

"A circulation manager must have a working knowledge of the postal rules and regulations, Interstate Commerce Commission laws and other laws that may affect circulation department operations."

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CHAPTER 19

Legal Questions Pertaining to Circulation

THE COMMON SAYING, "Ignorance of the law excuses no man," applies to newspaper publishing just as it does elsewhere. Certain federal, state and local laws and regulations require a very fine line of interpretation as to their application in situations that may arise within a newspaper organization. Consequently, the publisher or his circulation manager needs to be familiar with all laws that pertain in any way to newspaper circulation. Among these are:

1. Postal laws and regulations.
2. Laws regulating legal notices.
3. Wage and hour laws.
4. Child labor laws.
5. Laws pertaining to contracts.
6. Antitrust laws.
7. Income tax laws.

POSTAL REGULATIONS

To be barred from the mails would be disastrous to most newspapers. It is important, therefore, to understand fully all postal regulations and maintain all standards required. The provisions for newspapers are specific. A number of postal regulations that apply to newspapers, such as statements of ownership, circulation and amount of advertising, do not apply to periodicals of educational institutions, charity organizations and the like.

In order to gain access to the mails as second class matter, a newspaper must be issued at regularly stated intervals, at least four times a year; bear a date of issue; be numbered consecutively; and issued from a known office of publication. It must be formed of printed paper sheets, without board, cloth, leather or substantial binding. It must

be originated and published for the dissemination of information of a public character or devoted to literature, the sciences, arts or some special industry. In addition, a newspaper must have a list of legitimate subscribers.

To further qualify for second-class mailing privileges, a newspaper must publish certain information "conspicuously printed" on one of the first five pages, preferably on the first page. This applies to each copy. The required information is: title of publication, date of issue, regular period of issue or frequency, serial number, known office of publication, subscription price, and notice that it has been entered as second class matter.

The Post Office Department requires also that the editor, publisher, business manager or owner file, not later than October 1 of each year, a sworn statement setting forth the names and post office addresses of the editor and managing editor, publisher, business manager and owners, and in addition the stockholders, if the publication is owned by a corporation; also the names of known bondholders, mortgagees or other security holders. The statement must be published in the second issue of the publication printed next after the statement has been filed. Two copies of the statement and one copy of the issue in which the statement is published must be filed with the postmaster at the office where the publication has original second class privileges. Statements filed by daily, weekly, semiweekly and triweekly publications must show also the average number of copies of each issue sold or distributed to paid subscribers during the preceding twelve months (see Fig. 19.1).

A publisher who submits false information or evidence in order to obtain second class privileges for his publication shall, upon conviction in the federal courts, be fined not more than \$500.

Must Have "Legitimate Subscribers"

In order to retain its mailing privileges, a newspaper must maintain a paid circulation. Only persons who have paid for the paper or have promised to pay within a limited time are considered "legitimate subscribers." However, the post office is lenient in handling expired subscriptions expected to be renewed, and in transferring subscriptions from original addresses to new ones.

While subscription renewals are being sought following expiration, the publisher is allowed to mail copies at second class rates for six months to persons who have not renewed. If the subscription is not paid within that time, the name must be stricken from the mailing list.

When subscribers wish to have the paper discontinued, or fail to report to the newspaper office a change of residence, delivery may be stopped by simply writing "refused" on a copy of the paper and

Read the instructions
on page 2 of this form.

STATEMENT REQUIRED BY THE ACT OF AUGUST 24, 1912, AS AMENDED BY THE ACTS
OF MARCH 3, 1933, AND JULY 2, 1946 (Title 39, United States Code, Section 233) SHOWING
THE OWNERSHIP, MANAGEMENT, AND CIRCULATION OF

..... published
(Insert exact title of publication) (State exact frequency of issue)
at for 19.....
(Name of post office and State where publication has second-class entry)

1. The names and addresses of the publisher, editor, managing editor, and business managers are:

	Name	Address
Publisher
Editor
Managing editor
Business manager

2. The owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual member, must be given.)

Name	Address
.....
.....
.....
.....

3. The known bondholders, mortgagees, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.)

Name	Address
.....
.....
.....
.....

4. Paragraphs 2 and 3 include, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting; also the statements in the two paragraphs show the affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner.

5. The average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the 12 months preceding the date shown above was: (This information is required from daily, weekly, semiweekly, and triweekly newspapers only.)

.....
(Signature of editor, publisher, business manager, or owner)

Sworn to and subscribed before me this day of 19.....

[SEAL]

(My commission expires 19.....)

FIG. 19.1 — Form required by Post Office Department to show ownership, management and circulation of newspaper.

placing it back in the mail box. The newspaper is required to pay postage on any copies that are not accepted. Therefore, mailing lists should be kept in good order. Negligence in handling changes of address and in removing names from the mailing list when subscriptions expire may prove costly.

Post Office Privileges Are Helpful

Publishers may feel at times that postal regulations are unreasonable, but they should not overlook the privileges granted by the Post Office Department to help newspapers build circulation and serve efficiently their patrons on rural routes.

One of the great privileges granted newspapers is free delivery within the county to subscribers on rural routes and in towns not having letter-carrier service.

A publisher may send also to prospective rural subscribers at second-class pound rates sample copies to the amount of 10 per cent of the total poundage sent through the mail to regular subscribers. Each copy of the paper sent in this way must be marked "sample copy." If the mailing exceeds 10 per cent of the poundage to regular subscribers, the excess poundage is paid for at transient second class rate.

On Sundays and holidays when mail is not sent out from the post office, copies of Sunday and holiday issues may be placed by the newspaper's own deliverymen in rural route boxes with the understanding that subscribers will remove them before the next delivery of mail. This privilege is only by permission of the postmaster.

In territories where the mail service cannot make delivery of the paper on day of issue, the newspaper's carriers may be permitted to use the mail boxes. However, copies thus delivered by newspaper carriers must be reported to the post office.

It is no longer required that all copies to be delivered by mail be sent out from the post office in the town where the paper is published. Copies may be taken to outlying towns and sent out from the post offices there, but a report on the number of copies and weight thus distributed must be made to the local post office. Such an arrangement, in many cases, permits rural subscribers to receive their papers a day earlier than if sent through the local post office.

The Post Office Department also allows a rural route patron to place a receptacle for his newspaper on the same post with his rural mail box at sufficient distance so as not to obstruct view of the flag. It must be placed on the support in such a manner that it will not interfere with the delivery of mail or create a hazard for the rural mail carrier. Furthermore, the use of the receptacle must not be re-

stricted to any particular newspaper and it should display no advertising.

HANDLING EXCEPTIONAL CASES

The Post Office Department is considerate and cooperative on other matters pertaining to a newspaper's use of the mails. For example, a publisher might contract to have his paper printed in a different city from that in which the newspaper office is located. He then would like to transfer a part of the mailing to the post office in the town where the printing is done. For making this change without interruption of service, the Post Office Department offers two solutions:

1. If the publisher wishes to mail the bulk of his newspaper's circulation from the town in which the paper is published, he may forego second-class postage rates in the city in which the office is located and just put stamps, at the second-class transient rate, on such few copies as he mails from there. To provide delivery of the bulk of his circulation from the other town, he may file with the postmaster of that town an application for re-entry as second class matter and pay a filing fee of \$10.00.

