

1984 WL 249918 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 27, 1984

\*1 Honorable Hugh K. Leatherman, Sr.  
Member  
South Carolina Senate  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Leatherman:

I am in receipt of your letter of May 31, 1984, wherein you pose twelve questions concerning publication of legal notices in South Carolina. The questions do not refer to a specific type of notice or situation wherein notice is required; thus, the responses to your questions will of necessity be very general.

There are many different statutes with distinct notice requirements which provide for publication in a newspaper. These diverse statutes, depending upon the subject matter, are intended to notify either an individual, a class of individuals, or the public at large; accordingly, each statute is designed with its specific intent in mind. For example, in [§ 15-9-740, South Carolina Code of Laws of 1976](#), the statute provides for the service of a summons by publication. The court or one of its officers is to direct that publication be made in a newspaper 'most likely to give notice to the person to be served.' On the other hand, § 21-15-90 of the Code requires a probate judge to have a citation to creditors of an estate printed in a 'public gazette, if any be published in the county.' The purpose of this section is to give all interested persons a chance to be heard in the estate proceedings.

1. Just what is the law on publishing legal notices?

The general provisions related to publishing legal notices are found in Title 15, Chapter 29 of the South Carolina Code. However, as earlier mentioned, specific statutory provisions control most types of publications.

2. Define 'newspaper.' What qualifies one to publish legal notices?

This office has previously issued its opinion [1943 Opinion of the Attorney General, at 222 (attached)] wherein a 'newspaper' is generally defined for the purposes of publication statutes. The legal definitions cited therein recognized the following considerations:

(a) The paper must be published regularly at short intervals;

(b) The paper must contain intelligence of current events and news of general interest;

(c) The paper must be intended for general circulation; however, circulation may be limited to a specific geographical area;

(d) The paper must either be sold or distributed gratis.

Again, the term 'newspaper' must be defined in keeping with the purpose of the specific statute.

3. What is a 'newspaper of general circulation?'

To be characterized as a newspaper of general circulation within a community, a newspaper should contain news of general interest to the community and it must reach a diverse readership. [Moore v. State, 553 P.2d 8, 21 \(Alaska 1976\)](#); see also, 28A Words and Phrases (1983 Cum.Supp.) ‘Newspaper of General Circulation’ at 38. Additionally, a newspaper of general circulation has been defined as one that has a content appealing to the general public and having more than a de minimis number of actual paid subscribers. [Great Southern Media v. McDowell County, 304 N.C. 427, 284 S.E.2d 457 \(1981\)](#). I reiterate that the specific statute controlling the publication would have bearing on whether it is required that the newspaper be of general circulation in a geographic area.

4. Are circulation and distribution defined as the same?

\*2 In most situations dealing with publication of notice in a newspaper, circulation and distribution would be of similar import. ‘Circulation’ in the general sense means the act of passing from place to place or person to person and in the restricted sense used in journalism it means the average, total number of copies issued and distributed . . .’ [Wahl v. Hart, 85 Ariz. 85, 332 P.2d 195, 197 \(1958\)](#); see also, 7 Words and Phrases (1983 Cum.Supp.) ‘Circulate’ at 31. Reference to the specific statute is necessary to remove any doubts about the use of these terms.

5. Do ‘free’ newspapers, or shoppers guides, qualify as newspapers for publishing legal notices?

As used in Chapter 29 of Title 15 of the Code, ‘newspaper’ would not include a shopper's guide. See, Shopper's Guide Publishing Co. v. Woods, 547 S.W.2d 561 (Tenn. 1977). Whether the newspaper is sold or distributed free of charge is a consideration; however, it is not controlling. 1943 Opinion of the Attorney General, at 222; but see, Great Southern Media v. McDowell County, supra. The legislative intent, again, in the various statutes dealing with notice by publication in a newspaper is to make use of the publication most likely to give the notice to the intended recipient.

6. Does a newspaper have to have a second class mailing permit to be eligible to publish legal notices?

It is doubtful that the requirement of a second class mailing permit is a controlling factor in determining whether or not a document is a newspaper as used in publication statutes, although such a factor may be a relevant consideration. See, No. 2 herein.

7. Does the newspaper have to have circulation (or distribution if the legal meaning is the same) throughout the county in which the legal notice is published?

Whether the newspaper would have to maintain county-wide circulation would depend upon the specific statutory requirement. For example, § 21-15-630 provides for Notice to Creditors to be published in a newspaper ‘of general circulation in such county . . .’ Other publication statutes are not concerned as much with county-wide notice as they are with notice to a particular individual. See, e.g., § 15-9-740.

8. Do ‘printed and published’ mean the same thing under the law?

The answer to this question would of course depend upon the language and intent of the specific statute under review. This Office in its earlier opinion [1975-76 Op. Atty. Gen. No. 4144, at 211 (attached)] construed § 15-9-720, which provides for publication in a newspaper ‘printed in the county where the premises are situated,’ as requiring that the newspaper be published in the county rather than literally printed in the county. The opinion quoted the following:

‘Print,’ as used in a statute requiring notice of a judicial sale to be published in a paper printed in the county where such sale was to be made, was used in the sense of ‘publish,’ so that a publication in a paper published in the county, but not wholly printed therein, is sufficient.

\*3 [Aetna Life Insurance Co. v. Wortaszewski](#), 63 Neb. 636, 88 N.W. 855. The terms publish and print of course have different meanings depending upon their usage in a specific statute. For example, a newspaper may be deemed published in any place where it is circulated. See, [Wolf County Liquor Dispensary Assn. v. Ingram](#), 272 Ky. 38, 113 S.W.2d 839, 842 (1938).

9. Can a newspaper which publishes legal notices be published outside the county where the notice originates?

This question cannot be answered without knowing the situation and the type of notice to be published and consequently without reference to specific statute. However, see No. 8 herein.

10. Can it be printed outside the county? (If 'printed and published' are not the same under the law.)

Some statutes require the newspaper to actually be printed in the county wherein the notice originates or wherein it is to be distributed. See, e.g., § 21-15-90. However, see answer No. 8 herein.

11. Can the newspaper be published out of state?

See answers No. 8 through 10 herein.

12. Can it be printed out of state?

See answers No. 8 through 11 herein.

I hope this information has provided some guidance to you in your official capacity as State Senator. If you are having a particular problem or concern with a specific type of notice required to be published by statute please forward that information and I will be able to provide a more definitive response.

With best wishes,  
Very truly yours,

Edwin E. Evans  
Senior Assistant Attorney General

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