

Opinion No. 48-5146

April 23, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. W. T. Scoggin, Jr. District Attorney Las Cruces, New Mexico

{*145} We wish to acknowledge receipt of your inquiry of April 20, 1948 as to what constitutes "publication" of a legal newspaper in the county.

Section 12-202 of the 1941 Compilation defines a "legal newspaper", in part, as follows:

"Any and every legal notice or advertisement shall be published only in a daily, a triweekly, 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 consecutive weeks next prior to the first issue thereof containing any such notice or 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 months next prior to the first issue thereof containing any such notice or advertisement."

It was stated by the court in the case of *Bragdon v. Hatch*, 1 Atl. 140, 77 Me. 433 that a newspaper may be published in a county and yet not be printed there. It was likewise held in the case of *People ex rel O'Connell v. Read*, 100 N. E. 230, 256 Ill. 408, that the place of publication of a newspaper is the place where it is first put into {*146} circulation or issued to be delivered by mail or otherwise to its subscribers.

The Supreme Court of Kentucky in the case of *Wolfe Liquor Dispensary Association v. Ingram*, 113 S.W. 2d 839, 272 Ky. 38, at page 842, said:

"It is claimed that a proper construction of the statute is that the word 'publish', as used therein, means that 'the paper must be printed and published within the county', and the *Wolfe Co. Herald* was printed by a man by the name of Bryant in the City of Lexington, Fayette County, and sent by express to Campton, Wolfe County, and from there mailed to the subscribers; that, in substance, meant there was no paper published in the county; that the advertisement otherwise made complied with the statute. Should such a contention be approved by this court, it would virtually be an effort to legislate rather than construe the statute. The word 'publish' cannot be construed to mean 'print'." (See also 51 C. J. 88.)

In view of the language of our statute and the cases cited above, it is our opinion that a newspaper can be a "legal" newspaper published within a county although it may be printed elsewhere.

Trusting the aforementioned satisfies your inquiry, I remain

By ROBERT V. WOLLARD,

Asst. Atty. General