2. If the publisher wants to make sizable mailings from the town in which his office is located and desires the benefit of mailing at pound rates, he may retain his second class entry there and write a letter to his postmaster, explaining that he wishes to apply for an additional entry at the post office in the town where the paper is printed. This letter should state the approximate weight and number of copies to be mailed at the additional entry. It should include also a description of the geographical territory and/or the kind of mailings (sample copies, copies to fill subscriptions received between regular mailings, etc.) to be served at that office. Also, the number of copies for delivery in the home city should be indicated. A \$10 application fee must be sent with the letter. The postmaster then forwards the application to the Post Office Department in Washington for consideration and notifies the post office in the city where printed that application has been made for additional entry there. While the matter is being considered, both post offices will be permitted to transmit the publication through the mails at second class rates.

Regulations for Bulk Mailings

The Post Office Department's regulations for the handling of bulk mailings of newspapers should be carefully followed. A report showing the number of copies going into each zone and their weight is required.

As a working basis in determining weights of all mailings, the publisher must first determine the weight of a single page of his

paper, and from that determine the combined weight of one copy from each issue mailed during a calendar month. The postal instructions for doing this are as follows:¹

a. Determine by the method prescribed in Section 126.162 the average weight of one copy of any one issue selected by the postmaster for testing and verifying during the month. [Note: Section 126.162 says: The average weight per copy must include the wrapping and binding materials and shall be obtained by the publisher as follows: (a) Count a reasonable number of copies selected in such a manner for test purposes that when wrapped and bundled they will bear a proper ratio to the total number of copies to be mailed individually wrapped and bundled for mailing; (b) weigh in bulk the copies which have been counted, after they are wrapped and bundled for mailing; (c) divide the bulk weight of the test copies by the number of test copies to obtain the average weight per copy in pounds. Record fractions of pounds as decimals with six digits to the right of the decimal point.]

b. Divide the average weight of one copy by the number of sheets in the copy to determine the weight of one sheet in pounds. Record fractions of pounds in decimals with six digits to the right of the decimal point.

c. Select one copy of each of the issues mailed during the month and count the sheets in all of the selected copies to determine the total number of sheets in the selected copies.

d. Multiply the total number of sheets in the selected copies by the weight of one sheet.

The figuring of the weight of a single sheet of newspaper by carrying it to six digits to the right of the decimal point caused some confusion, and Edwin A. Riley, director of the Division of Mail Classification in the office of Postmaster General, explained at a meeting of the Pennsylvania Newspaper Publishers Association that the Post Office Department would not object to publishers voluntarily relinquishing their advantages by terminating the decimal with less than six digits, provided the last digit to the right is "in all instances" raised by one full number.

"For example," he said, "the six-digit decimal .846521 might, if the publisher so desired, be changed to a two-digit decimal .85. There is a great difference in computing the weight of a publication having, for example, a circulation of several million copies and one having a circulation of several hundred. The extension of the decimal is of importance to the former but may make little difference to the latter."

The Post Office Department provides a form (see Fig. 19.2) to be filled in by the publisher and filed with the postmaster, showing the number of copies mailed, weight, distribution by zones and percentage of advertising. This report may be made monthly for all papers issued during the month or it may be for a single issue. Once each year a zone analysis must be presented to the local post office, showing the number of copies sent to each zone.

¹ Postal Manual, Chap. 1, Sec. 126.164, Dec. 27, 1956.

<small>POST OFFICE DEPARTMENT</small> STATEMENT SHOWING NUMBER OF COPIES OF SECOND-CLASS PUBLICATION MAILED		
CITY _____	STATE _____	DATE _____
NAME OF PUBLICATION OR NEWS AGENT _____		
DATE OF ISSUE PRINTED IN COPIES _____	DATE OF MAILING _____	
CHECK WHETHER SUBSCRIBERS' OR SAMPLE COPIES <i>(Do not report both on one form.)</i> <input type="checkbox"/> SUBSCRIBERS' COPIES <input type="checkbox"/> SAMPLE COPIES		
WHEN THIS STATEMENT IS FOR ONE ISSUE ONLY, FURNISH THE FOLLOWING INFORMATION: AVERAGE WEIGHT PER COPY FOR THE ISSUE _____ LBS PERCENTAGE OF ADVERTISING IN THE ISSUE _____	WHEN THIS STATEMENT IS FOR ALL ISSUES FOR A CALENDAR MONTH, FURNISH THE FOLLOWING INFORMATION: WEIGHT OF ONE SHEET _____ LBS COMBINED WEIGHT OF ONE COPY FROM EACH ISSUE _____ LBS PERCENTAGE OF ADVERTISING COMPUTED ON CONTENTS OF ALL ISSUES _____	
When postage is computed at the key rate, the lines for zones 1 to 8 need not be completed except for two issues each calendar year at six-month intervals. The total zone mailings must be entered on the "Total to all zones" line during the six-month intervals.		
POSTAL ZONES	NUMBER OF COPIES	NUMBER OF POUNDS
1 AND 2		
3		
4		
5		
6		
7		
8		
TOTAL TO ALL ZONES		
COPIES OUTSIDE COUNTY WITH 5½¢ OR LESS ADVERTISING		
COPIES OUTSIDE COUNTY AT SPECIAL 11½ CENTS A POUND RATE		
COPIES WITHIN COUNTY AT 1 CENT A POUND		
COPIES WITHIN COUNTY FREE OF POSTAGE		
LOCAL OR HEADQUARTERS COPIES AT 1 OR 2 CENTS EACH		
COPIES FOR PUAS COUNTRIES—132 142. POSTAL MANUAL		
CONTROLLED PUBLICATIONS—PART 133. POSTAL MANUAL		
FREE MATTER FOR BLIND—138 322. POSTAL MANUAL		
_____ <small>SIGNATURE</small>		

POD Form 3542 Replaces previous editions of this form which MAY be used.

☆ U. S. GOVERNMENT PRINTING OFFICE -O-379411

FIG. 19.2 — Statement to be filed with postmaster regarding copies of papers presented for second class mailing.

PROPER WRAPPING REQUIRED

Newspapers must be properly wrapped for mailing. A federal law passed in 1872 and still in force says: "No newspaper shall be received unless sufficiently dried and enclosed in proper wrapper."² To implement the law, postal regulations require: ". . . the folding of newspapers to an eighth of a newspaper size, or about 5x12 inches, and they should be wrapped with white or other light colored paper."³ The Post Office Department, however, allows papers to be delivered flat in bundles where more than five individually addressed copies go to the same post office. Nevertheless, the Post Office Department looks with much disfavor on the flat method of mailing newspapers because of damage in transit, railway postal workers' objections, plus injured fingers when staples are used.

A change in the regulation regarding the mailing of copies in envelopes now permits publications enjoying second-class postal rates to be mailed sealed or unsealed, providing the name and address of the enclosed publication and the notice of entry appear on the envelope.

Rules Regarding Advertising

The assistance of the advertising department is always needed in maintaining the newspaper's access to the mails. Violations of the postal provisions concerning advertising content may deprive a newspaper of mailing privileges.

There is a criminal statute, in addition to postal regulations, forbidding the publishing of notices concerning lotteries. Three elements are included in the legal definition of lottery: chance, compensation, and consideration. In other words, prizes awarded by means of chance or lot to participants who paid in terms of money, time or effort are lotteries. If a person is required to be present at a drawing of door prizes, that requirement may be interpreted as the "consideration" involved, and thus the drawing would be classified as a lottery. The registering of names alone, in order to qualify for prizes, may not be deemed a lottery because the "consideration" is negligible or non-existent. This is the blanket ruling used by the Post Office Department in determining whether or not a lottery exists.

The effect of this ruling is to say that if the consideration is not present, the matter is mailable and the Post Office Department has no objection. The statute, however, expressly prohibits gift enterprises and schemes of any kind offering prizes awarded by lot or chance.

Something else to consider is that many state laws are much stricter regarding lotteries than the federal law and Post Office Department regulations. A paper may conform to postal rules but at the same time violate state laws regarding lotteries.

