

2006 WL 3824150 (Miss.A.G.)

Office of the Attorney General
State of Mississippi

Opinion No. 2006-00530

October 27, 2006

Re: Newspaper Qualifications to Publish Legal Notices

Rebecca Cartledge Taylor, Esquire
Attorney for City of Wiggins

Dear Ms. Taylor:

Attorney General Jim Hood received your letter of request and assigned it to me for research and reply. Your letter states:

It is my pleasure to serve the City of Wiggins as City Attorney. The Mayor has asked that I request an official opinion from your office. The issue presented is whether or not a newspaper seeking to be considered a “newspaper qualified to publish legal notices” pursuant to [Miss. Code Ann. Section 21-39-3](#) in a municipality must furnish the municipality information concerning its general circulation and/or bona fide paying subscribers pursuant to [Miss. Code Ann. 13-3-31\(1\)\(a\) and \(b\)](#)?

If the general factual scenario would be helpful, there has been a newspaper in Wiggins for a number of years. About two years ago, another newspaper began publication here. Both are excellent newspapers. The City is certainly aware of its obligations and will consider both; however, the newest newspaper has refused to provide the City any information whatsoever about the number of bona fide paying subscribers, general circulation, the number of mail subscribers, dealers and carriers or street vendors. In short, the City has absolutely no idea as to the circulation of this paper. After request was made to both papers, the older newspaper provided it Statement of Ownership, Management and Circulation (Form 3526-R); however the newer newspaper has stated it does not file that form and continues to refuse to provide any information as set forth in [Section 13-3-31\(1\)\(a\) and \(b\)](#).

As I am certain you are aware, we would appreciate your addressing this issue at your earliest opportunity since the City would like to handle the matter legally and properly and would like to move on.

[Mississippi Code Annotated Section 21-39-3](#) (Revised 2001) provides in pertinent part:

In municipalities in which there is more than one newspaper qualified to publish legal notices, the governing authorities of such municipality shall enter into a contract for the publication of its proceedings, ordinances, resolutions, and other notices required to be published only after inviting competitive bids from such newspapers. Such contracts shall be let to the lowest bidder among them for a period of not more than twelve months from the date of such contract..... (Emphasis added)

We assume that the newspaper in question submitted the lowest bid.

The Mississippi Supreme Court in [Sunland Publishing Company, Inc. v. City of Jackson](#), 710 So.2d 879 (Miss.

1998) in addressing whether the City of Jackson could lawfully award its publishing contract to a newspaper other than the Northside Sun which submitted the lowest bid said:

The City may justifiably deny the legal publishing contract to the *Sun* only after demonstrating that the *Sun* does not meet the general circulation requirements of [Miss. Code Ann. Section 13-3-31 \(Supp. 1996\)](#).....

*2 However, in [Sun](#) the paper in question was presumed to be qualified pursuant to [Section 13-3-31](#). That is not the case here.

In [Sun](#), the governing authorities also required zip code information about subscribers which the court found not relevant. That is not the case here

The determination of whether a particular newspaper who submitted the lowest bid meets the requirements of [Section 13-3-31](#) is a question of fact which the municipal governing authorities must make. That statute provides in part:

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.....
- (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 or 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.

In response to your specific question, we are of the opinion that the municipal governing authorities may require

newspapers submitting bids for the municipality's publishing contract to provide evidence of compliance with [Section 13-3-31](#).

Sincerely,

***3** Jim Hood

Attorney General

By: Phil Carter

Special Assistant Attorney General

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