

# The State of South Carolina



## Office of the Attorney General

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November 28, 1994

The Honorable Gilda Cobb-Hunter  
Member, House of Representatives  
1891 Colonial Drive, SE  
Orangeburg, South Carolina 29115

Dear Representative Cobb-Hunter:

Several months ago you requested the opinion of this Office as to whether S.C. Code Ann. § 15-29-85 (1993 Cum. Supp.) governs charges for legal advertisements in newspapers and rates for indigents, and whether the law requires accommodation of indigent requests.

Section 15-29-85 provides:

Notwithstanding other provisions of § 15-29-80 with regard to legal advertising rates, any person required to publish a summons or other legal notice who qualifies as an indigent shall not be charged an amount exceeding one dollar per inch for the first insertion and not exceeding fifty cents per inch for each subsequent insertion of that legal advertisement. Advertisements published under the provisions of this section shall comply with the layout requirements set forth in § 15-29-80 with charges calculated in accordance with the measurement provisions set forth therein. As used in this section "indigent" means a person whose legal assistance is paid for with public funds or who would be qualified for such assistance in the proceeding which requires publication of the legal notice concerned.

A newspaper is a private business, Herald Telephone v. Fatourous, 431 N.E.2d 171 (Ind. App. 1982), a business which is not inherently governmental in nature. Chicago Joint Board, Amal. Cloth. Wkrs. v. Chicago Tribune Co., 307 F.Supp. 422 (N. D. Ill. 1969). The newspaper publisher may do business with whomever it wishes or may refuse

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to do business with whomever it wishes. Herald Telephone, supra; Fitzgerald v. National Rifle Ass'n of America, 383 F.Supp. 162 (D. N. J. 1974). An advertiser has no First Amendment right of access to a newspaper, Carpets By the Carload, Inc. v. Warren, 368 F.Supp. 1075 (E. D. Wis. 1973), nor does a newspaper publisher have a legal obligation, in the absence of a contract, to accept advertising. Modla v. Tribune Publishing Co., 14 Ariz. App. 82, 480 P.2d 999 (1971). Based on these principles of law, it is our opinion that a newspaper, as a private business, is not required to accept all advertising which may be submitted to it. Thus, a newspaper publisher may decline to accept indigents' legal advertisements.

If, however, a newspaper accepts for publication legal advertising of an indigent (defined by § 15-29-85 to be one "whose legal assistance is paid for with public funds or who would be qualified for such assistance in the proceeding which requires publication of the legal notice concerned"), then § 15-29-85 restricts the amount which may be charged to the advertiser who qualifies as an indigent.

Enclosed with your letter was a copy of a letter from a newspaper to one of the state's legal services offices, which letter stated that the newspaper "do[es] not run ads for indigents." Then the newspaper's ad rate was listed. Based on the above, it is our view that the newspaper has no duty to accept the indigent advertising; if, however, it chooses to do so, the limitations of § 15-29-85 would apply.

As a practical matter, the legal services office in question may wish to clarify the newspaper's stance on indigent advertising with the attorney who counsels the newspaper. Depending on the outcome of that communication, perhaps attention of the advertising manager should be drawn to § 15-29-85 if the newspaper will publish indigent advertising but only at its usual rate.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions