

OPINION NO. 2008-013**Syllabus:**

2008-013

An online version of a newspaper, which newspaper is of general circulation in a particular county, is not a “newspaper of general circulation” for the purpose of notice by publication as required by R.C. 119.07.

To: Betsy Houchen, RN, MS, JD, Executive Director, Columbus, Ohio
By: Marc Dann, Attorney General, April 30, 2008

You have requested an opinion whether an online version of a newspaper of general circulation in a county is also a “newspaper of general circulation” in the county, as that term is understood by R.C. 119.07, for the purpose of notice by publication. For the reasons that follow, we conclude that an online version of such a newspaper is not a newspaper of general circulation for the purpose of notice by publication.

R.C. 119.07 provides, in pertinent part, that “in all cases in which section 119.06 of the Revised Code requires an agency¹ to afford an opportunity for a hearing prior to the issuance of an order, *the agency shall give notice to the party informing the party of the party’s right to a hearing.*” (Emphasis and footnote added.) No-

¹ R.C. 119.01(A)(1) defines “[a]gency” for the purposes of R.C. Chapter 119 as follows:

“Agency” means, except as limited by this division, any official, board, or commission having authority to promulgate rules or make adjudications in the civil service commission, the division of liquor control, the department of taxation, the industrial commission, the bureau of workers’ compensation, the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to sections 119.01 to 119.13 of the Revised Code, and the licensing functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses.

tice is required to be sent by registered mail, return receipt requested. If the notice is returned because the party fails to claim it, the agency is required to “send the notice by ordinary mail to the party at the party’s last known address” and to “obtain a certificate of mailing.” R.C. 119.07. If the certificate of mailing is obtained, service is complete. If a notice sent by registered or ordinary mail is returned for failure of delivery, the agency must either “make personal delivery of the notice” or “cause a summary of the substantive provisions of the notice to be *published* once a week for three consecutive weeks in a *newspaper of general circulation* in the county where the last known address of the party is located.” R.C. 119.07 (emphasis added).

Application of R.C. 7.12

The General Assembly has not specifically defined the terms “newspaper,” “newspaper of general circulation,” or “publish” for purposes of R.C. Chapter 119; however, R.C. Chapter 7 addresses process and publication.² R.C. 7.12 provides, in 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 . . .

In addition to all other requirements, a newspaper or newspaper of general circulation, except those publications performing the functions described in section 2701.09 of the Revised Code for a period of one year

² See *Record Publ’g Co. v. Kainrad*, 49 Ohio St. 3d 296, 551 N.E.2d 1286 (1990) (syllabus, paragraph 3) (“[t]o be a ‘newspaper of general circulation,’ a publication must meet all the requirements of R.C. 7.12”); 1991 Op. Att’y Gen. No. 91-059, at 2-292 n.1 (“[t]he term ‘newspaper of general circulation’ is statutorily defined in R.C. 7.12”). See also 2005 Op. Att’y Gen. No. 2005-017, at 2-163 and 2-164 n.3 (concurring with the reasoning set forth in 1991 Op. Att’y Gen. No. 91-059 and finding that in R.C. Chapter 7, “the General Assembly intended to use the word ‘published’ in its narrow sense, *i.e.*, printed”).

immediately preceding any such publication required to be made,³ shall be a publication bearing a title or name, regularly issued as frequently as once a week for a definite price or consideration paid for by not less than fifty per cent of those to whom distribution is made, having a second class mailing privilege, being not less than four pages, published continuously during the immediately preceding one-year period, and circulated generally in the political subdivision in which it is published. Such publication must be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.⁴ (Emphasis and footnotes added.)

Reiterating the requirements set forth in R.C. 7.12, a “newspaper of general circulation” must: (1) “be a publication bearing a title or name,” (2) be “regularly issued as frequently as once a week,” (3) be issued “for a definite price or consideration paid for by not less than fifty per cent of those to whom distribution is made,” (4) have “a second class mailing privilege,” (5) be “not less than four pages,” (6) have been “published continuously during the immediately preceding one-year period,” (7) be “circulated generally in the political subdivision in which it is published,” and (8) “be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.”

The Meaning of “Online”

In order to determine whether an online version of a newspaper is a “newspaper of general circulation,” we must first consider what is meant by the term “online.” Online is a general term defined as “connected to, served by, or available through a system and esp. a computer or telecommunications system (as the Internet).” *Merriam-Webster’s Collegiate Dictionary* 867 (11th ed. 2007). For purposes of your request, we will assume “online” means available through the Internet. R.C. 1.59(K) defines “Internet” as “the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork known as the world wide web.” *See* 2000 Op. Att’y Gen. No. 2000-046, at 2-279 n.1 ([t]he Internet is “a collection of interconnected networks of computers that permits and enables communications between individuals, universities, governments, organizations, and businesses,” citing F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxviii, xxx-xxxii (1999) and George B. Delta & Jeffrey H. Matsuura, *Law of the Internet* § 1.02 (1999)).

“[I]nformation made available by means of the Internet may be accessed

³ R.C. 2701.09 describes requirements for the publication of court calendars, and it therefore is not an applicable exception in this instance.

