

Tex. Atty. Gen. Op. LO-96-084, 1996 WL 547181 (Tex.A.G.)

Office of the Attorney General
State of Texas

Letter Opinion No. 96-084

August 9, 1996

Re: Whether the United States Postal Service's change in designation from "second-class" to "periodicals" class affects Texas law (ID # 38824)

The Honorable David Sibley
Chair

Dear Senator Sibley:

You have asked whether the United States Postal Service's change of the name of "second-class" mail to "periodicals" class will affect Texas law, and if so, how.

[Section 2051.044, Government Code](#), provides one example of the use of the "second-class" mail designation:

(a) The newspaper in which a notice is published must:

....

(3) be entered as second-class postal matter in the county where published.

You ask whether "the change in terminology from 'second class' to 'periodicals class' [is] one of nomenclature" and whether "the eligibility for the 'periodicals class' privilege [is] the same as eligibility for the 'second class' privilege, for the purpose of all relevant state law."

In the 1995 Code of Federal Regulations, second-class mail is defined as "mailable matter consisting of newspapers and other periodical publications which meet the qualifications listed in sections 200.0101 through 200.0109, or 200.0110." *See* 39 C.F.R. ch. III, pt. 3001, subpt. C, App. A, § 200.010 (1995). To qualify as "second-class," a publication must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively. Furthermore, it must have a known office of publication, must be formed of printed sheets (not reproduced by stencil, mimeograph, or hectograph processes, or reproduced in imitation of typewriting), must be originated and published for the purpose of disseminating information of a public character, or devoted to literature, the sciences, art, or some special industry, and must have a legitimate list of persons who have subscribed by paying or promising to pay at a rate above nominal for copies to be received during a stated time. *Id.* §§ 200.0101-.0105.

The change in the designation of this described class from "second-class" to "periodicals" class became effective on July 1, 1996. *See* U.S. POSTAL SERVICE, DOMESTIC MAIL MANUAL, Issue 50, § E211 (July 1, 1996). The prerequisites for qualifying as a "periodical" are similar to those required to qualify as "second-class" matter. [\[FN1\]](#)

The initial proposed changes in the domestic mail classification reform were published in the April 3, 1995, issue of the Federal Register. Within the proposal it was stated that

[t]he current second-class preferred rate classifications for Within County, Nonprofit, Classroom and Science of Agriculture publications would be included in the new Periodicals class.... The service maintains that no rate changes or substantive classification changes are requested for these existing classifications.

*2 See 60 Fed. Reg. 16,888 (1995). An overview regarding “periodicals” published in the December 22, 1995, issue of the Federal Register states again that

[p]eriodicals, like today's second-class mail, is designed for newspapers and other periodical publications. Under Classification Reform, all current categories of authorization would remain (general, requester, institutions and societies, foreign, and state departments of agriculture). Current subclasses would also be retained No substantive change to Preferred Rates Periodicals (In-County, Classroom, Nonprofit, Science-of-Agriculture zones 1-2) is proposed in the current Classification Reform case.

Id. at 66,599 (1995). The summary of adopted rules published in the March 12, 1996, Federal Register relates that

[t]his final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the Postal Service in Postal Rate Commission Docket No. MC95-1, Classification Reform 1....

See 61 Fed. Reg. 10068 (1995).

Under the title of “Basic Information” and with respect to “periodicals,” *Domestic Mail Manual*, Issue 50, confirms that

[e]ffective July 1, 1996, second-class mail was renamed Periodicals. This name change does not alter the status of authorized publications; second-class mailing privileges are now referred to as Periodicals mailing privileges and have comparable eligibility standards.

U.S. POSTAL SERVICE, DOMESTIC MAIL MANUAL, Issue 50, § E211.1.1 (July 1, 1996) (emphasis in original).

In our opinion, it is clear that the change in designation from “second-class” to “periodicals” class is a change merely of “nomenclature,” and that the federal regulations have effected thereby no substantive change with regard to the class of matter formerly known as “second-class” mail. We conclude that, subsequent to July 1, 1996, any reference in Texas law to “second-class” mail should be construed to refer to “periodicals” class mail.

SUMMARY

The United States Postal Service's change in name of classification of “second-class” mail to “periodicals” is fundamentally a name change. The “periodicals” mailing privileges have the same eligibility standards as those of the previously named “second-class” mailing privileges. After July 1, 1996, any reference to “second-class” should be construed to refer to “periodicals” class.

Yours very truly,
Rick Gilpin
Deputy Chief
Opinion Committee

[FN1]. A periodical publication is one published at a stated frequency with the intent to continue publication indefinitely. See U.S. POSTAL SERVICE, DOMESTIC MAIL MANUAL, Issue 50, § E211.2.1 (July 1, 1996). A

periodical must show continuity from issue to issue. Continuity is shown by serialization of articles or by successive issues carrying the same style, format, theme, or subject matter. *Id.* § E211.2.2. The primary purpose of a periodical must be the transmission of information. *Id.* § E211.2.3. A periodical may consist of original or reprinted articles on a single topic or variety of topics, listings, photographs, illustrations, graphs, a combination of advertising and nonadvertising matter, comic strips, legal notices, editorial material, cartoons, or other subject matter. *Id.* § E211.2.4. The primary distribution of each issue must be made before that of each succeeding issue. *Id.* § E211.2.5. These requirements for periodicals have changed little from those listed for second-class matter in the 1995 Code of Federal Regulations.

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