

OPINION 38

OFFICIAL OPINION NO. 38

November 19, 1969

Hon. Walter J. Roorda
R. R. 1, Box 6
Demotte, Indiana 46310

Dear Representative Roorda:

This is in response to your request for an Official Opinion interpreting Acts of 1927, Ch. 95, Sec. 7, as amended, and found in Burns' (1968 Repl.), Section 2-4707, which Act reads as follows:

"In all cases where the law provides for the publication of legal notices in a newspaper, it shall be legal to make such publication in either a daily, weekly, semi-weekly or tri-weekly newspaper which for at least five [5] years, has been a newspaper of general circulation, printed in the English language and entered, authorized and accepted by the post-office department of the United States of America as mailable matter of the second class as defined by the Act of Congress of the United States of March 3, 1879, and having a bona fide paid circulation: Provided, That such publication, if made in a daily or semi-weekly or tri-weekly newspaper, shall be published once a week for the same period and time as required by law, and it shall be made on the same day of each week."

Your question is whether a newspaper which has complied with all requirements listed in the above statute except that it has only in the past year been accorded second class mailing privileges by the United States post office department qualifies as the proper place for the publication of legal notices.

It is my opinion that it does not for the reason that the five year provision in the above statute requires a newspaper be entered, authorized and accepted by the post-office department of the United States of America as mailable matter of the second class for that period of time.

The legislative intent of a notice statute, such as this, is to afford adequate notice to the citizens throughout the governmental area concerned. The Legislature has not only said that

1969 O. A. G.

the newspaper must be one of general circulation printed in the English language and accepted by the post-office department as second class matter but that it must also be qualified for at least five years. These qualifications are similar in that they insure a diversity of subscribers to the newspaper. All of these qualifications were added by the 1949 amendment to 1927 Act.

Upon examination of the Act under consideration, I am of the opinion that the language is plain and unambiguous and must be read as punctuated. The five year requirement of acceptance by the United States Postal Department controls all of the qualifications of newspapers publishing notices under this statute.