

NEWSPAPERS - Newspaper of "free circulation" not eligible to receive notices of publication.

July 31, 1935

8-10



Honorable Jack R. Adams
Rolla Printing Company
Rolla, Missouri

Dear Sir:

We have your request of July 19, 1935,
which is as follows:

"We have been debating a question here for some time concerning the publication of legal notices, and we would like for you to give us your opinion on the matter.

"We are publishing a free circulation newspaper, distributing it through the Rolla Post Office to the boxholders, 631 of them, on three Rural Routes out of Rolla, and by carrier to every home in Rolla, for a total of 1800 copies. The legal notice law reads that to accept legal publications, the paper must be in existence for one year, and be of 'general circulation.'

"The Rolla School Board is seeking bids on the publication of their financial statement, and they would like for us to be able to publish it because of our much larger circulation.

"How would our paper, free circulating, with only seventeen paid subscribers, seventeen people have paid fourth class

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postage to get it, be considered regarding other legal notice publications.

"I would appreciate your, and your Department's opinions on this matter as soon as possible so that we may notify the School Board at once of our position."

The statute pertaining to public advertisements is Section 13775, Laws Mo. 1931, p. 303. It is as follows:

"All public advertisements and orders of publication required by law to be made, and all legal publications affecting the title to real estate, shall be published in some daily, tri-weekly, semi-weekly or weekly newspaper of general circulation in the county where located and which shall have been admitted to the post office as second class matter in the city of publication; shall have been published regularly and consecutively for a period of one year; shall have a list of bona fide subscribers voluntarily engaged as such who have paid or agreed to pay a stated price for a subscription for a definite period of time. Provided that when a public notice required by law to be published once a week for a given number of weeks, shall be published in a daily, tri-weekly, semi-weekly or weekly newspaper, the notice shall appear once a week on the same day of each week, and further provided, that every affidavit to proof of publication shall state that the newspaper in which such notice was published has complied with the provisions of this act. All laws or parts of laws in conflict with this section, except sections 13777,

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13778, 13779, 7631, 7632 and 7633, Revised Statutes of Missouri, 1929, are hereby repealed."

The underlined portions of the above statute were inserted by the 1931 Legislature. In order for a newspaper to qualify for public advertisements and orders of publication required by law, it must meet five conditions under the above statute, which briefly are:

- (1) It must be published daily, tri-weekly, semi-weekly or weekly.
- (2) Be of general circulation.
- (3) Be admitted to the post office as second class matter.
- (4) Shall have been published regularly and consecutively for one year.
- (5) Shall have a list of bona fide subscribers voluntarily engaged as such who have paid or agreed to pay a stated price for a subscription for a definite period of time.

From your request, it appears that you have only seventeen subscribers who have paid postage for receiving the paper as fourth class matter. The balance of the 1800 subscribers belong to what may be termed a "free list", wherein they receive the paper without having to pay for it.

Since the amendment of the above statute in 1931, it is necessary that all newspapers, to be eligible for legal notices of publication, must have been admitted to the post office as second class matter. The qualifications for admission of a newspaper as second class matter are set out in 39 U. S. C. A., Section 226, and are as follows:

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"Except as otherwise provided by law, the conditions upon which a publication shall be admitted to the second class are as follows: First. It must regularly be issued at stated intervals, as frequently as four times a year, and bear a date of issue, and be numbered consecutively. Second. It must be issued from a known office of publication. Third. It must be formed of printed paper sheets, without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications. Fourth. It must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers. Nothing herein contained shall be so construed as to admit to the second class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates."

It will be noted in the above section of the Federal Law that a newspaper "designed primarily for advertising purposes, or for free circulation" is not eligible to enter the post office as second class matter. The term "primarily for advertising purposes" means chiefly or principally. Lewis Publishing Co. v. Wyman, (No. 1910), 182 Fed. 13.

A newspaper otherwise entitled to be admitted as second class matter would violate the federal law by mailing under the second class matter a newspaper designed primarily for advertising purposes, or for free circulation. U. S. v. Atlanta Journal Co., 185 Fed. 656.

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The phraseology "legitimate list of subscribers", as used in the Federal Code, means subscribers taken at more than a nominal price, wherein a price has been paid or agreed to be paid by the subscriber; in substance, it means a paid list of subscribers. Myrick v. U. S., 291 Fed. 1.

From the 1931 law, it is apparent that the term "bona fide subscribers" means a group of subscribers well distributed over the county of circulation, who have in good faith paid a valuable consideration to receive the newspaper over a fixed period of time. The term "bona fide subscription list of paying subscribers", as a requirement of a newspaper of general circulation for the publication of notices, means a real, actual, genuine subscription list containing only the names of those paying in good faith regularly for their subscription. Application of Herman, 191 Pac. 934, 939; 183 Cal. 153.

CONCLUSION.

It is, therefore, the opinion of this office that a newspaper whose circulation is primarily on the "free list" as distinguished from a newspaper which has a paid-up subscription list, is not eligible to receive public advertisements and orders of publication required by law to be published; is not eligible to be admitted to the post office as second class matter, and does not have a bona fide list of subscribers who have voluntarily paid or agreed to pay a stated price for a subscription for a definite period of time.

Respectfully submitted,

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APPROVED:

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