² Revised Statutes 3883, 39 U. S. Code 252, June 8, 1872.

³ Postal Manual, Chap. 1, Sec. 126.11-12, Nov. 15, 1957.

Rules Regarding Supplements

Another postal requirement is that all sections of the paper carry the name of the publication at the top of each page. All advertisements that appear in a newspaper must be permanently attached thereto and sheets containing them must be substantially as large but not larger than the pages of the publication. Advertisements printed on sheets larger than the regular pages are inadmissible even though folded to the size of the regular pages. Therefore, by strict interpretation of postal regulations, supplements printed outside the newspaper plant and not containing the newspaper's masthead cannot be inserted and sent through the mail with the newspaper as second class matter. The ruling also states that the supplement must contain some news matter in order to qualify.

A publisher once inserted a circular in his mail edition to advertise a reduction in the mail subscription price. The post office refused to handle the issue as second class because the circular, although printed in the newspaper plant, did not contain the newspaper's masthead and date line, and was unnumbered. The following day, the paper ran the same circular with a masthead and date line, and it was accepted. A certain way to avoid any question regarding mail privileges is to make every section that goes into the newspaper a definite part of the newspaper, shown by carrying the masthead on each page and numbering the pages as belonging to a complete issue.

The postal rules regarding supplements are set forth as follows:⁴

.441 Issues may include supplements subject to the following conditions:

a. The supplement must be germane to the issue, and prepared in order to complete it, having been omitted for want of space, time, or greater convenience.

b. A supplement must bear the title of the publication preceded by the words "Supplement to" and the date of the regular issue.

c. Supplements must be folded and mailed with the regular issues.

.442 Enclosures that may be accepted as supplements include:

a. Legal notices such as statutes, ordinances, proceedings of public boards, or conventions, tax rates, and delinquent tax lists, required by law to be published, may be mailed as supplements even though the publisher is paid for printing the notices.

b. Maps, diagrams, and illustrations that form a necessary part of a publication may be either loose or attached and need not bear the words "Supplement to."

.443 Enclosures that may not be accepted as supplements include:

a. Independent publications entirely distinct from and independent of the regular issue and complete in themselves.

b. Circulars, handbills, posters, and other third-class mail.

c. Advertising pages, or pages containing advertising and nonadvertising, issued by or for advertisers.

⁴ Postal Manual, Chap. 1, Sec. 132.441-443, July 10, 1957.

Regulations Covering Legal Notices

Circulation again becomes a point for consideration in connection with advertising when a newspaper must establish its right to carry legal notices. The law usually states that the newspaper must be one of "general circulation," implying that it be one of sufficient circulation to give desirable widespread information.

A study of decisions rendered by state courts reveals that the criteria usually considered are: (1) a newspaper of general circulation is not determined by the number of its subscribers but by the diversity of its subscribers, and (2) that even though the newspaper is of particular interest to a particular class of persons, yet if it contains news of a general character and interest to the community, although the news may be limited in amount, it qualifies as a newspaper of general circulation.

Quantity of news, however, is a factor. The Post Office Department requires that a newspaper contain a high percentage of news material. In order that the postal authorities may have proof of this, a marked copy of each issue, showing the amount of news and the amount of advertising it contains must be filed with the post office. An endorsement on the front page must show the total units of advertising space, the total units of nonadvertising space and the percentage of each. In order to hold its second class privilege, a newspaper must not have more than 75 per cent of its space occupied by advertising in more than 12 issues during the year.

A monthly report must be made to the post office on Form 3542, showing the percentage of advertising computed on contents of all issues. The following method⁵ should be used to determine the percentage of advertising contained in all issues for a particular month:

- (a) Keep a record of the number of units of advertising space and the number of units of nonadvertising space in each issue.
- (b) Add the advertising units in each issue to determine the total advertising units in all of the issues.
- (c) Add the nonadvertising units in each issue to determine the total nonadvertising units in all of the issues.
- (d) Add the advertising and nonadvertising units to determine the total units in all of the issues.
- (e) Divide the total advertising units by the total units.

