



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 132

The Honorable Melvin Neufeld
State Representative, 115th District
Rt. 1, Box 13
Ingalls, Kansas 67853-9706

Re: Publications, Bibliography and Calendar -- Legal
Publications -- Newspapers in Which Legal
Publications May be Made; Statutory Requirements
Regarding Circulation and Publishing

Cities and Municipalities -- Miscellaneous
Provisions -- Official Newspaper in Cities of
Second and Third Classes; Qualifications

Synopsis: Since the newspaper in Grinnell, Kansas has been
publishing for at least one year it may move to
Scott City, Kansas and may publish Scott City's
legal notices as long as it meets the requirements
set forth in K.S.A. 1990 Supp. 12-1651. Cited
herein: K.S.A. 1990 Supp. 12-1651; 64-101.

* * *

Dear Representative Neufeld:

As representative for the one hundred fifteenth district, you
request our opinion on whether, when a newspaper moves from
one county to another, the newspaper's existing record of
having published at least fifty times a year for at least five
years (K.S.A. 64-101) may be carried to the new county for the
purpose of qualifying for publication of legal notices.

This question arises because the newspaper that is located in Grinnel (Gove county) is contemplating moving to Scott City (Scott county), and therefore you want to know if their previous publishing experience carries over to another county or if they are required to establish a new publishing record.

K.S.A. 1990 Supp. 64-101 establishes the following qualifications that a newspaper must satisfy before it can publish legal notices:

"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 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 and having general paid circulation in the county. . . .

"Nothing in this section shall apply to counties wherein no newspaper has been published the requisite length of time."
(Emphasis added).

However, "K.S.A. 64-101 has no application to publication of ordinances by cities of the second or third class and the qualifications of official newspapers for these cities are contained in K.S.A. 12-1651 only." Attorney General letter dated 8-6-69. Therefore, since Scott City and Grinnell are cities of second and third class respectively (based on information obtained from the Kansas League of Municipalities) the publications of these cities are governed by K.S.A. 1990 Supp. 12-1651.

"(a) The governing body of each city of the second and third class shall designate by resolution a newspaper to be the official city newspaper. Once designated the newspaper shall be the official city newspaper until such time as the governing body designates a different newspaper.

"(b) The newspaper selected for the official publications of cities of the second and third class shall be one which has the following qualifications;

"(1) It must be published at least weekly 50 times each year and have been so published for at least one year prior to the publication of any official city publication.

"(2) It must be entered at the post office of publication as second-class mail matter.

"(3) More than 50% of the circulation must be sold to the subscribers either on a daily, weekly, monthly or yearly basis.

"(4) 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."

There are several differences between the requirements set out in K.S.A. 1990 Supp. 64-101 and K.S.A. 1990 Supp. 12-1651. The two major differences are that under K.S.A. 1990 Supp. 12-1651 the newspaper only needs to be published for one year and there is no requirement that the newspaper be

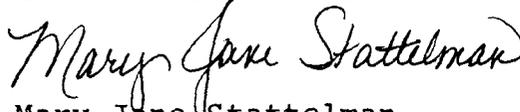
published in the county where the city publishing the official publication is located. Neither statute, however, requires that the one year or five years of publication be accumulated in the same county in which the legal notices are sought to be published. Published has been held to mean the place "where the paper is first put into circulation, where it is first issued to be delivered or sent, by mail or otherwise, to its subscribers."

Therefore, it is our opinion that, since it has been publishing a weekly newspaper for more than 1 year, the newspaper could be designated as your city's official publication as long as it meets the other requirements set forth in K.S.A. 1990 Supp. 12-1651.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma
Assistant Attorney General

RTS:JLM:MJS:bas