your request for an official opinion and has assigned it to me for research and reply. Your letter states:

I write you once again regarding [Mississippi Code Annotated Section 13-3-31](#). As you will note I have written a couple of times regarding concerns the DeSoto County Board of Supervisors had in reference to a newspaper wishing to advertise as a local paper which was packaged with an out of state newspaper for sale resulting in your opinion of February 19, 2002. Subsequent thereto, one of the local newspapers felt the issues may not have been framed properly. As I am sure you can understand, the DeSoto County Board of Supervisors merely wants to take the necessary steps to do what is correct under the law. Not surprisingly, each newspaper feels that a decision by the Board of Supervisors against their interest would be an incorrect decision. The purpose of this letter is to further get guidance regarding some of the concerns that have been expressed in relation to the February 19, 2002 opinion from your office.

You will find enclosed a copy of the Memphis *Commercial Appeal*. The copy which is enclosed is, as I understand it, the manner in which the *Commercial Appeal* arrives at the home of every DeSoto County subscriber as well as in every DeSoto County newsstand. As you will note, the front section of this newspaper is designated the *DeSoto Appeal*. The *DeSoto Appeal* is the entity which claims to be a Mississippi newspaper because they state they have an office in DeSoto County, Mississippi. Opposition to designation of the *DeSoto Appeal* as a Mississippi newspaper states that this is merely another section of the *Commercial Appeal* and is not, therefore, a stand alone newspaper. There was some concern that my January 21, 2002 request which resulted in the February 19, 2002 opinion might have been misleading in use of the terminology "Mississippi newspaper" when the opposition claims that this is not a newspaper but rather a section of the foreign newspaper. This is the manner in which the *Commercial Appeal* arrives as set forth in my January 21, 2002 correspondence. The underlying questions the DeSoto County Board of Supervisors would like to have answered are simple:

You ask:

1. Is the DeSoto Appeal, a copy of which is enclosed, a separate newspaper or is it simply a section of the *Commercial Appeal*?
2. Is the package enclosed as the DeSoto Appeal/Commercial Appeal one newspaper or two newspapers?

3. What is the principal place of business as the enclosed newspaper or newspapers?

Our office cannot render opinions on questions of fact, and therefore we must decline to respond to these three questions.

You next ask:

*2 Question One:

Can a newspaper be designated as a Mississippi newspaper pursuant to [Mississippi Code Annotated Section 13-3-31](#) if it cannot be purchased separately from a Tennessee newspaper? As the DeSoto County Board of Supervisors may be called upon to make a factual determination, some guidelines from the responses contained in the February 11, 2002 opinion would be beneficial.

Response:

This office is of the opinion that a newspaper with a principal public business office in DeSoto County, Mississippi is deemed to be published in Mississippi regardless of the fact it can be purchased only as part of a Tennessee newspaper. MS AG Op., Chamberlin (February 19, 2002).

Question Two:

What criteria should be used to determine if a newspaper is sold for value?

Response:

There is no requirement that the newspaper be "sold for value." The statute requires that the newspaper "maintains a general circulation predominantly to bona fide paying subscribers within the political subdivision within which publication of such legal notice is required." That statute goes on to define "bona fide paying subscribers" as "persons who have subscribed at a subscription rate which is not nominal, whether by mail subscriptions, purchases through dealers and carriers, street vendors and counter sellers, or any combination thereof, but shall not include free circulation, sales at a token or nominal subscription price and sales in bulk for purposes other than for resale for individual subscribers." [Miss. Code Ann. Sec. 13-3-31\(1\)\(a\)](#).

Question Three:

What factors should be used to determine if a newspaper meets the requirements of [Mississippi Code Annotated Section 13-3-31](#)?

Response:

[Miss. Code Ann. Sec. 13-3-31](#), which sets out the criteria for determining whether or not a newspaper is eligible to be used for publication of certain notices, states:

(1) Whenever it is required by law that any summons, order, citation, advertisement or other legal notice shall be published in a newspaper in this state, it shall mean, in addition to any other requirements imposed by law, publication in some newspaper which:

(a) Maintains a general circulation predominantly to bona fide paying subscribers within the political subdivision within which publication of such legal notice is required. The term "general circulation" means numerically substantial, geographically widespread, demographically diversified circulation to bona fide paying subscribers. In no event shall the term "general circulation" be interpreted to require that legal notices be published in a newspaper having the greatest circulation. The term "bona fide paying subscribers" means persons who have subscribed at a subscription rate which is not nominal, whether by mail subscriptions, purchases through dealers and carriers, street vendors and counter sellers, or any combination thereof, but shall not include free circulation, sales at a token or nominal subscription price and sales in bulk for purposes other than for resale for individual subscribers.

***3** (b) Maintains a legitimate list of its bona fide paying subscribers by the following categories where applicable:

- (i) Mail subscribers;
- (ii) Dealers and carriers; and
- (iii) Street vendors and counter sellers.

(c) Is not published primarily for advertising purposes and has not contained more than seventy-five percent (75%) advertising in more than one-half (1/2) of its issues during the period of twelve (12) months next prior to the first publication of any legal notice therein, excluding separate advertising supplements inserted into but separately identifiable from any regular issue or issues.

(d) Has been established and published continuously for at least twelve (12) months next prior to the first publication of such matter to be published, is regularly issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively; provided, however, that publication on legal holidays of this state or of the United States and on Saturdays and Sundays shall not be required, and failure to publish not more than two (2) regular issues in any calendar year shall not disqualify a paper otherwise qualified.

(e) Is issued from a known office of publication, which shall be the principal public business office of the newspaper and need not be the place at which the newspaper's printing presses are physically located. A newspaper shall be deemed to be "published" at the place where its known office of publication is located.

(f) Is formed of printed sheets. However, the word "printed" does not include reproduction by the stencil, mimeograph or hectograph process.

(g) Is originated and published for the dissemination of current news and intelligence of varied, broad and general public interest, announcements and notices, opinions as editorials on a regular or irregular basis, and advertising and miscellaneous reading matter.

(h) Is not designed primarily for free circulation or for circulation at nominal rates.

(2) "Newspaper," as used in this section, shall not include a newspaper, publication, or periodical which is published, sponsored by, is directly supported financially by, or is published to further the interests of, or is directed to, or has a circulation restricted in whole or in part to any particular sect, denomination, labor or fraternal organization or other special group or class of citizens, or which primarily contains information of a specialized nature rather than information of varied, broad and general interest to the general public, or which is directed to any particular geographical portion of any given political subdivision within which publication of such legal notice is required, rather than to such political subdivision as a whole. No newspaper otherwise qualified under this section shall be disqualified from publishing legal notices for the sole reason that such newspaper does not have as great a circulation as some other newspaper publishing in the same political subdivision.

***4** (3) In the event of the discontinuance of the publication of all newspapers in any county qualified under this section to publish legal notices, any other such newspaper published in the same county, regardless of the length of time it has been published, shall be deemed qualified to publish such legal notices, provided such newspaper meets all requirements of this section other than the requirements of subsection (1)(d) of this section.

(4) A newspaper otherwise qualified under this section which is published in a municipality whose corporate limits encompass territory in more than one (1) county shall be qualified to publish legal notices for any county a portion of whose territory is included within the municipality, irrespective of the actual physical location within the municipality of the principal public business office of the newspaper.

This office does not make factual determinations such as those necessary to decide if a particular newspaper meets the qualifications established under 13-3-31 to publish notices and other county matters as required by statute. We invite your examination of *Sunland Pub. Co., Inc. v. City of Jackson*, 710 So.2d 879 (Miss. 1998) (copy enclosed), which may provide you with some guidance in this matter. Further, all of the factors listed in your letter may be relevant to the board's determination of whether a newspaper is qualified under the statute. The Board should meet to consider these factors, make a finding whether the paper is or is not qualified under the statute and act accordingly.

Sincerely,
Mike Moore
Attorney General

By: Beverly A. Bolton
Special Assistant Attorney General

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