Wage and Hour Laws

Wage and hour laws apply in the circulation department as in other departments of the newspaper. The publisher needs to know to what extent his newspaper is obligated or exempt under the Fair Labor Standards Act. The main provisions of the act are:

⁵ Postal Manual, Chap. 1, Sec. 126.154, Dec. 27, 1954.

1. The minimum wage provisions, which require pay at the rate of \$1.00 an hour.
2. The overtime pay provisions, which require pay of at least one and one-half times the employee's regular rate for all hours in excess of 40 in any work week, unless specifically exempt.
3. The child labor provisions, which prohibit the employment of children under 16 years of age in most jobs and children under 14 years of age in any job. In addition, children under 18 are prohibited from working in jobs covered by hazardous occupations orders issued by the Secretary of Labor.

Some newspapers — dailies as well as weeklies and semiweeklies — having a circulation of 4,000 or less, the major part of which circulation is within the county where printed and published or counties contiguous, are exempt from the minimum wage and overtime pay provisions.

Application of the Wage and Hour Law in the case where a publisher operates two newspapers, each with circulation less than 4,000 but whose combined circulation is in excess of this figure, required different interpretation. It has been ruled that if two publications are separate and distinct papers, each may be treated separately for the purpose of the circulation test. If, however, the papers have virtually the same contents but merely carry different mastheads, they are to be regarded as one and the same newspaper. Then the total circulation of both papers must be considered in determining whether the exemption applies.

Certain Employees May Be Exempt

Certain types of employees are exempt from wage and hour provisions. Among these are executive, administrative and professional employees and outside salesmen who meet certain qualifications. The basic requirements for exemption are:

1. An executive employee's primary duty must be managing the enterprise or a recognized department or subdivision of it, and he must be paid at least \$55 a week.
2. An administrative employee's primary duty must be performing office and nonmanual field work directly related to the management or operation of the business and must draw \$75 a week on a salary or fee basis.
3. A professional employee must primarily perform work requiring advanced knowledge in a field of science or learning, or perform primarily creative work in an artistic field, and his pay must be at least \$75 a week.
4. An outside salesman must customarily and regularly be engaged away from his employer's place of business, in making sales and obtaining orders or contracts.

Ordinarily, newspaper publishers classify their help in the circulation department as professional help, but many publishers, in order to be free from any possibility of violating government regulations, have put their entire force under the wage and hour provisions, paying them on an hourly basis with time and one-half for time over 40 hours.

Overtime pay violations often result from lack of correct information on how to compute pay when irregular hours are worked. Under the act, each work week stands alone. Hours can be averaged over two or more weeks.

If a fixed weekly salary is paid for whatever number of hours may be worked in the week, the regular rate in a given week is determined by dividing the weekly salary by the number of hours worked in that week. In such circumstances, the regular rate will vary from week to week, according to the total hours worked in the week. For each hour worked over 40 in any work week, the employee is entitled to half the regular hourly rate that week in addition to his fixed weekly salary.

CHILD LABOR LAWS MUST BE OBSERVED

In the employment of boys to deliver papers or handle them in the mailing room care must be taken not to violate child labor laws and the Social Security Act.

Children under 16 years of age are not permitted to work in places where printing operations are undertaken. In the strict meaning of the law, they are not permitted to enter workrooms to pick up bundles or for other reasons, and they cannot work as cleanup boys, printers' helpers or mailers' helpers, regardless of whether or not the machinery is in operation. The hazardous occupations orders, issued by the Secretary of Labor under the act, set an age minimum of 18 years. A child under 18 cannot be employed to drive a car or truck. Another order bans employment of boys under 18 to operate power-driven hoisting apparatus, including freight and passenger elevators. They cannot ride man-lifts or freight elevators in the course of their work.

