

## Opinion No. 64-12

February 3, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General James E. Snead, Assistant Attorney General

**TO:** Mrs. Alberta Miller, Secretary of State, Santa Fe, New Mexico

### QUESTION

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Is the NAVAJO TIMES a newspaper, published by the Navajo Tribe, whose offices are in Window Rock, Arizona, and whose circulation is within the counties of McKinley and San Juan in New Mexico, and which is entered in the second class postal privilege of such counties, a "legal newspaper" within the meaning of Section 10-2-2, N.M.S.A., 1953 Compilation?

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

The statutory section in question provides as follows:

"Section 10-2-2. 'Legal newspaper' defined. -- Any and every legal notice or advertisement shall be published in a daily, a tri-weekly, a semi-weekly or a weekly newspaper of general paid circulation, which is entered under the second class postal privilege in the county in which said notice or advertisement is required to be published; which said newspaper, if published triweekly, semiweekly, or weekly, shall have been so published in such county continuously and uninterruptedly, during the period of at least twenty-six (26) consecutive weeks next prior to the first issue thereof containing any such notice of advertisement, and which said newspaper, if published daily, shall have been so published in such county, uninterruptedly, and continuously, during the period of at least six (6) months next prior to the first issue thereof containing any such notice or advertisement; Provided, that the mere change in the name of any newspaper, or the removal of the principal business office or seat of publication of any newspaper from one place to another **in the same county** shall not break or affect the continuity in the publication of any such newspaper if the same is in fact continuously and uninterruptedly **printed and published within such county** as herein provided; Provided, further that a newspaper shall not lose its rights as a legal publication if it should fail to publish one (1) or more of its issues by reason of fire, flood, accident,

transportation embargo or tie-up, or other casualty beyond the control of the publisher; Provided, further, that any legal notice which fails of publication for the required number of insertions by reasons beyond the control of the publisher, shall not be declared illegal, if publication has been made in one issue of said publication; Provided, further, that if in any county in this state there shall not have been published therein any newspaper or newspapers for the prescribed period at the time when any such notice or advertisement is required to be published then such notice or advertisement may be published in any newspaper or newspapers having a general paid circulation and/or published and printed in whole or in part in said county." (Emphasis supplied)

At least three prior Attorney General's Opinions have been issued dealing with the general subject matter of publication of notice, but, as will be seen, none of these deal specifically with the question now at hand.

Opinion No. 5146, issued on April 23, 1948 at page 145 held it to be the opinion of the Attorney General that in order for a newspaper to be "legal" for publication of notices, it did not have to be both published and printed within the county, but only published within the county. Such would seem to be the law today. See 66 C.J.S. "Newspapers," section 7. See also **Petition of Herald Publishing Co.**, \_\_\_\_, 311 P.2d 98, which can be taken to hold that "printing" and "publishing" are two different terms when used in relation to newspapers.

Opinion No. 60-47, issued in 1960 at page 400, held that the Village of Espanola must publish in two newspapers since the village is situated in two counties and there were no newspapers qualified in both counties, but one qualified in each county.

Opinion No. 63-24, issued in March 1963, held that a municipality could publish its ordinances in a newspaper of general circulation in the municipal corporation, which newspaper was not published within the corporate limits even though there were newspapers published within the corporate limits. It should be noted, however, that this opinion dealt with the special situation of publication of municipal ordinances which publication is governed specially by Section 14-25-7, N.M.S.A., 1953 Compilation.

Although none of the opinions mentioned above dealt directly with the situation at hand, a reading of them indicates their assumption that a newspaper "published" within a county must actually be located within the county even though it does not have to be printed within the county, Opinion No. 5146, supra.

That it was in fact the intention of the legislature that legal notices be published in newspapers located within the county is seen from the fourth proviso of the statute defining a "legal newspaper" quoted above. This section provides that if there is no newspaper **published within the county** meeting the requirements of the statute, **then** notices and advertisements "may be published in any newspaper or newspapers having a general paid circulation and/or printed in whole or in part in said county." This, only where no newspaper is published in the county. If mere circulation or entry into the second class postal privilege within a county were sufficient to constitute a newspaper

"legal" the above quoted proviso would be meaningless. Such an intent cannot be attributed to the legislature.

In **Montesano v. Liberty Warehouse Co.**, 120 N.J.L. 124, (E&A 1938) quoted with approval in **Wildwood Independent Record Publishing Co. v. City of Wildwood**, 114 A. 2d 483, 35 N.J. Super. 543, the court stated:

"It appears, however, that within the meaning of such statutes (requiring publication within a county) as that upon which we are now passing, the place of publication of a newspaper is where the paper is first put into circulation, where it is first issued to be delivered or sent, by mail or otherwise to its subscribers."

Blacks Law Dictionary, Fourth Edition, 1951, defines the term "publication" when applied to newspapers, as follows:

"To publish a newspaper ordinarily means to compose, print, issue, and distribute it to the public, and especially its subscribers, at or from a certain place."

Finally, it is stated in 66 C.J.S., "Newspapers," Section 7:

"It is within the power of the legislature to require that newspapers entitled and qualified as publishers of public and official notices, advertisements, leases, etc. shall be published within the particular locality affecting the publication . . ." and at page 32:

"It has been held that a newspaper printed outside of the locality may be considered as published therein if it is mailed from the locality and distributed therefrom; (citations omitted) that the place of publication of a newspaper is the place where it is first put into circulation, where it is first issued to be delivered or sent, by mail or otherwise, to its subscribers."

Thus, it can be seen that although it is not necessary that a newspaper be both printed and published within a county for it to be a "legal" newspaper, it at least must be published therein, and that "publication" contemplates that the paper issue to its subscribers from the county. In the present case the newspaper is published in Window Rock, Arizona, and mailed to subscribers in San Juan and McKinley Counties in New Mexico. Even under the most liberal interpretation of the New Mexico law, it is not possible to say that the newspaper is "published" in these counties. It is our opinion that the newspaper is published in Window Rock, Arizona, and therefore not a "legal newspaper" in New Mexico.

That the newspaper is in peculiar circumstances, being the chief newspaper within the Navajo Tribe, does not alter the fact that the legislature of New Mexico has established a certain standard for a "legal newspaper," and the NAVAJO TIMES does not meet that standard. It would seem that in view of its special circumstances, the TIMES would have excellent reasons for asking the legislature for a special law to alter its situation.

This opinion should not be taken to mean that legal notices cannot be carried by the TIMES, but only that it does not come within the definition of a "legal newspaper." Any legal notices carried in the paper, however, could not be considered as being binding notice on parties, but the people reading the paper would at least be informed of the subject matter advertised.