

## LEGAL NOTICES/PUBLICATION UPDATE



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## Government Code § 2051.044

### § 2051.044. Type of Newspaper Required

- (a) The newspaper in which a notice is published must:
  - (1) devote not less than 25 percent of its total column lineage to general interest items;
  - (2) be published at least once each week;
  - (3) *be entered as second-class postal matter in the county where published*; and
  - (4) have been published regularly and continuously for at least 12 months before the governmental entity or representative publishes notice.
- (b) A weekly newspaper has been published regularly and continuously under Subsection (a) if the newspaper omits not more than two issues in the 12-month period.
- (c) This section does not apply to the publication of a notice to which Section 2051.0441 applies.



## Government Code § 2051.048

### § 2051.048. Notice of Other Political Subdivision

(a) This section applies only to a political subdivision other than a county or a conservation and reclamation district under Section 2051.047.

(b) A notice of a political subdivision shall be published in a newspaper *that is published in the political subdivision* and that will publish the notice at or below the legal rate.

(c) If no newspaper in the political subdivision will publish the notice at or below the legal rate, the political subdivision shall publish the notice in a newspaper that:

(1) *is published in the county in which the political subdivision is located*; and

(2) will charge the legal rate or a lower rate.

(d) If no newspaper published in the county in which the political subdivision is located will publish the notice at or below the legal rate, the political subdivision shall post the notice at the door of the county courthouse of the county in which the political subdivision is located.

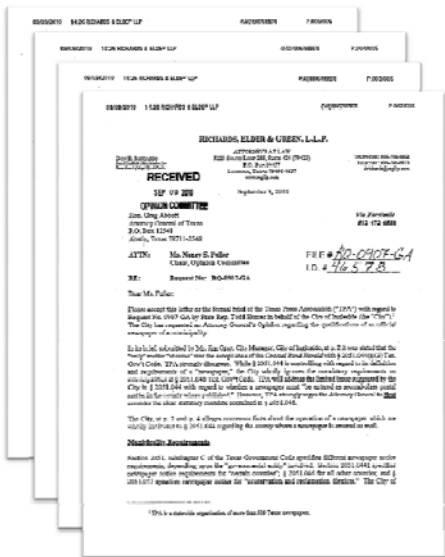


## ***George W. Christy et al v. W.S. William et al,*** **292 S.W.2d 348, 352 (Tex. App. Galveston 1956 writ dismissed)**

“The State Attorney General’s Office, in Opinion No. C-7286 ruled ‘A paper is published at the time and place where it is released to the public, not where it is mechanically produced. We so held in our Opinion No. O-7112.’ Such ruling by the Attorney General’s Office is too clear to need support by authority or reason.”



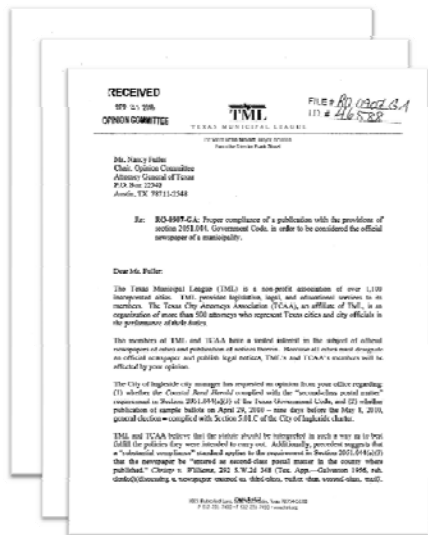
### Correspondence from the Texas Press Association to Attorney General, dated September 9, 2010



“Every newspaper admits its official one-and-only ‘publishing location’ in each issue of the newspaper. Thus the location where it is ‘published’ is easily ascertainable by the newspaper itself. Every newspaper holding a periodical (i.e., ‘second-class’) postal permit is required by postal regulation to designate its official ‘location of publication’ in the newspaper’s ‘Identification Statement,’ which must be printed within the first five pages of each issue of the newspaper. Such location of publication must be in the city where the newspaper is officially authorized to be entered into the U.S. Postal Service.”



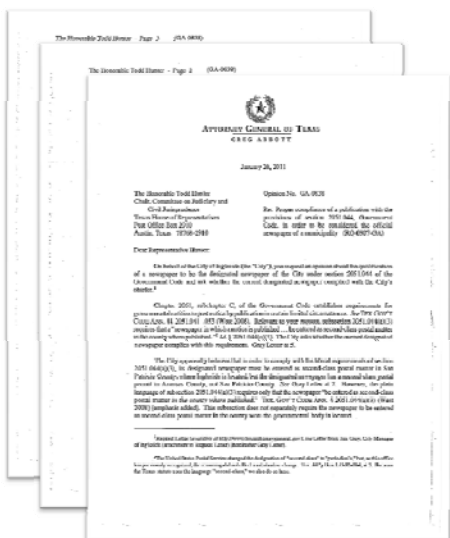
### Correspondence from the Texas Municipal League to Attorney General, dated September 21, 2010



“... precedent suggests that a ‘substantial compliance’ standard applies to the requirement in Section 2051.044(a)(3) that the newspaper be ‘entered as second-class postal matter in the county where published.’”



### Attorney General Opinion, GA-0383, dated January 26, 2011



“However, the plain language of subsection 2051.044(a)(3) requires only that the newspaper ‘be entered as second-class postal matter *in the county where published.*”

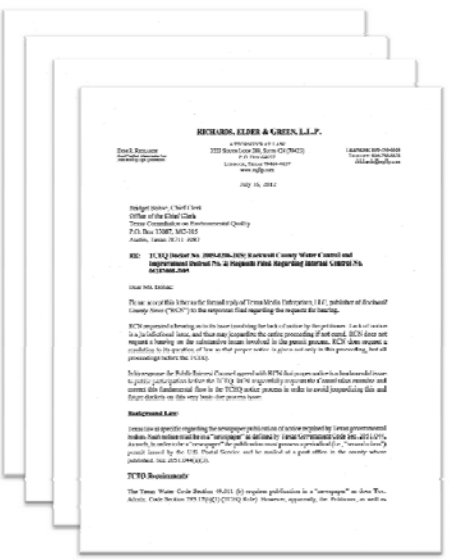
“This subsection does not separately require the newspaper to be entered as a second-class postal matter in the county where the governmental body is located.”

“One brief submitted suggests that a newspaper has only one official publishing location, which is a ‘known office of publication’ under the United States postal regulations, and is ‘at the location where the original entry for Periodicals mailing privileges is authorized. The location of publication may be so defined for purposes of the federal regulations, an issue we need not decide here. However, under Texas law and as used in the relevant statute at issue, the location of publication is where the newspaper is released to the public.”

“One brief submitted suggests that the City’s newspaper violates other Government Code provisions. However, your request concerns ‘only the [newspaper’s] compliance with 2051.044(a)(3),’ and our opinion is limited accordingly.”



### Correspondence from Texas Media Enterprises, LLC to TCEQ, dated July 16, 2012



“As such, in order to be a ‘newspaper’ the publication must possess a periodical (i.e., ‘second-class’) permit issued by the U.S. Postal Service and be mailed at the post office in the county where published. *See* 2051.044(a)(3).”



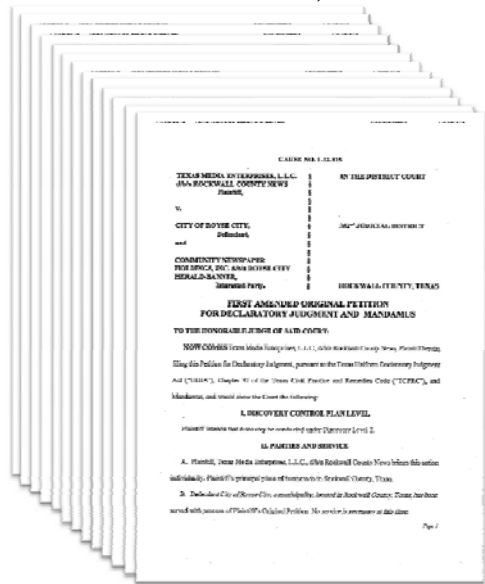
## TCEQ Order, dated July 25, 2012



“... The Requestors had not established that they were affected parties entitled to a hearing.”



## First Amended Original Petition for Declaratory Judgment and Mandamus *Rockwall County News v. City of Roysse City, Cause No. 1-12-804, in the 382<sup>nd</sup>* Judicial District Court, Rockwall County, Texas

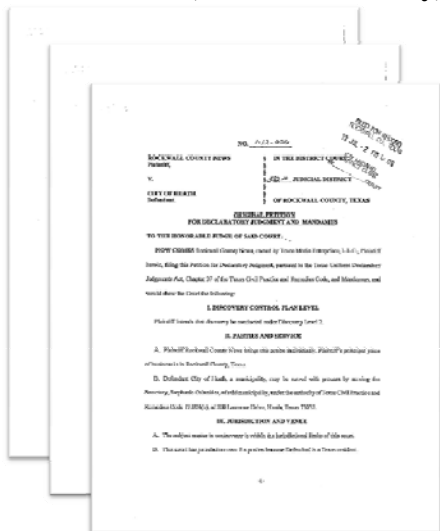


“The City of Roysse City, Rockwall County, Texas, by and through its City Council has voted to select the Roysse City Herald-Banner as the official, legal advertising newspaper for the City pursuant to the requirements of Section 2051.049 of the Texas Government Code (the ‘Code’). Plaintiff, contests that such designation is illegal pursuant to Section 2051.018(b) and (c)(1) of the Code. Section 2051 specifies that the City ‘shall’ publish its legal advertising in a newspaper that is published in the county in which the city is located. The Roysse City Herald-Banner is legally published, according to its own published statements and federal agency requirements, in the City of Greenville, Hunt County, Texas, and not in Rockwall County, Texas.”

“Plaintiff contends that under the mandatory requirements of the Texas Government Code, the Roysse City Herald-Banner does not qualify as a legal choice of the City of Roysse City, and the City has knowingly violated the non-discretionary requirement of Section 2051.044(b)(3) and 2051.048(c)(1) despite the availability of a legally qualified newspaper. In this instant case, as the City of Roysse City did not have any other statutorily eligible newspaper to lend credence to any claim of discretionary selection, the choice was mandatory, ministerial selection of the only statutorily eligible newspaper.”



**Original Petition for Declaratory Judgment and Mandamus  
*Rockwall County News v. City of Heath*, Cause No. 1-12-656, in the 382<sup>nd</sup> Judicial  
 District Court, Rockwall County, Texas**

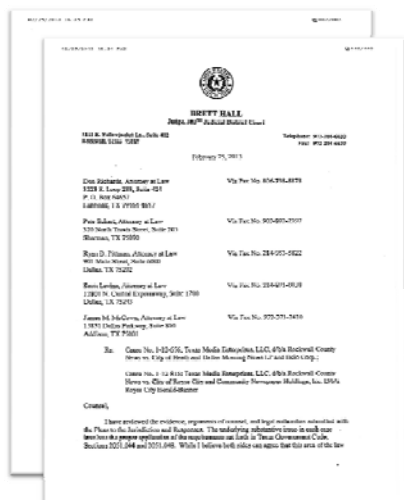


“The Dallas Morning News is legally published, according to its own published statements and federal agency requirements, in the City of Dallas, Dallas County, Texas, and not in Rockwall County, Texas.”

“Plaintiff contends that under the mandatory requirements of the Texas Government Code that the Dallas Morning News does not qualify as a legal choice of the City of Heath. Rockwall County News, however, is published legally, statutorily, and factually, within Rockwall County, and is the only legal Texas newspaper so published, and thus is the only qualified legal newspaper to be the choice of Heath.”



**Court’s Ruling, dated February 25, 2013  
*Rockwall County News v. City of Royse City*, Cause No. 1-12-804, in the 382<sup>nd</sup> Judicial  
 District Court, Rockwall County, Texas; and  
*Rockwall County News v. City of Heath*, Cause No. 1-12-656, in the 382<sup>nd</sup> Judicial  
 District Court, Rockwall County, Texas**



“While I believe both sides can agree that this area of the law could be subject to some clarification or revision by the Texas Legislature, at this point the issue for the Court is whether or not under Texas law, there is subject matter jurisdiction to decide a Declaratory Judgment action brought against the cities of Heath and Royse City, based on claims of alleged ultra vires acts.”



# Currently Proposed Legislation

By: Strickland

H.B. No. 335

A BILL TO BE ENTITLED

AN ACT

relating to the posting of required notice on a political subdivision's Internet website.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2051, Government Code, is amended by adding Subchapter E. to read as follows:

SUBCHAPTER E. NOTICE BY PUBLICATION ON INTERNET FOR POLITICAL SUBDIVISIONS

Sec. 2051.151. NOTICE BY PUBLICATION ON INTERNET. A political subdivision may satisfy a requirement in any other law to provide notice by publication in a newspaper by posting the notice on its Internet website continuously from the earliest date provided for in the requirement until the day after the date the action for which notice was required occurs.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.



# Currently Proposed Legislation

By: Harper-Brown

H.B. No. 3646

H.B. No. 3646

A BILL TO BE ENTITLED

AN ACT

relating to a governmental entity's selection of an advertising medium and publication of notice.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2158, Government Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. ADVERTISING MEDIUM SELECTION; NOTICE BY PUBLICATION

Sec. 2158.501. DEFINITIONS. In this subchapter:

(1) "Advertising medium" means the method through which a promotional message is communicated to the public using words, speech, pictures, or video. The term includes billboards, magazines, radio, television, direct mail, and the Internet.

(2) "Governmental entity" has the meaning assigned by Section 2051.041.

Sec. 2158.502. ADVERTISING MEDIUM SELECTION CRITERIA. A governmental entity conducting an advertising campaign to communicate information to the public may use for the advertising campaign only the advertising medium that provides the information to the largest number of people.

SECTION 2. Chapter 2051, government code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. NOTICE BY PUBLICATION ON INTERNET FOR GOVERNMENTAL ENTITIES

Sec. 2051.151. DEFINITION. In this subchapter, "governmental entity" has the meaning assigned by Section 2051.041.

Sec. 2051.152. NOTICE OF PUBLICATION ON THE INTERNET. A governmental entity may satisfy a requirement in any other law to provide notice by publication by posting the notice on its Internet website continuously from the earliest date provided for in the requirement until the day after the date the action for which notice was required occurs.

SECTION 3. Subchapter I, Chapter 2158, Government Code, as added by this Act, applies only to a contract for which an invitation for offers, request for proposals, request for qualifications, or other similar solicitation is first published or distributed on or after the effective date of this Act is governed by the law in effect at the time the invitation, request, or other solicitation is published or distributed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2013.

