

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37202

July 31, 2009

Opinion No. 09-145

The Millington Star as a Newspaper of General Circulation

QUESTION

Whether *The Millington Star* qualifies as a “newspaper” and/or “newspaper of general circulation” for the purposes of publication of official notices within Shelby County, Tennessee.

OPINION

The Millington Star does not qualify as a “newspaper” and/or “newspaper of general circulation” for the purposes of publication of official notices within Shelby County, Tennessee.

ANALYSIS

Information submitted with this opinion request states that *The Millington Star* is published weekly and sells for seventy-five cents (75¢) per issue. The publication contains coverage of local news, opinion, sports, entertainment, and advertising. The entire publication appears focused on information relevant to the Millington area. Distribution data submitted with this opinion request shows that, on May 21, 2009, approximately 870 copies of the publication were distributed to 71 businesses apparently in the Millington area, with about 300 copies returned unsold. The publication does not appear to be distributed in significant quantities outside of the Millington area.

Tennessee statutes contain several references to the terms “newspaper” and “newspaper of general circulation,”¹ but the terms are only defined in the Election Code.² Because *The*

¹ For example, *see* Tenn. Code Ann. §§ 4-13-302 and 5-8-507 (state and county government notices); Tenn. Code Ann. § 9-21-903 (notices of public bonds); and Tenn. Code. Ann. § 40-12-105 (notices in grand jury proceedings).

² For any given election, each county’s election commission determines in which paper(s) it may publish such notices consistent with the statutory factors for determining what qualifies as a “newspaper” or “newspaper of general circulation.” Tenn. Code Ann. § 2-12-111. To meet the Election Code requirements the publication must bear a title or name, be regularly issued at least as frequently as once a week, for a definite price, and have a second-class mailing privilege. It must be not less than four pages, be published continuously during the immediately preceding one-year period, and be published for the dissemination of news of general interest. Finally, it must be circulated generally in the political subdivision in which it is published and in which notice is to be given. Tenn.

Millington Star is not circulated generally within Shelby County (the political subdivision in which it is published and in which notice is to be given), it does not comply with the Election Code's definition of a "newspaper of general circulation." Tenn. Code Ann. § 2-1-104(a)(13).³

With respect to the statutes in which the terms "newspaper" or "newspaper of general circulation" are not defined, three criteria have been established in order for a publication to qualify as such. See Op. Tenn. Att'y Gen. 09-07 (January 26, 2009); Op. Tenn. Att'y Gen. 06-166 (November 9, 2006); Op. Tenn. Att'y Gen. 06-158 (October 9, 2006); Op. Tenn. Att'y Gen. 02-050 (April 17, 2002). First, the publication should be available in all parts of the county. Second, it should be published at least weekly. Third, it should contain news of general interest to the public. See Op. Tenn. Att'y Gen. 04-064 (April 15, 2004); Op. Tenn. Att'y Gen. 93-19 (March 11, 1993); *Cook v. McCullough*, 1989 WL 155926, *7 (Tenn. Ct. App.), *perm app. denied* (1990)(examined these criteria in determining that *The Nashville Record* was a newspaper for purposes of publication of tax sale notices pursuant to Tenn. Code Ann. § 67-5-2502).

Only approximately 870 copies of each edition of *The Millington Star* are distributed at approximately 71 business locations within the Millington area. Of these copies, it appears that approximately 1/3 are returned unsold. Millington contains 15.6 square miles and had a population of 10,433 according to the 2000 census.⁴ By contrast, Shelby County contains approximately 755 square miles and had a population of 897, 472 according to the 2000 census. *The Millington Star* does not appear to be distributed in any significant numbers within the City of Memphis (the county seat) or elsewhere in the county outside of the Millington area. Therefore it does not appear that *The Millington Star* is available in all parts of Shelby County.

Based on the information supplied with your request, this Office concludes that *The Millington Star* does not meet the general and statutory definitions of "newspaper" and/or "newspaper of general circulation" for purposes of publication of official notices within Shelby County.

ROBERT E. COOPER, JR.
Attorney General and Reporter

Code Ann. § 2-1-104(a)(13).

³ The Shelby County Election Commission may determine that, for City of Millington municipal elections only, official election notices may be published in *The Millington Star*, as in that instance the appropriate political subdivision where notice is to be given may be the City of Millington.

⁴ The land mass and population figures used in this opinion come from the Tennessee Blue Book. See <http://Tennessee.gov/sos/bluebook>.

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Requested by:

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