

Tenn. Op. Atty. Gen. No. 09-07, 2009 WL 217968 (Tenn.A.G.)

Office of the Attorney General
State of Tennessee

Opinion No. 09-07

January 26, 2009

“The Tennessean” as a Newspaper of General Publication

The Honorable Joe M. Haynes
State Senator

QUESTION

Whether *The Tennessean* qualifies as a “newspaper” and/or “newspaper of general circulation” for the purposes of publication of official notices within the following Tennessee counties: Bedford, Benton, Cannon, Carroll, Cheatham, Clay, Coffee, Cumberland, Davidson, Decatur, Dekalb, Dickson, Fentress, Franklin, Giles, Grundy, Hamilton, Henry, Hickman, Humphreys, Houston, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Warren, Wayne, White, Williamson, and Wilson.

OPINION

The Tennessean qualifies as a “newspaper” and/or “newspaper of general circulation” for the purposes of publication of official notices in all of the requested counties, with the exception of Decatur, Hamilton, Perry, and Stewart counties.

ANALYSIS

Tennessee statutes contain several references to the terms “newspaper” and “newspaper of general circulation,” [FN1] but these terms are only defined in the Election Code. [FN2] With respect to the statutes in which the terms “newspaper” or “newspaper of general circulation” are not defined, three criteria have been established in order for a publication to satisfy the requirements of those various statutes. *See* Op. Tenn. Att’y Gen. 06-166 (November 9, 2006); Op. Tenn. Att’y Gen. 06-158 (October 9, 2006). First, the publication should be available in all parts of the county. Second, it should be published at least weekly. Third, it should contain news of general interest to the public. *See* Op. Tenn. Att’y Gen. 04-064 (April 15, 2004); Op. Tenn. Att’y Gen. 93-19 (March 11, 1993).

These criteria are supported by the case of *Cook v. McCullough*, 1989 WL 155926 (Tenn. Ct. App.), p.t.a. denied (1990). In that case, the Court of Appeals determined that *The Nashville Record* was a newspaper for purposes of publication of tax sale notices pursuant to [Tenn. Code Ann. § 67-5-2502](#). The Court stated:

The Nashville Record is a ‘newspaper’ within the sense of the applicable statute. It is published weekly. It is

intended for circulation among the general public. It contains matters of general interest. It is in the form of a newspaper.

Cook v. McCullough, 1989 WL 155926 at *7.

In connection with the issuance of this opinion, this Office has reviewed the May 22, 2008, issue of *The Tennessean* (“issue” or “the paper”). *The Tennessean* is in newspaper format with six (6) multi-page sections: front page, local news, sports, living, business/classifieds, and an advertisement insert. *The Tennessean* is published in Nashville daily, with a single copy price of seventy-five (\$0.75) cents on weekdays and Saturdays and one dollar and seventy-five cents (\$1.75) on Sundays. It is available by subscription for periods of four (4), twelve (12), twenty-six (26), or fifty-two (52) weeks. The paper is also distributed to subscribers through home delivery and by mail at “periodicals postage” rates. [FN3] The paper does not state the publication's founding date but does indicate in the lower left hand corner of the front page that the May 22 issue is “Volume 104, No. 143.” *The Tennessean* contains local, state, national, and international news. A sampling of the headlines found in the May 22 issue indicates that the paper contains matters of interest to the general public.

*2 The last determining issue is whether the paper is available throughout each county as required by law. The analysis considers each county's size and population in relation to the number of single-copy purchase locations in each county. See Op. Tenn. Att'y Gen. 06-166 (November 9, 2006); Op. Tenn. Att'y Gen. 06-158 (October 9, 2006).

Assuming that the materials submitted to this office are accurate, it appears that *The Tennessean* is available for single-copy purchase in newspaper racks and in stores at multiple locations in the following counties: Bedford, Benton, Cannon, Cheatham, Coffee, Cumberland, Davidson, Dekalb, Fentress, Franklin, Giles, Grundy, Henry, Hickman, Humphreys, Houston, Lawrence, Macon, Marshall, Maury, Montgomery, Moore, Putnam, Robertson, Smith, Sumner, Trousdale, Warren, Wayne, Williamson, and Wilson. Thus, the newspaper is intended for circulation among the general public, and based upon multiple single-copy locations, should be deemed to be available throughout these counties.

In Clay, Pickett, Overton, Carroll, Lincoln, Lewis, Jackson, and Stewart counties, the paper is available for single-copy purchase in only one city. Clay County has nine (9) single-copy purchase locations in the town of Celina. Clay County contains 236 square miles and has a population of only 7,976. [FN4] Celina's population is 1,379. Pickett County has (11) single-copy purchase locations in the city of Byrdstown. Pickett County contains only 163 square miles and has a population of 4,945. Byrdstown has a population of 903. Because both Clay and Pickett counties are small in geographical size and population and contain only one incorporated municipality each, the number of single-copy purchase locations in these counties appears to be sufficient to justify the conclusion that the paper is available throughout both counties.

Overton County has twenty-nine (29) single-copy purchase locations, all of which are located in Livingston, Overton County's only municipality. Overton County encompasses 433 square miles and has a population of 20,118. Livingston's population is 3,498. Lincoln County is similarly large in geographic area, containing 570 square miles and boasting a population of 31,340. Its largest city, Fayetteville, has a population of 6,994. Lincoln County has thirty-eight (38) single-copy purchase locations, all but one of which are located in Fayetteville. White County has thirty-five (35) single-copy purchase locations, all but one of which is located in Sparta. Sparta's population is 4,599. White County covers 377 square miles and has a population of 26,066. Jackson County has eighteen (18) single-copy purchase locations in Gainesboro. Jackson County contains 309 square miles and has a population of 10,984. Gainesboro has a population of only 879. Lewis County has nine (9)

single-copy purchase locations in the town of Hohenwald. Lewis County contains 282 square miles with a population of 11,367. Hohenwald's population is 3,754. Although each of these counties is geographically large, the relatively high number of single-copy purchase locations in the principal city of each of these counties likewise justifies the conclusion that *The Tennessean* is available throughout the counties of Overton, Lincoln, White, Jackson, and Lewis.

*3 Carroll County is geographically large, containing 599 square miles, and has a population of 29,473. The county contains eleven (11) single-copy purchase locations: two (2) in Bruceton (pop. 1,554), five (5) in Huntington (pop. 4,349), and four (4) in McKenzie (pop. 5,295). Carroll County also contains five (5) other incorporated municipalities without a single-copy purchase location: Atwood, Clarksburg, Hollow Rock, McLemoresville, and Trezevant. Nevertheless, we conclude that *The Tennessean* qualifies as a “newspaper of general circulation” in Carroll County based upon the relatively wide dispersal of the eleven (11) single-copy purchase locations as described.

The extremely limited availability of *The Tennessean* in Decatur, Hamilton, Perry, and Stewart Counties indicates that the paper is not available throughout any of these counties. Hamilton County contains only one (1) single-copy purchase location even though it covers 543 square miles and has a population of 307,896. This sole single-copy location does not ensure circulation throughout Hamilton County. Perry County also has only one (1) single-copy location. Perry County contains 415 square miles and has a population of 7,361. Similarly, Decatur County has two (2) single-copy locations, both of which are located in Parsons. Decatur County contains 333 square miles and has a total population of 11,731. Parsons is Decatur County's largest municipality with a population of 2,452 but is not the county-seat. Finally, Stewart County contains 458 square miles and a population of 12,370, but has only three (3) single-copy locations, all of which are located in Dover. Dover's population is 1,442. Even though Decatur, Perry, and Stewart counties are small in population, the extremely limited availability of single-copy locations means that the paper is not available throughout the county. In sum, this Office concludes that *The Tennessean* does not qualify as a “newspaper of general circulation” for the purposes of publication of official notices in Decatur, Hamilton, or Perry counties.

Based on the materials submitted with your request, this Office opines that *The Tennessean* meets the general and statutory definitions of “newspaper” and/or “newspaper of general circulation” for purposes of publication of official notices in all the requested counties with the exception of Decatur, Hamilton, Perry and Stewart counties.

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[FN1]. For example, see [Tenn. Code Ann. §§ 4-13-302](#) and [5-8-507](#) (state and county government notices); [Tenn. Code Ann. § 9-21-903](#) (notices of public bonds); and [Tenn. Code Ann. § 40-12-105](#) (notices in grand jury proceedings).

[FN2]. For any given election, each county's election commission determines in which paper(s) it may publish

such notices consistent with the statutory factors for determining what qualifies as a “newspaper” or “newspaper of general circulation.” [Tenn. Code Ann. § 2-12-111](#). To meet the Election Code requirements the publication must bear a title or name, be regularly issued at least as frequently as once a week, for a definite price, and have a second-class mailing privilege. It must be not less than four pages, be published continuously during the immediately preceding one-year period, and be published for the dissemination of news of general interest. Finally, it must be circulated generally in the political subdivision in which it is published and in which notice is to be given. [Tenn. Code Ann. § 2-1-104\(a\)\(13\)](#).

[FN3]. This Office has previously noted that “periodical postage” rate is the equivalent of “second class mailing privilege.” *See* Op. Tenn. Att’y Gen. 04-011 (February 3, 2004) at n.1.

[FN4]. All population figures used in this opinion come from the Tennessee Blue Book. *See* <http://Tennessee.gov/sos/bluebook>.

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