

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 04-064

America's News Day as a "Newspaper" and/or "Newspaper of General Circulation"

QUESTION

Does *America's News Day* qualify as a "newspaper" and/or "newspaper of general circulation" for purposes of publication of official notices?

OPINION

If it is published weekly, *America's News Day* does qualify as a "newspaper" and/or "newspaper of general circulation" for purposes of publication of official notices except for publication of official notices under the Election Code.

ANALYSIS

With the exception of a definition in the Election Code, Tenn. Code Ann. §§ 2-1-101, *et seq.*, the terms "newspaper" and "newspaper of general circulation" are not defined in any of the state statutes that require publication of official notices in a "newspaper" or "newspaper of general circulation." *See generally*, Op. Tenn. Att'y Gen. 00-160 (October 17, 2000); Op. Tenn. Att'y Gen. UP3-112 (November 30, 1993) and Op. Tenn. Att'y Gen. U92-99 (September 1, 1992). However, the Election Code does define the term "newspaper of general circulation" and lists a number of requirements for meeting that definition. 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).

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. 00-160 (October 17, 2000) and Op. Tenn. Att'y Gen. U91-164 (December 23, 1991). First, the publication should be available in all parts of the county. Op. Tenn. Att'y Gen. U92-99 (September 1, 1992). Second, it should be published at least weekly. Op. Tenn. Att'y Gen. U91-164 (December 23, 1991) and Op. Tenn. Att'y

Gen. U91-09 (January 22, 1991). Third, it should contain news of general interest to the public. Op. Tenn. Att’y Gen. 93-19 (March 11, 1993); Op. Tenn. Att’y Gen. U92-99 (September 1, 1992); Op. Tenn. Att’y Gen. U91-09 (January 22, 1991); Op. Tenn. Att’y Gen. U90-118 (August 15, 1990) and Op. Tenn. Att’y Gen. U90-55 (March 28, 1990).

These criteria are supported by the case of *Cook v. McCullough*, 1989 WL 155926 (Tenn. App. December 29, 1989); *p.t.a. denied* (1990). In that case, the Court of Appeals determined that *The Nashville Record* was a newspaper for purposes of Tenn. Code Ann. § 67-5-2502. The Court stated:

The Nashville Record is a “newspaper” in 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.

On inspection of a sample issue (the February 12, 2004 issue) that accompanied the request, this office noted that *America’s News Day* is in a newspaper format and is published in Jackson and/or in Memphis. It is distributed to readers in Madison, Gibson, Hardeman, Crockett, Fayette, Haywood, Shelby, Tipton, Carroll, Henry, Benton, Montgomery, Houston, Perry, Humphreys, Decatur, Chester, Henderson, and McNairy counties and thus is intended for circulation among the general public. The publication’s masthead notes that it contains “News, Movies, Crime/Missing Persons, School News, Sports, R&B, Entertainment, Horoscope & More.” It contains, then, matters of interest to the general public. For example, the front page of the issue provided featured articles on Freed-Hardeman University’s TransSouth Conference player of the week, a meeting of the State Lottery Board, criminal charges against two youths, and singer Diana Ross’ jail sentence for a DUI conviction. Classified ads appear on inside pages. The publication also features a number of display advertisements and a public auction notice. The inspected issue does not state the date of the publication’s founding, does not state whether it can be mailed at a second-class postage rate, and does not indicate how often it is published. The issue inspected does not specify a price and does not state the manner of its circulation. A phone call to the publisher/president of the paper revealed that *America’s News Day* is available at area retailers, free of charge. Copies can be mailed to interested persons at a cost near or equivalent to the postage costs. Thus, there is no charge for the publication itself.

Based on information provided and gleaned from the February 12, 2004, issue, if published weekly *America’s News Day* qualifies as a “newspaper” and/or “newspaper of general circulation” for purposes of publication of official notices. Because the paper does not meet all of the criteria set forth in Tenn. Code Ann. § 2-1-104(a)(13), however, it does not qualify for publication of official notices under the Election Code.

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