



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

November 4, 1975

ATTORNEY GENERAL OPINION NO. 75- 414

Mr. Charles L. Frickey  
Decatur County Attorney  
Decatur County Courthouse  
Oberlin, Kansas 67749

Re: Legal Publications--Newspapers--Place of Publication

Synopsis: A newspaper is not necessarily published at the place where it is printed. Although printed at one location, if it is first issued for distribution by mail or otherwise at another location, such other location may be deemed the place of publication.

\* \* \*

Dear Mr. Frickey:

You advise that a question has arisen whether the Jennings, Kansas, *Journal*, qualifies for publication of legal notices under K.S.A. 64-101.

This newspaper, you indicate, has been in existence well over five years as a weekly publication. However, through the issue of September 18, 1975, this paper, known as the *Journal-Advocate* was printed in Nebraska, and thus did not qualify under K.S.A. 64-101(d). However, effective September 18, 1975, the *Journal-Advocate* was purchased by the Tri-State Plainsman, Inc., of Selden, Kansas. The new owner has combined the Selden, Kansas, *Advocate*, published jointly heretofore with the Jennings *Journal*, with a Sheridan County edition of the Tri-State Plainsman. Thus at the present time, it appears, the Jennings *Journal* continues publication separately from the Selden *Advocate*.

Presently, you advise, there is an office in Jennings, Kansas, in Decatur County, operated by the *Journal* for news-gathering and

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and for mailing, which is open two or three days each week. The Jennings *Journal* is assembled and composed at this office, and is printed at Hays, Kansas. Thus, the question arises whether the *Journal* is "published" in Decatur County.

Under K.S.A. 64-101, a newspaper must have the following qualifications to entitle legal notices published therein to have legal force and effect:

(a) It must be published at least weekly fifty (50) times a year and have been so published for at least five (5) years prior to the publication of any official publication;

(b) it must be entered at the post office of publication as second class mail matter;

(c) it shall have general paid circulation on a daily, weekly, monthly or yearly basis in the county . . . and

(d) it must be printed in the state of Kansas and published in the county publishing the official publication, or if there be no newspaper published in said county, then in a newspaper printed in Kansas and having general paid circulation in said county . . . ."

Generally speaking, the courts have distinguished between the place of printing and the place of publication. In *Wolfe County Liquor Dispensing Ass'n v. Ingram*, 272 Ky. 839, 113 S.W.2d 839 (1938), the court stated thus:

"A book may be printed without being published. It is published only when it is offered for sale or put in general circulation."

Cases discussing this distinction are canvassed at some length in three fairly recent cases, *State v. Vigil*, 71 N.M. 766, 398 P.2d 987 (1965), *Hunterdon County Democrat, Inc. v. Recorder Publishing Co.*, 117 N.J. Super. 552, 285 A.2d 258 (1971), and *Allen v. Globe-Democrat Publishing Co.*, 368 S.W.2d 460 (Mo. 1963). In the last named case, the court stated thus:

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"Very few cases have been found which construe the words 'publication' or 'printing' in relation to newspapers. It may be said, with certain isolated exceptions subsequently noted, that the reported cases are generally to the effect that although the 'words "print" and "publish" are often confused,' the 'word "publish" cannot be construed to mean "print," ' . . . ' there 'is a distinction between printing a newspaper and publishing a newspaper' and a person 'is not required to print a paper in order to publish same, but can have the printing done elsewhere,' . . . ; a newspaper 'might be printed but never published,' and it is 'published when put in general circulation,' . . . ; a newspaper is published at that place where it is first put in circulation 'and not at the place where it is printed,' . . . ; in determining the place of 'publication,' it is immaterial where the printing is done . . . and 'it would strain every rule of construction beyond all reasonable limits to read the words "printed" and "publication," which have well defined meanings, as being synonymous. Printing implies the mechanical art by which type is imprinted upon the paper, whereas, publishing means the conveying of knowledge of notices.' . . . ." 368 S.W.2d at 460. [Citations omitted.]

In *Hunterdon*, *supra*, the court quoted from *Montesano v. Liberty Warehouse Co.*, 121 N.J.L. 124, 1 A.2d 462 (E. & A. 1938), in part as follows:

"[I]t is . . . conceded that a newspaper may be published where it is not printed. It appears, however, that within the meaning of such statutes as that upon which we are now passing the *place of publication of a newspaper is where the paper is first put into circulation, where it is first issued to be delivered or sent, by mail or otherwise, to its subscribers.*" [Emphasis supplied.]

K.S.A. 64-101(a) clearly distinguishes between printing and publication. Although a newspaper thereunder must be "printed

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in the state of Kansas," it must also be "published in the county publishing the official publication." In my judgment, the fact that the *Journal* is printed in Hays does not necessarily mean that it is published there. Although printed in Hays, if the Jennings, Kansas, *Journal* is first issued for distribution by mail or otherwise at Jennings, then Jennings is the place of publication. If, for example, the *Journal* is first delivered to Jennings for delivery by mail or otherwise to its subscribers, then Jennings must be deemed the place where it is first put into circulation, and Decatur may be deemed the county of publication.

If further questions arise concerning this matter on the basis of the foregoing, please feel free to call upon us.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj