

OPINION NO. 86-097**Syllabus:**

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.

To: Gregory J. Brown, Ashtabula County Prosecuting Attorney, Jefferson, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986

I have before me your request for my opinion with regard to whether a particular newspaper may be used for the publication of legal notices. You have asked whether a county may use for publication of a legal notice a newspaper which has no second class mailing privilege and is distributed for free.

Your question requires application of R.C. 7.12, which describes the newspapers that are qualified to carry legal notices. R.C. 7.12 reads as follows:

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.

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 immediately preceding any such publication required to be made, 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. (Emphasis added).

The first paragraph of R.C. 7.12 concerns the location in which a newspaper is published or issued, and the extent of the newspaper's circulation. It provides, first, that when a legal publication is required by law to be made in a newspaper published in a particular geographical area, the newspaper must also be a newspaper of general circulation. It provides, next, that if no newspaper is published in the area, any newspaper of general circulation in the area may be used for the publication of legal notices. It provides, finally, that if fewer than two newspapers are published in the area, then publication may be made in a newspaper that is not published in the area but is, instead, issued at stated intervals from a known office of publication located within the area.

The second paragraph of R.C. 7.12 contains requirements that apply "[i]n addition to all other requirements." In order to constitute "a newspaper or newspaper of general circulation" for purposes of the first paragraph of R.C. 7.12 and thus to be an acceptable medium for carrying legal notices, a paper must meet the requirements set forth in the second paragraph of R.C. 7.12. In particular, it must be "regularly issued...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." You have informed me that the publication in question does not meet these requirements. It is therefore, not a "newspaper or newspaper of general circulation" for purposes of R.C. 7.12. See generally Wachendorf v. Shaver, 149 Ohio St. 231, 237, 78 N.E.2d 370, 374 (1948) ("where the statute is expressed in general language, it is to be applied to all cases coming within its terms").

The second paragraph of R.C. 7.12 expressly excludes from compliance with its provisions certain papers performing the functions described in R.C. 2701.09. R.C. 2701.09 describes daily law journals which carry court calendars. You have sent me a copy of the newspaper in question, and it clearly does not qualify as a daily law journal. It is, therefore, subject to the requirements of the second paragraph of R.C. 7.12, and is

unable to carry legal notices since it does not satisfy those requirements.

I am aware that in Ambos v. Campbell, 40 Ohio App. 346, 178 N.E. 320 (Cuyahoga County 1931), the court determined, under statutes then in existence, that a newspaper whose circulation was largely unpaid constituted a newspaper of "general circulation" that was qualified to carry a legal notice. The court stated: "when the circulation is extensive throughout the county, it makes no difference whether it consists of paid subscribers or nonpaying recipients of the same." 40 Ohio App. at 351, 178 N.E. at 322. By the enactment of the second paragraph of R.C. 7.12, see 1956-1957 Ohio Laws 784 (Am. Sub. H.B. 549, eff. Sept. 14, 1957), the General Assembly evidently rejected this philosophy and expressed the judgment that, to be effective, a legal notice must appear in a newspaper that is paid for by at least fifty percent of those to whom distribution is made. See generally Wachendorf v. Shaver, 149 Ohio St. at 236-37, 78 N.E.2d at 374 ("the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute").

It is, therefore, my opinion and you are hereby advised, 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.