⁴ *See Record Publ’g Co. v. Kainrad* (syllabus, paragraph 3) (one of the requirements of R.C. 7.12 is that the publication “be of a type to which the general public resorts for news of passing events”).

and retrieved through the World Wide Web.” 2002 Op. Att’y Gen. No. 2002-040, at 2-256. “World Wide Web” means “a part of the Internet accessed through a graphical user interface and containing documents often connected by hyperlinks.” *Merriam-Webster’s Collegiate Dictionary* 1444 (11th ed. 2007). The Web “allows textual, graphical, video, and audio information to be widely published and accessed by users having Web browser software and Internet access installed on their computers.” F. Lawrence Street & Mark P. Grant, *Law of the Internet*, xxx (1999). The Web’s “capability comes from its use of a specific programming language for all of the material incorporated into the Web, *Hypertext Markup Language* (HTML). HTML permits the use of diverse media in Web sites. HTML documents are communicated through the Internet using the *Hypertext Transfer Protocol* (HTTP).”⁵ George B. Delta & Jeffrey H. Matsuura, *Law of the Internet*, § 1.04 (1999). It is through the World Wide Web that one is able to access a web site that contains the online version of a newspaper of general circulation.

Newspapers vary in their online offerings. Some sites are free for all users to view, while others may require payment of an online subscription fee or maintenance of an existing subscription to the print edition of the newspaper. Newspapers often reformat print editions for their web sites. Online newspapers typically present as a series of links⁶ to various news stories or links to pages of general news topics that then provide links to individual articles.⁷

In addition to the typical series of links most newspapers use on their websites, there are still other ways newspapers make content available to their readers. For instance, some of Ohio’s newspapers offer what they call an “electronic edition” or “digital edition,” which has an appearance and format very similar to the hard copy, printed edition, but is viewed and read electronically rather than in hard copy, and is accessed in a number of ways depending upon the newspaper.⁸ With the wide range of possibilities for offering newspapers online, the only trait common to all online newspaper editions is their accessibility through the Internet.

Discussion

The language of R.C. 7.12 describes eight separate characteristics of a

⁵ See 2002 Op. Att’y Gen. No. 2002-040, at 2-255 and 2-256 (setting forth a more detailed discussion of the components of the Internet and the electronic operations of the World Wide Web).

⁶ “A web page will often include hyperlinks (or links), displayed as graphics or highlighted text, that will connect the viewer to another place on that site or to a different web site altogether.” 2002 Op. Att’y Gen. No. 2002-001, at 2-1 n.1.

⁷ For examples and comparison, see *The Columbus Dispatch* at <http://www.dispatch.com>; *The Plain Dealer* (Cleveland) at <http://www.cleveland.com>; the *Dayton Daily News* at <http://www.daytondailynews.com>; *The Blade* (Toledo) at <http://www.toledoblade.com>; and *The Vindicator* (Youngstown) at <http://www.vindy.com>.

⁸ See <http://ee.dispatch.com>; <http://www4.vindy.com/subscribe>. *The Blade* offers a similar “e-edition.”

newspaper of general circulation. Online versions of newspapers do not possess all of these characteristics.

Specifically, a newspaper of general circulation must be a publication issued “for a definite price or consideration paid for by not less than fifty per cent of those to whom distribution is made” and “having a second class mailing privilege.” R.C. 7.12. While some newspapers charge a fee to view portions of their online offerings (usually archives or the previously-described “electronic editions” formatted to resemble printed editions), nearly all newspapers offer most of their current, daily content free of charge to all those who access that content online. Furthermore, an online version of a newspaper does not and cannot possibly have a second class mailing privilege⁹ because the concept of “mailing” in this context applies only to materials sent through the United States Postal Service. This is not the case for an online version of a newspaper, the content of which is transmitted by the Internet and not by the United States Postal Service. While online versions of newspapers may or may not possess other characteristics required of a newspaper of general circulation,¹⁰ an online version of a newspaper at a minimum fails to

⁹ “[S]econd class” is “a class of U.S. or Canadian mail comprising periodicals sent to regular subscribers.” *Merriam-Webster’s Collegiate Dictionary* 1121 (11th ed. 2007). By requiring a second class mailing privilege, the General Assembly refers to “mail” in its traditional sense, as “material sent or carried in the postal system.” *Id.* at 749. A second class mailing privilege cannot apply to e-mail or other information transmitted through the Internet.

1986 Op. Att’y Gen. No. 86-097 addresses the question whether a publication that has no second class mailing privilege and is distributed free of charge may qualify as a newspaper for purposes of required publication of legal notices. The opinion determined that “R.C. 7.12 does not permit a county to make the required publication of legal notices in a newspaper which has no second class mailing privilege and is distributed free of charge.” 1986 Op. Att’y Gen. No. 86-097, at 2-550.

¹⁰ R.C. 7.12 states that a newspaper of general circulation shall be a “publication . . . being not less than four pages.” “[T]he General Assembly intended to use the word ‘published’ [as used in R.C. 7.12] in its narrow sense, *i.e.*, printed.” 2005 Op. Att’y Gen. 2005-017, at 2-164 n.3. This legislative finding limits the possibility that a newspaper “published” only electronically on a web site could satisfy the requirement that it be a “publication” in order to be a newspaper of general circulation. Furthermore, what constitutes a “page” for purposes of the requirements of R.C. 7.12 is unclear, but it is even more difficult to discern when evaluating the “pages” of an online newspaper. Links to news articles online will often display stories on their own web page, yet the amount of textual content is not comparable to a page of the print version of the newspaper.

Additionally, a newspaper of general circulation shall be a publication “circulated generally in the political subdivision in which it is published.” R.C. 7.12. Determining whether an online version of a newspaper is generally circulated may be problematic when considering the meaning of “circulated” and the avail-

meet these two requirements. Thus, in accordance with the current language of R.C. 7.12, an online version of a newspaper cannot be deemed a newspaper of general circulation on its own merits.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, an online version of a newspaper, which newspaper is of general circulation in a particular county, is not a “newspaper of general circulation” for the purpose of notice by publication as required by R.C. 119.07.