Legal Notice, publication in newspaper

Number: AGO 2012-11

Date: April 25, 2012

Subject:
Legal Notice, publication in newspaper

Mr. John B. Lynch
City Manager
City of Lynn Haven
825 Ohio Avenue
Lynn Haven, Florida 32444

RE: LEGAL NOTICE–-NEWSPAPERS-–newspaper must be published weekly or more often for one year prior to publication of legal notice. ss. 50.11 and 50.031, Fla. Stat.

Dear Mr. Lynch:

You have asked substantially the following question:

Is a local newspaper which published on a bi-weekly[1] basis for more than one year, but recently began publishing on a weekly basis, qualified for publication of legal notices pursuant to Chapter 50, Florida Statutes?

In sum:

A newspaper which has not been published on a weekly or more often schedule for one year prior to the first publication of a legal notice would not qualify for publication of a legal notice pursuant to Chapter 50, Florida Statutes.

You state that the city is exploring ways in which to reduce the expense of publishing legal notices. Currently, there is only one newspaper in the county which will publish public legal notices and you feel the newspaper's rates for such publications are excessive. You have contacted a locally-owned newspaper with a circulation of 5000 which prior to July 2011, was published on a twice-monthly basis. Since July, 2011, the paper has been published on a weekly basis. The question has arisen whether a paper which has been publishing on a twice-monthly basis for more than a year, but publishing on a weekly basis only since July 2011, would meet the requirement of having been in existence for one year.

Section 50.011, Florida Statutes, provides that any statutorily prescribed legal notice, advertisement, or publication be published:

"in a newspaper *printed and published periodically once a week or oftener*, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally,

available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public."[2] (e.s.)

In addition, section 50.031, Florida Statutes, requires, in part, that such newspapers

"at the time of *such publication shall have been in existence for 1 year* and shall have been entered as periodicals matter at a post office in the county where published, or in a newspaper which is a direct successor of a newspaper which together have been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed." (e.s.)

While there is an exception provided in section 50.031, Florida Statutes, for counties in which there has been no newspaper in existence that has been published for the requisite time, it would not appear to be applicable to Bay County in which your city is located.[3]

In sections 50.011 and 50.031, Florida Statutes, the Legislature has prescribed detailed minimum requirements a newspaper must meet before it qualifies for publication of legal notices. This office has stated that strict compliance with these minimum requirements forecloses the prospect of a successful due process challenge to the notice provided.[4] Moreover, this office has consistently maintained that the one-year requirement applies to both the existence of a newspaper within the scope of section 50.031, Florida Statutes, and to the length of time that such material must have been circulated as periodical material.[5] This conclusion is supported by the statutory requirements for the uniform affidavit used to establish proof of publication which includes the statement that the newspaper "is a newspaper published at __, in said __ County, Florida, and that the said newspaper has heretofore been continuously published in said __ County, Florida, each __ and has been entered as periodicals matter at the post office in __, in said __ County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement[.]"[6]

In Attorney General Opinion 96-25, this office concluded that the joint publication of a city's legal notices in a weekly newspaper published and circulated within the city at no charge, but with no second class mailing permit, and in a neighboring city's weekly newspaper with limited circulation within the subject city, but with a second class mailing permit, did not satisfy the publication requirements of section 50.011, Florida Statutes. Citing the prescribed detailed minimum requirements in sections 50.011 and 50.031, Florida Statutes, that a newspaper must meet before it qualifies for publication of legal notices, the opinion found strict compliance with the minimum requirements was the only means to foreclose the prospect of a successful due process challenge to the notice provided.[7] Neither of the papers used by the city independently met the requirements for publication of legal notice prescribed in Chapter 50, Florida Statutes.

In light of the potential legal consequences of insufficient legal notice and this office's previous opinions determining that strict compliance with the minimum requirements of the statute must be met, it would appear advisable to publish a legal notice in a newspaper that has complied with all of the minimum requirements for at least one year prior to the date of the first publication of a public legal notice.[8]

Accordingly, it is my opinion that a newspaper which has not been published on a weekly or more often schedule for one year prior to the first publication of a legal notice does not qualify for publication of a legal notice pursuant to Chapter 50, Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

PB/tals

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[1] The term "bi-weekly" is used to denote a publication every two weeks.

[2] *See* Op. Att'y Gen. Fla. 90-67 (1990), stating that a newspaper which meets the requirements of ss. 50.011 and 50.031, Fla. Stat., may be utilized for the publication of notices of proposed municipal ordinances as required in s. 166.041(3)(a), Fla. Stat. *And see* Op. Att'y Gen. Fla. 96-25 (1996).

[3] You indicate the Panama City News Herald, currently a daily newspaper published in Bay County, publishes legal notices.

[4] *See, e.g.,* Ops. Att'y Gen. Fla. 73-149 (1973) (publication in newspaper not meeting the requirements of s. 50.011, Fla. Stat., does not meet the requirements of due process of law); 94-24 (1994). *And see Daytona Leisure Corporation v. City of Daytona Beach*, 539 So. 2d 597, 599 (Fla. 5th DCA 1989) (measures passed in contravention of notice requirements are invalid if not strictly enacted pursuant to statutory requirements).

[5] *See* Ops. Att'y Gen. Fla. 02-70 (2002) and 94-24 (1994). *And see* Ops. Att'y Gen. Fla. 41-38 (1941), at p. 70; 64-150 (1964); 73-149 (1973); and 74-125 (1974). The earlier opinions refer to "second class mail." Sections 21 and 22, Chapter 99-2, Laws of Florida, respectively amended ss. 50.011 and 50.031 to conform to the redesignation of second-class matter as periodicals by the United States Postal Service.

[6] *See* s. 50.051, Fla. Stat.

[7] *See* Op. Att'y Gen. Fla. 73-149 (1973) (due process requirements are not met by publication in newspaper not meeting the requirements of s. 50.011, Fla. Stat.).

[8] *See Ideal Farms Drainage District v. Certain Lands*, 19 So. 2d 234 (Fla. 1944); *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452 (Fla. 1992) (all parts of a statute must be read together in order to achieve a consistent whole); *State ex rel. Ashby v. Haddock*, 140 So. 2d 631 (Fla. 1st DCA 1962).