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August 21, 1987

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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Official Publication by Newspaper

Dear Mr. Remaklus:

In your letter of June 24, 1987, you address a question to our office as to whether The Advocate qualifies as a newspaper to publish legal notices under the provisions of § 60-106, Idaho Code. Your letter poses the question as follows:

After having completed 78 consecutive weeks of publication and obtaining a valid second class mailing permit from the United States Post Office, and having 200 bona fide subscribers, is a weekly newspaper required to maintain at least 200 subscribers for an additional 78 consecutive weeks before it is qualified to publish legal notices under the provisions of § 60-106, Idaho Code?

As an attachment to your letter, you included a copy of a letter from Bob Hall, Executive Director of the Idaho Newspaper Association, to Tom Grote, Publisher of the Central Idaho Star News in McCall, which concludes that The Advocate did not qualify under § 60-106 for legal publications. Mr. Hall claims in his letter that the 78-week period imposed by § 60-106 does not begin until there are 200 subscribers and the only proof of that is the

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granting of a second class postal permit. Mr. Hall concludes by stating that the time began to toll on May 29, 1987, and The Advocate could not legally publish public notices until December, 1988. We believe Mr. Hall's analysis and conclusion are incorrect.

Idaho Code § 60-106 sets forth the requirements of qualifications of newspapers printing legal notices. Rather than repeat the entire statute here, a copy is attached for your reference. This provision states that in order to qualify to print legal notices, a weekly newspaper must be in general circulation, published weekly for a period of 78 consecutive weeks. The statute details columns, page size, and type of printing, and states that a newspaper which is of smaller size pages, but has ". . . an equivalent amount of type matter, shall have at least 200 bona fide subscribers living within the county in which the newspaper is published" This requirement applies only to those newspapers which are of a smaller page size.

The statute contains only a generalized statement that there must be 200 bona fide subscribers without stating specifically when or during what period there must be 200 bona fide subscribers. In our opinion, if there are 200 bona fide subscribers "prior to the first publication of the legal notice or advertisement," this would be sufficient and the publication would be official. There is no statement within the statute which requires an additional 78 consecutive weeks with 200 or more subscribers before a newspaper is qualified to publish legal notices. We have not been able to find any case law which supports Mr. Hall's position in this matter. To reach the conclusion of Mr. Hall, it would be necessary to achieve the absurd result that if a newspaper in only a single 78-week period had a number of bona fide subscribers of less than 200, the 78-week period must start anew. This is not the intended result of the statute.

The newspaper could easily prove its number of subscribers from its subscription lists and records without reliance on the second class mailing permit. In Land Fair v. Latah County, 51 Idaho 65, 2 P.2d 317 (1931), the court indicated that subscription lists and records could be used to prove the number of

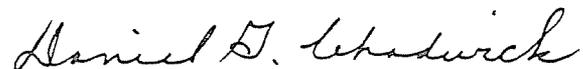
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subscribers. In the Idaho case of Robinson v. Latah County, 56 Idaho 759, 59 P.2d 19 (1936), the court held in construing other requirements of Idaho Code § 60-106 (formerly Idaho Code Annot. § 58-106), as soon as the requirements are met the newspaper is entitled to be considered as a newspaper which can publish legal notices. In this case, the court considered the circulation factor. It stated that, while actual circulation of a newspaper is an important element of the notice required by the statute, it is not decisive, with other factors to be considered.

Because the statute does not set forth the specific time period in which the 200 subscriber minimum must be reached, looking at all the factors together, it is reasonable to conclude that it is only necessary to have the 200 subscribers prior to the first date of publication of legal notice, as long as the 78 consecutive week publication and other style requirements are met.

If our office can be of additional assistance, please do not hesitate to contact me.

Sincerely,



DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division

DGC/mkf

cc: Jim Weatherby
Chuck Holden
Bob Hall
Roy Mosman, Esq.
Tom Grote