

244 Ala. Op. Atty. Gen. 17, 1996 WL 897529 (Ala.A.G.)

Office of the Attorney General
State of Alabama

*1 July 2, 1996

Newspapers – Legal Notices – Publications – Advertising

A newspaper which does not have an approved second class mailing permit, but which has been published under a pending second class permit for 51 weeks, does not qualify under [Code of Alabama 1975, § 6-8-60](#) to run legal advertisements.

Honorable Jack Venable
Member

Dear Representative Venable:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Does a newspaper which does not have a second class permit, but has been published under a **pending** second class permit for 51 weeks, qualify under [Section 6-8-60](#) to run legal advertisements?

FACTS AND ANALYSIS

[Code of Alabama 1975, § 6-8-60](#), provides:

“... 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.” (Emphasis added.)

In [Gulf Coast Media, Inc. v. Mobile Press Register, Inc.](#), 470 So. 2d 1211, 1215 (Ala. 1985), the Alabama Supreme Court noted that the purpose of the statutory classification is to ensure “the dissemination of public official notices in a bona fide newspaper which has a fixed local character and nexus to the county, so that individuals are not required to search widely to find official notices.” The Court further stated that the requirements of the legal notice statutes should be interpreted strictly. Thus, we must interpret the requirements of [§ 6-8-60](#) with strict compliance.

Your request states that a new newspaper applied for a second class mailing permit in May of 1995. The U. S. Postal Service has not yet granted the permit but allows the newspaper to publish under a pending second class permit.

Pursuant to the Domestic Mail Manual used by the U. S. Postal Service, until the permit is granted, the newspaper is charged a third class mailing rate and will be given credit back to the date of its application should its permit be granted. If the permit is denied, the denial is retroactive to the date of the application. Thus, the newspaper would not have been mailed under a second class mailing permit or privilege during this time.

Under the facts given in this request, if the permit is granted retroactive to the date of the application the newspaper will have been mailed under the second class mailing privilege for at least 51 weeks. At that time the newspaper will qualify under [§ 6-8-60](#) to run legal advertisements.

*2 Based upon the foregoing, we must interpret [§ 6-8-60](#) to require the newspaper to be published under an approved second class mailing permit and not under a pending permit.

CONCLUSION

A newspaper which does not have an approved second class mailing permit, but which has been published under a pending second class permit for 51 weeks, does not qualify under [Code of Alabama 1975, § 6-8-60](#) to run legal advertisements.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,
Jeff Sessions
Attorney General
Opinion by Assistant Attorney General Solomon

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