

OPINION NO. 91-059**Syllabus:**

1. For purposes of Ohio Const. art. XVI, §1, a newspaper is published in a county when it is issued or circulated to the public therein, regardless of where the newspaper is actually printed.
2. For purposes of selecting a newspaper for advertisement of constitutional amendments pursuant to Ohio Const. art. XVI, §1, the provision of R.C. 7.12 governing instances where there are "less than two newspapers published in" a county applies when only one newspaper is actually printed in a county.
3. For purposes of selecting a newspaper for advertisement of constitutional amendments pursuant to Ohio Const. art. XVI, §1, when only one newspaper is actually printed in a county, R.C. 7.12 authorizes selection of a newspaper printed out of the county, if, in addition to being a newspaper of "general circulation," it is also "a newspaper regularly issued at stated intervals from a known office of publication located within" the county.

To: Steven C. LaTourette, Lake County Prosecuting Attorney, Painesville, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

I have before me your request for my opinion regarding the advertisement of state constitutional amendments as governed by Ohio Const. art. XVI, §1 and R.C. 7.12. You relate that your county is served by two newspapers: a county paper and a large metropolitan paper. The county paper is printed and distributed from its headquarters in Lake County. The metropolitan paper has an office in Lake County where it transacts business. This latter paper, however, is wholly assembled and printed outside Lake County and maintains its principal headquarters outside the county. In light of these facts, your specific questions are:

1. Is the metropolitan paper a newspaper published in Lake County in accordance with the first sentence of R.C. 7.12, and Article XVI Section 1, Ohio Constitution, requiring proposed amendments to be published "...in at least one newspaper of general circulation in each county of the state, where a newspaper is published?"
2. Does R.C. 7.12 authorize the Board of Elections to advertise in the metropolitan paper because there are less than two newspapers published in the County?

The pertinent language of Ohio Const. art. XVI, §1 appears in its final paragraph, as follows:

Such proposed [constitutional] amendments, the ballot language, the explanations, and the arguments, if any, shall be published once a week for three consecutive weeks preceding such election, *in at least one newspaper of general circulation in each county of the state, where a newspaper is published.* (Emphasis added.)

R.C. 7.12 further states, in pertinent part:

Whenever any legal publication is required by law to be made in a newspaper published in a municipal corporation, county, or other political subdivision, the newspaper shall also be a newspaper of general circulation in the municipal corporation, county, or other political subdivision, without further restriction or limitation upon a selection of the newspaper to be used. If no newspaper is published in such municipal corporation, county, or other political subdivision, such legal publication shall be made in any newspaper of general circulation therein. If there are less than two newspapers published in any municipal corporation, county, or other political subdivision in the manner defined by this section, then any legal publication required by law to be made in a newspaper published in a municipal corporation, county, or other political subdivision may be made in any newspaper regularly issued at stated intervals from a known office of publication located within the municipal corporation, county, or other political subdivision. As used in this section, a known office of publication is a public office where the business of the newspaper is transacted during the usual business hours, and such office shall be shown by the publication itself. (Emphasis added.)

The constitution thus requires that the newspaper used for advertisement of constitutional amendments be both of general circulation and published in a county. R.C. 7.12 applies "[w]henver any legal publication is required by law to be made in a newspaper published in a...county." Accordingly, the provisions of R.C. 7.12 with respect to the choice of a paper are applicable to the advertisement of constitutional amendments. See generally *Hoffrichter v. State*, 102 Ohio St. 65, 67, 130 N.E. 157, 158 (1921) ("[t]he term 'law' [used in a statute] is clearly broad enough to comprehend constitutional law as well as statute law"). As you note in your letter, R.C. 7.12 appears to waive the requirement that the paper be published in the county in instances where only one paper is published in a county. I find upon

examination, however, that the apparent conflict between the constitutional requirement and the statutory provisions stems from the fact that the word "publish" is subject to two different meanings. In its broad, general sense, "publish" means "to issue (a printed work, etc.) to the public, as for sale." *Webster's New World Dictionary* 1149 (2nd college ed. 1984); see also *Black's Law Dictionary* 1233 (6th ed. 1990) ("to make public; to circulate"). As used in R.C. 7.12, however, the term "publish" obviously refers more narrowly to the actual printing of a paper. This narrow usage is evidenced by the distinction made between papers "published in" a county and papers "of general circulation therein" or papers "issued...from a known office of publication." See, e.g., R.C. 7.12 ("[i]f no newspaper is published...then any legal publication required...may be made in any newspaper of general circulation therein").

Constitutional Provision

It does not follow, however, that the same narrow meaning applies to the constitutional provision. A constitution is, by its nature, a fundamental instrument of law, which "can lay down only general rules, and employ general terms, leaving questions of construction to the appropriate departments of the government." *Hubbard v. Brush*, 61 Ohio St. 252, 265-66, 55 N.E. 829, 832 (1899). The same general rules of construction apply to constitutions as to statutes,

"save and except that the terms of a constitution must of necessity be of a more general and omnibus character, and, therefore, in order that the grants of power under the constitution shall be workable, such grants shall be favorably and liberally construed so as to effect the public welfare sought by the constitutional grant."

County of Miami v. City of Dayton, 92 Ohio St. 215, 223, 110 N.E. 726, 729 (1915). See also *Steele, Hopkins & Meredith Co. v. Miller*, 92 Ohio St. 115, 120, 110 N.E. 648, 649 (1915) (interpretation of constitution should "give effect to the intention of the people in adopting it, and...rules which are purely technical should not be permitted to thwart the attainment of that object"). Thus, the rules of constitutional construction favor construing the word "published" in Ohio Const. art. XVI, §1 in its broad, general sense of being issued or made available to the public in a particular county. This construction provides the greatest possible latitude in achieving the obvious constitutional objective of requiring advertisement of constitutional amendments in a newspaper in every county of Ohio.

It is apparent that the legislature has adopted this broad definition of "published" in construing Ohio Const. art. XVI, §1. As already noted, R.C. 7.12 uses "published" in the more narrow sense of actually printed, and, under certain circumstances, allows advertisement in a paper printed out of the county, even though a paper printed in the county may exist. Clearly, had the legislature ascribed the same narrow meaning to the constitutional use of the word "published," such a provision would be impermissible. It must be assumed that the legislature was aware of constitutional requirements in enacting R.C. 7.12. See generally *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955) (syllabus, paragraph one) ("[a]n enactment of the General Assembly is presumed to be constitutional"); R.C. 1.47(A) ("[i]n enacting a statute, it is presumed that: (A) compliance with the constitutions of the state and of the United States is intended"); 1988 Op. Att'y Gen. No. 88-030 at 2-125 (statute must be presumed constitutional unless a court declares otherwise). Thus, it is apparent from the provisions of R.C. 7.12 that the legislature interpreted the constitutional requirements more broadly. Accordingly, I find that for purposes of Ohio Const. art. XVI, §1, a newspaper is published in a county when it is issued or circulated to the public therein, regardless of where the newspaper is actually printed.¹

¹ I am aware that, under this definition, all newspapers of general circulation in a county will also be "published" in the county in the constitutional sense. This does not, however, create a redundancy that would imply the need for a more narrow constitutional definition of "published." Prior to 1974, Ohio Const. art. XVI, §1 required only that the

R.C. 7.12

Viewed in this light, all of the newspapers described in R.C. 7.12 meet the minimum constitutional standards for advertisement of constitutional amendments. R.C. 7.12 simply sets additional statutory standards which must be met in selecting a newspaper from those which are constitutionally qualified. Moreover, R.C. 7.12 provides that in counties where "less than two newspapers [are] published," in the narrow sense of actually printed, "then any legal publication required...may be made in any newspaper regularly issued from a known office of publication located within the...county...." Accordingly, you ask whether R.C. 7.12 authorizes advertisement in the metropolitan paper described in your request "because there are less than two newspapers published in the county."

Your request indicates that only one newspaper is actually printed in the county. Because R.C. 7.12 uses the term "published" narrowly, the provision allowing advertisement in a paper of general circulation issued from a known office of publication when less than two newspapers are published, *i.e.*, printed, in a county governs the circumstances you have described. Therefore, R.C. 7.12 authorizes advertisement in the metropolitan paper if "it is regularly issued at stated intervals from a known office of publication located within the...county." A known office of publication is defined as "a public office where the business of the newspaper is transacted during usual business hours, and such office shall be shown by the publication itself." In construing this language, I note that the statute does not require that a "known office" be the principal or only office of a newspaper. Further, because a "paper issued...from a known office" is contrasted with papers "published," *i.e.*, printed, in the county, the term "issued" should not be interpreted to require actual physical production of the paper from the office.

Whether a particular newspaper printed outside of the county meets these qualifications, is a question of fact which it is not appropriate to determine by means of an opinion of the attorney general. *See generally* 1983 Op. Att'y Gen. No. 83-057 at 2-232 (Attorney General "shall not attempt to make final determinations where issues of fact are involved"); *accord* 1989 Op. Att'y Gen. No. 89-078 at 2-362; 1989 Op. Att'y Gen. No. 89-050 at 2-242. While I have defined the broad parameters of the inquiry here, I must decline to render an opinion as to whether R.C. 7.12 authorizes advertisement in the specific paper you have described.

Conclusion

It is, therefore, my opinion and you are hereby advised that:

1. For purposes of Ohio Const. art. XVI, §1, a newspaper is published in a county when it is issued or circulated to the public therein, regardless of where the newspaper is actually printed.
2. For purposes of selecting a newspaper for advertisement of constitutional amendments pursuant to Ohio Const. art. XVI, §1,

newspaper be published, *i.e.*, circulated, in a county. *See* 1974 Ohio Laws, Part II, 1317 (HJR 61, adopted Feb. 13, 1974); Ohio Constitutional Convention 1912, vol. 1, p. 17. The fact that a newspaper is circulated in a county, however, does not necessarily imply that it is a paper of general circulation. Thus, the addition of the *general* circulation requirement served to narrow the class of newspapers constitutionally qualified for advertising amendments.

The term "newspaper of general circulation" is statutorily defined in R.C. 7.12. The requirements for general circulation include, *inter alia*, that the newspaper "be of a type to which the general public resorts for passing events," that it be issued at least weekly for a definite price paid by not less than fifty per cent of its recipients, that it have a second class mailing privilege, and that it meet size and duration of publication requirements. R.C. 7.12; *see also Record Publishing Co. v. Kainrad*, 49 Ohio St. 3d 296, 551 N.E.2d 1286 (1990). These requirements are in addition to the requirement that the newspaper be circulated in the county.

the provision of R.C. 7.12 governing instances where there are "less than two newspapers published in" a county applies when only one newspaper is actually printed in a county.

3. For purposes of selecting a newspaper for advertisement of constitutional amendments pursuant to Ohio Const. art. XVI, §1, when only one newspaper is actually printed in a county, R.C. 7.12 authorizes selection of a newspaper printed out of the county, if, in addition to being a newspaper of "general circulation," it is also "a newspaper regularly issued at stated intervals from a known office of publication located within" the county.