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ATTORNEY GENERAL OPINION NO. 89-72

Wayman Favors  
Wyandotte County Counselor  
1314 N. 5th  
Kansas City, Kansas 66101

Re: Publications, Bibliography and Calendar -- Legal  
Publications -- Newspapers in Which Legal  
Publications May be Made

Synopsis: The Wyandotte Echo, in its current form,  
qualifies as a newspaper in which legal notices may  
be published pursuant to K.S.A. 1988 Supp. 64-101.  
Cited herein: K.S.A. 1988 Supp. 64-101.

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Dear Mr. Favors:

Wyandotte county requests our opinion concerning whether the Wyandotte Echo qualifies as a newspaper in which legal notices may be published pursuant to K.S.A. 1988 Supp. 64-101 or if, rather, it does not qualify because it can be classified as a trade publication under K.S.A. 1988 Supp. 64-101(c)(3). K.S.A. 1988 Supp. 64-101(c) establishes what type of publications may carry legal notices in Kansas:

"(c) Except as provided by K.S.A. 12-1651, and amendments thereto, no legal notice, advertisement or publication of any kind required or provided by any of the laws of the state of Kansas, to be published in a newspaper shall have any force or effect as such unless the same be

published in a newspaper having the following qualifications:

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

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

(3) it shall have general paid circulation on a daily, weekly, monthly or yearly basis in the county and shall not be a trade, religious or fraternal publication; and

(4) it must be printed in the state of Kansas and published in the county publishing the official publication, or if there is no newspaper published in the county, then in a newspaper printed in Kansas having general paid circulation in the county. The provisions of this section requiring publication for at least five years prior to the publication of any official publication shall not apply to any newspaper which is qualified to publish official publications under the provisions of this section. . . ."  
(Emphasis added).

Two Kansas cases discuss the definition of a newspaper. In Kansas City v. Overton, 68 Kan. 560 (1904), the court defined a newspaper as "[a] weekly publication, printed and circulated in a city, containing the current news and matters of general interest, as well as local happenings . . ." Id. at Syl. ¶ 3. Garden City News v. Hurst, 129 Kan. 365, 369 (1929), defined a newspaper as "a general publication, usually in sheet form, intended for general circulation, and published regularly at short intervals, containing intelligence of current events and news of general interest."

The phrase "newspaper of general circulation" means one which circulates among all classes and is not confined to a particular class or calling in the community and is the term generally applied to a newspaper to which the general public will resort in order to be informed of the news and intelligence of the day, editorial opinion, and advertisements, and thereby render it probable that the

notices or official advertising will be brought to the attention of the general public. As a general rule, for a newspaper to be considered as a newspaper of general circulation, the purposes to which the newspaper is devoted must be of common interest to many. However, the fact that a newspaper is devoted to the interest of a particular class of persons, as for instance, those engaged in the same business or calling, and specializes in news and intelligence primarily of interest to that class, will not exclude it from classification as a newspaper of general circulation if, in addition to such special news, it also publishes news of a general character; and hence, a newspaper may be a newspaper of general circulation, although primarily devoted to commerce and finance, labor unions, the legal profession, or a political party. 66 C.J.S. Newspapers, § 4 (1950).

Case law from other jurisdictions evidences a willingness to define a publication as a newspaper despite the fact that its primary purpose is to give notice of legal announcements if, in addition to the legal announcements, it also publishes news items of general interest and current events. See In re David, 276 P. 419, 421 (Cal.App. 1929); Beutelspacher v. Spokane Savings Bank, 2 P.2d 729, 731 (Wash. 1931); Cox v. First Mortgage Loan Company, 48 P.2d 1060, 1062 (Okla. 1935). Thus, a publication devoted to a particular business field may, under certain circumstances, qualify as a newspaper. See Hadwen, Inc. v. Department of Taxes, 422 A.2d 255, 257 (Vt. 1980); Deutsch v. McGurkin, 241 N.Y.S.2d 393, 395 (1963). However, publications which report no news of general character or interest are generally not considered newspapers. See Nevada State Press Association v. Fax, Inc., 378 P.2d 374, 376 (Nev. 1963); See also (other criteria) Green v. Home News Publishing Company, 90 So.2d 295, 296 (Fla. 1956); Gulf Coast Media, Inc. v. Mobile Press Register, Inc., 470 So.2d 1211, 1214 (Ala. 1985); K-Mart Corp., Inc. v. South Dakota Department of Revenue, 345 N.W.2d 55, 57 (S.D. 1984); Village Publishing Corp., 311 S.E.2d 366, 368 (N.C.App. 1984).

Counsel for The Wyandotte Echo, Michael J. Peterson, informs us that The Echo has been a member of the Kansas Press Association since 1948 and that this association does not allow membership by trade publications. Rather, the Kansas Press Association requires that its members be newspapers. Mr. Peterson also states that The Echo is printed in Kansas 52 times a year, is entered at the post office as second class mail, has a general paid circulation on a weekly basis in the county and that it serves every zip code and precinct in Wyandotte county.

Counsel for The Kansas City Kansan, Harry E. Wigner, Jr., argues that The Wyandotte Echo is a trade publication. Mr. Wigner states that The Echo does not contain enough current news and local events of general interest, and is primarily devoted to legal notices. Additionally, counsel discusses the purpose of the laws requiring publication in a newspaper which contains information of general interest. We agree that the purpose "implies a necessity for some circulation among those affected by the contents of the notice." Wahl v. Hart, 332 P.2d. 195 (Az. 1958). We note that we are unaware of any successful challenge to the sufficiency of a legal notice published in The Wyandotte Echo.

We agree that The Echo contains a very limited amount of general interest articles. However, although the number may not be great, The Wyandotte Echo does contain articles of general interest. Kansas statutes do not delineate or dictate the specified or required quantity of articles of general interest that must be contained in a newspaper. Overton and Garden City News do not state what percentage of general news articles must be published in order to qualify a publication as a newspaper. While it may be true that The Wyandotte Echo clearly targets the legal community, this does not negate the fact that the press association considers it a newspaper rather than a trade publication. To hold that a publication otherwise recognized as a newspaper is a trade publication under K.S.A. 64-101(c)(3) because it targets a specific type of audience and contains very few articles of general interest requires decisions concerning factual issues not addressed by Kansas law and is a departure from precedent from other jurisdictions allowing such publications to be defined as newspapers. It is therefore our opinion that The Echo, in its current form, generally complies with the requirements of K.S.A. 64-101(c) and the general purposes and principles which require publication in newspapers rather than trade publications.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls  
Assistant Attorney General