

Opinion No. 81-13

July 9, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Senator James J. Rogers, 4585 Wildwood Place, Las Cruces, New Mexico 88001

LEGAL NOTICES

Synopsis: The provisions of Section 14-11-2 NMSA 1978 do not require publication of legal notices and advertisements in a newspaper which is entered under the second class postal privilege in the county of publication.

QUESTIONS

Do the provisions of Section 14-11-2 NMSA 1978 require publication of legal notices and advertisements in a newspaper which is entered under the second class postal privilege in the county of publication?

CONCLUSIONS

No. Opinion of the Attorney General No. 60-46, dated March 4, 1960, is hereby expressly overruled insofar as it is inconsistent with this opinion.

ANALYSIS

Section 14-11-2 NMSA 1978 provides, in pertinent part, that

"Any and every legal notice or advertisement shall be published only in a daily, a triweekly, a semiweekly 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;"

OPINION

In Opinion of the Attorney General No. 60-46, dated March 4, 1960, this office concluded that in order to comply with the requirements of legal publication, a newspaper must be entered under the second-class postal privilege. However, in **State ex rel. Sun Company v. Vigil**, 74 N.M. 766, 398 P.2d 987 (1965), the New Mexico Supreme Court held that second-class postal privilege was not necessary to effect legal publication in accordance with Section 14-11-2. The Court explained:

". . . As we have said, the purpose of the statute is to give the public the opportunity to read the legal publication - this is the mandatory portion of the statute, and the provision for the second-class mailing privilege is of relatively small importance in relation to the general object intended by the act and is merely directory." 74 N.M. at 773.

In light of this clear ruling by the Court that the provision relating to second-class mailing privilege is merely directory, the fact that a newspaper does not have second-class mailing privileges in the county of publication will not defeat legal publication of a notice or advertisement, assuming all other statutory requirements are satisfied.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General