

OPINION NO. 2013-015

Syllabus:

2013-015

Pursuant to R.C. 7.12(A)(5), when a political subdivision is required to make legal publication in a newspaper of general circulation, the publication must be circulated generally by proof of the filing of a United States Postal Service “Statement of Ownership, Management, and Circulation” (PS Form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within twelve months immediately preceding legal publication.

To: Jessica A. Little, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Michael DeWine, Ohio Attorney General, May 8, 2013

You have requested an opinion regarding the meaning and application of language in R.C. 7.12(A)(5). Specifically, you inquire whether a political subdivision that is required to make legal publication in a newspaper of general circulation must use a publication that is circulated generally by proof of the filing of a United States Postal Service "Statement of Ownership, Management, and Circulation" (PS Form 3526) with the local postmaster or by proof of an independent audit. You explain that it is your understanding that the requirement to file a PS Form 3526 or proof of an independent audit applies only to legal publication made by state agencies.

R.C. 7.12 provides, in pertinent part:

(A) Whenever a state agency or a political subdivision of the state is required by law to make any legal publication in a newspaper, the newspaper shall be a newspaper of general circulation.

As used in the Revised Code, "newspaper" or "newspaper of general circulation" . . . is a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements:

. . . .

(5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States postal service "Statement of Ownership, Management, and Circulation" (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve months immediately preceding legal publication.

In order to answer your inquiry, we must determine whether the clause "if legal publication is made by a state agency" modifies the clause before it ("[t]he publication is circulated generally . . . in the state") or the clause following it ("by proof of the filing of a United States postal service 'Statement of Ownership, Management, and Circulation' [form]"). In other words, we must determine whether the "proof clause" ("by proof of the filing of a [PS Form 3526] with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve months immediately preceding legal publication") modifies the clause, "[t]he publication is circulated generally . . . in the political subdivision . . . or in the state," or the clause, "if legal publication is made by a state agency."

Two alternative interpretations of the language in R.C. 7.12(A)(5) are possible depending on the resolution of that determination. If the "proof clause" modi-

fies the clause, “[t]he publication is circulated generally . . . in the political subdivision . . . or in the state,” then proof that the publication is circulated generally is required when publication is made by a political subdivision as well as a state agency. If, however, the “proof clause” modifies the clause, “if legal publication is made by a state agency,” then proof that the publication is circulated generally is required only when publication is made by a state agency.

When ascertaining the meaning of a statute, the primary goal is to effect the intent of the General Assembly. *Gutmann v. Feldman*, 97 Ohio St. 3d 473, 2002-Ohio-6721, 780 N.E.2d 562, at ¶14. The first step in determining legislative intent is to examine the language of the statute. *Id.* It is presumed that in enacting a statute, the General Assembly intended that the entire statute be effective and that a just and reasonable result is obtained. R.C. 1.47(B), (C). The words and phrases contained in a statute “shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42.

R.C. 7.12 requires political subdivisions and state agencies to make legal publication in a newspaper of general circulation. A “newspaper of general circulation” must bear a name or title and be regularly issued at least once per week. R.C. 7.12(A). In addition, the newspaper must meet all five of the requirements specified in R.C. 7.12(A)(1)-(5), the last of which is that the newspaper is circulated generally.¹ Proof that the newspaper is circulated generally may be made through the filing of a PS Form 3526 or by the performance of an independent audit of the publication. R.C. 7.12(A)(5).²

The language of R.C. 7.12(A)(5) is not ambiguous. In order to qualify as a “newspaper of general circulation” proof of the publication’s general circulation must be made. As both state agencies and political subdivisions share the obligation to make legal publication in a “newspaper of general circulation,” it follows that

¹ The other four requirements of R.C. 7.12(A) are:

(1) [The publication] is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or sixteen pages in the tabloid format.

(2) [The publication] contains at least twenty-five per cent editorial content, which includes, but is not limited to, local news, political information, and local sports.

(3) [The publication] has been published continuously for at least three years immediately preceding legal publication by the state agency or political subdivision.

(4) The publication has the ability to add subscribers to its distribution list.

² A PS Form 3526 must be filed or an independent audit must be performed “within the twelve months immediately preceding legal publication.” R.C. 7.12(A)(5).

proof of the publication's general circulation is required when publication is made by political subdivisions as well as state agencies. Accordingly, the clause "if legal publication is made by a state agency" must modify the clause before it (*i.e.*, "[t]he publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state"). It cannot modify the "proof clause" (*i.e.*, "by proof of the filing of a [PS Form 3526] with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve months immediately preceding legal publication").

The placement of the clause, "if legal publication is made by a state agency," after the clause, "[t]he publication is circulated generally . . . in the political subdivision . . . or in the state," clarifies where the publication must be circulated when legal publication is made by a state agency. If legal publication is made by a state agency, the publication must be circulated generally in the state. If, on the other hand, legal publication is made by a political subdivision, the publication must be circulated generally in the political subdivision. Thus, it is evident from the language of R.C. 7.12(A)(5) that the requirement of proof that the publication is circulated generally applies when legal publication is made by a political subdivision as well as a state agency.

We do not discern a logical basis for requiring a state agency to use a publication that has demonstrated proof of general circulation when a political subdivision would not be subject to the same requirement. The purpose of making legal publication is to provide notice to the appropriate population of certain activities undertaken by the state or a political subdivision. *See Record Publishing Co. v. Kainrad*, 49 Ohio St. 3d 296, 301, 551 N.E.2d 1286 (1990) ("[t]here is good reason for the 'general circulation' requirement. The purpose of 'notice' is to provide ' . . . information, an advice, or written warning, in more or less formal shape, intended to appraise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate'"). Providing notice in a publication that is not generally circulated in the relevant area would defeat the object of requiring legal publication. Accordingly, it is logical that the General Assembly intends the "proof clause" of R.C. 7.12(A)(5) to apply to legal publication made by political subdivisions as well as by state agencies.

It is, therefore, my opinion, and you are hereby advised that pursuant to R.C. 7.12(A)(5), when a political subdivision is required to make legal publication in a newspaper of general circulation, the publication must be circulated generally by proof of the filing of a United States Postal Service "Statement of Ownership, Management, and Circulation" (PS Form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within twelve months immediately preceding legal publication.