

OVERRULED BY 1989 LEGISLATION

December 9, 1980

Mr. A. S. Benson
Bottineau County State's Attorney
Benson Building
616 Main Street
Bottineau, ND 58318

Dear Mr. Benson:

This is in response to your letter of November 26, 1980, wherein you request an opinion of this office relative to qualifications of a newspaper to do legal printing. You submit the following in your letter of inquiry:

Bottineau County has a number of newspapers, being published in this County. These papers are: Westhope Standard, published in Westhope, North Dakota; The Bottineau Courant, and the Hills and Plains Free Press, both published in Bottineau, North Dakota; the Lansford Leader, published in the western part of the County.

The Hills and Plains Free Press Newspaper was established in September of 1980, the other newspapers have all been in circulation for over one year.

My questions is very simple; is the Hills and Plains Free Press newspaper allowed to publish any notice for any political subdivision in the County? Notice shall include minutes of political subdivisions within the County, and the County itself. If this newspaper publishes any notices or meetings without any cost to the political subdivision, is there a conflict with the present law?

It would seem to me that the Hills and Plains Free Press does not meet the qualifications, which are set forth as follows:

- (1) It has not been in circulation for at least one year.
- (2) I understand that it does not have a second class mail permit.

While your letter does not so specifically state, we assume the question relates to Section 46-05-01 of the North Dakota Century Code, as amended, setting forth the requirements and qualifications for newspaper to do legal printing, providing as follows:

46-05-01. NEWSPAPERS QUALIFIED TO DO LEGAL PRINTING - FILE COPIES WITH STATE HISTORICAL SOCIETY - PUBLISHING NOTICES

IN ADJOINING COUNTY.--Before any newspaper in this state is qualified to publish any legal notice or any matter required by law to be printed or published in some newspaper in the state, or any public notice for any political subdivision within this state, the newspaper must:

1. Have been established in a regular and continuous circulation of at least one year, with a bona fide subscription list of at least one hundred fifty regular subscribers;
2. Be nonsectarian and printed at least three-fourths in English; and
3. Have been admitted to the United States mails and have complied with the requirements of the federal laws governing second class mail for at least one year.

In the county where no newspaper having the above-prescribed qualifications is published, any newspaper at the county seat of said county shall be entitled to publish such legal notices even though it may not have been established one year. The owner or publisher of each legal newspaper shall send to the state historical board, to such address as shall be designated by the secretary thereof, two copies of each issue of such newspaper. In a county in which no newspaper is published, any notice required by law to be published may be published in a newspaper published in an adjoining county and having a general circulation in the county. (Emphasis supplied)

With regard to general qualifications then, it would appear to us that if a newspaper is going to publish any matter or notice required by law to be printed or published, it must meet the requirements of the statute as outlined therein.

If the question relates to the publication of school minutes pursuant to the provisions of Section 15-28-11 of the North Dakota Century Code, as amended, we would note that that provision provides as follows:

15-18-11. PUBLICATION OF SCHOOL BOARD PROCEEDINGS--ELECTORATE TO DECIDE BIENNIALY. Biennially, commencing in the year 1967 at the annual election of school board members held in each school district, the question of whether a record of the proceedings of the school board shall be published in a newspaper of general circulation in such district shall be submitted to the electors of such district. If the publication of proceedings is approved by a majority of the electors voting thereon, the records of such school board, including an itemized list of obligations approved for payment, shall be published in a newspaper of general circulation in such school district. When applicable, these proceedings shall be identified in the newspaper as being published subject to review and revision by the school board. These proceedings shall be given to the newspaper by the board's clerk within a reasonable time after

each school board meeting for the succeeding two years, or until disapproved at a succeeding school board election. (Emphasis supplied)

While the foregoing section provides for a “newspaper of general circulation in such school district”, we do not believe that such reference specifically refers to the newspaper or its qualifications but rather to the question of whether a record of the minutes shall be published. Since Section 46-05-01 of the North Dakota Century Code specifically addresses itself to the requirements of a newspaper to publish “any matter required by law to be printed or published”, we believe the provisions of that section to be controlling, if for no other reason for the reason that the specific provision governs the general.

Accordingly, and while we do not have all the facts concerning the particular notice that may be involved and perhaps not the total factual situation as to the particular newspaper which is the subject of the inquiry, it would appear that it would not meet the qualifications as set forth under Section 46-05-01 of the North Dakota Century Code, as amended.

We trust that the foregoing general observations and expressions will adequately set forth our opinion upon the matter presented and will be adequate for our purposes.

Sincerely,

Lynn E. Erickson
Assistant Attorney General