Carriers who deliver the newspaper to individual subscribers are specifically exempted from the minimum wage, overtime pay and child labor provisions of the act. Service as a carrier, however, does not include delivering papers to a point for further delivery or distribution, such as is done by truck or car drivers dropping off papers for carrier distribution.

Under the Social Security Act, if the carrier is over 18 and earns more than \$50 in a calendar quarter, his social security status will depend upon whether he is an employee or an independent contractor. The common law definition of the employer-employee,

master-and-servant relationship applies in determining who comes under the act. If the person is an independent contractor and earns \$400 in a tax year, he makes a self-employment return and pays a tax. If he is an employee earning more than \$50 in a calendar quarter, the newspaper withholds from his earnings the social security tax.

News vendors who buy papers at a fixed price and sell them at a higher figure also are not in covered employment. This holds true even if the news vendor is guaranteed a minimum amount of compensation for such services, or is credited with any unsold papers turned back.

The situation of carriers relative to wage and hour laws is a point that needs to be watched. To be exempt, the newspaper must be able to prove beyond a doubt that the carrier is an independent contractor. If the newspaper is not able to prove this, it may be liable for personal injuries to carriers and for injuries that carriers bring to other persons.

The Florida State Supreme Court in 1956 reversed a Circuit Court decision, which awarded a widow \$31,000 damages for injuries received when she was hit by a Miami *Herald* (circulation 269,781, population 259,035) carrier. The Supreme Court ruled that *Herald* carriers operated under a contract which expressly stated that they are independent contractors subject to no control by the newspaper. This paragraph from the decision of the court is interesting to all circulation managers:⁶

We have the definite opinion that newspaperboys as they perform their work generally in this country have a place in the pattern of American life that constitutes a "distinct occupation," and that the provisions of the contract in this case are harmonious with this idea. True, there was some supervision by the publisher's representative but while the newspaperboy was actually making his deliveries, he was acting alone and was a specialist... We doubt not that distribution of papers is a part of the regular business of the publisher, but there is no reason that this cannot be done by independent contract.

A carrier who operates as an independent contractor is obligated to distribute papers only to those customers on his route who pay him the subscription price from which he realizes a profit. Carriers, however, usually are willing to deliver sample copies to the homes of nonsubscribers in the hope that they will become regular customers . . . and in thus delivering samples, carriers do not lose their independent contractor relationship. But if they deliver samples of merchandise as part of their route service, as they may be asked to do, they become employees for social security tax purposes.

⁶ Miami Herald Publishing Co. vs. Kendall, Mar. 7, 1946 (Florida 88 So. 2nd 276).

State Laws Usually Are Rigid

The status of carrier relationship is determined also by state laws dealing with minors which often are stricter than federal laws.

New York has a statute which, among other provisions, makes carriers employees for workmen's compensation only. This action was taken to clear up confusion which had prevailed when the regulation of carriers fell to both the Labor Department and the Education Department. Now the latter has primary jurisdiction and relationships are largely between the newspapers and school authorities. Each carrier must be at least 14 years of age and when he proves himself eligible in all requirements, he receives a certificate or badge. Street-salesboys can operate four hours a day when school is in session, five hours when school is not in session. The badge or certificate can be revoked by school authorities as a result of physical examination showing unsatisfactory conditions or for cause after notice. The badge or certificate, once issued, remains in force until age 18, unless terminated as listed above. The labor commissioner and the police enforce hour provisions and check for badges and certificates.

Publishers should watch carefully proposed legislative action that will affect the relationship of newspaper carriers. The United States Department of Labor drafted and distributed to state legislatures a "model" workmen's compensation act which, as originally drawn, would make all newspaperboys employees, whether or not they are independent contractors, and would probably cover all community correspondents and make them employees. For many newspapers, this would more than double the number of employees for whom payroll records would be required. While the cost of coverage for such persons now operating as independent contractors might not be great, the expense of carrying them on the payroll records would be considerable.

CONTRACT LAWS NEED TO BE WATCHED

In addition to the provisions of wage and hour laws and child labor laws, a publisher and his circulation manager should know the points needed to make a contract binding. A contract between a carrier and the newspaper should contain all the items needed to properly protect both parties. Basically, a carrier operating as an independent contractor is required to pay only for the number of copies he buys from the newspaper each week. If other provisions are desired by the publisher, such as requiring the carrier to pay for delivery of copies he misses, or for property damage caused by the carrier, these should be included in the contract. Otherwise, there is a chance that the status of the carrier as an independent contractor will be affected.

Carriers sometimes accidentally damage property in delivering

papers. Repairs usually are promptly made by the newspaper, and the boy is billed for the cost. Unless such a procedure for settling damages is specified in the contract, the newspaper had better let the carrier handle the whole matter himself. Otherwise, a troublesome father might protest the statement and refuse to make payment.

ANTITRUST LAWS MAY AFFECT PRACTICES

Antitrust laws to a certain extent and in some instances may restrict a newspaper in its circulation practices.

A court decree resulting from a civil antitrust suit brought against the Kansas City Star Company in January, 1953, required the company to relinquish its old custom of selling home delivery subscriptions to its morning, evening and Sunday issues exclusively in combination package. The decree, which was signed by attorneys for the Star Company and attorneys for the Department of Justice and filed with Judge Richard M. Duncan in Kansas City in November, 1957, permitted subscribers to the Star papers — the Kansas City *Star* (evening), the Kansas City *Times* (morning) and the Sunday Kansas City *Star* — thereafter to elect one of six ways to buy these papers on a home delivery basis: (1) morning, evening and Sunday, as previously required; (2) morning issue and Sunday; (3) evening issue and Sunday; (4) morning issue only; (5) evening issue only; or (6) Sunday issue only. This made it necessary for the *Star* to accept subscriptions for a single issue daily or for a Sunday issue only in addition to subscriptions in combination.

On the basis of antitrust laws, publishers have been faced with legal action regarding territory assignments to news dealers. Suit was once brought against a newspaper based on the contention of a news dealer that the assignment of specific territory for the distribution of newspapers violated the antitrust laws of the state. The case, however, was dismissed by the Circuit Court and the dismissal was sustained by the Court of Civil Appeals. The higher court stated:⁷

This distributor's sole grievance is that the newspaper discontinued selling papers to him, and he seeks damages because of this continuance. He is not an innocent party who has been injured by the action of conspiring strangers; on the contrary, he was, until his contract was canceled, a party to the distribution system of which he now complains. He has sought by this action to force the newspaper to resume selling his papers or to penalize it for failure to do so. The law does not permit him to use the antitrust statutes for such a purpose.

INCOME TAX LAWS

A newspaper comes up against the income tax law in its handling of receipts for prepaid subscriptions. There is a question of

⁷ Erickson *vs.* Times-Herald Printing Co., July 2, 1954 (271 S.W. 2nd. 329).

whether prepaid subscriptions should be counted as income in the year when the money is received or be reported as income in the year it is earned. The courts have ruled that the publisher as a taxpayer may elect which course to pursue and must continue that course from year to year unless he can present satisfactory reasons for asking for a change.

The provisions for withholding income tax from salaries, of course, must be observed in the circulation department as in all other departments. This, however, usually is handled in the general business office.

In handling circulation, many situations may develop where legal knowledge is valuable. When in doubt regarding any point, a publisher or his circulation manager should seek counsel. It is well for a publisher to read carefully all information on legal matters issued by his regional and state press associations and by the American Newspaper Publishers Association. Bulletins of the International Circulation Managers Association and his regional association of circulation managers should be obtained.