

IN THE SUPREME COURT THE STATE OF MISSISSIPPI

**STONE COUNTY PUBLISHING, INC.
d/b/a The Times of Stone County
and South Mississippi**

APPELLANT

V

SC NO. 2007-TS-02106

BILL PROUT, ET AL.

APPELLEE

BRIEF OF APPELLANT

**STONE COUNTY PUBLISHING, INC. d/b/a The Times of Stone County
and South Mississippi**

**APPEAL FROM THE CIRCUIT COURT OF
STONE COUNTY, MISSISSIPPI**

ORAL ARGUMENT REQUESTED

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STONE COUNTY PUBLISHING, INC. d/b/a
The Times of Stone County and South Mississippi**

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**BRIEF OF APPELLANT STONE COUNTY PUBLISHING, INC. d/b/a The Times of
Stone County and South Mississippi**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant, STONE COUNTY PUBLISHING, INC. d/b/a The Times of Stone County and South Mississippi certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal:

1. Stone County Publishing, Inc.
2. H. Ted Cain
3. City of Wiggins, Stone County, Mississippi
4. Bill Prout
5. Darrell Berry
6. Donna Rouse
7. Mike Cain
8. Thomas E. Hall
9. Jerry Alexander

COUNSEL FOR APPELLANT

1. Honorable Darren E. Gray, Attorney at Law, 146 West Pine Avenue, Wiggins, MS, 39577

APPELLANT

1. Stone County Publishing, Inc., d/b/a The Times of Stone County and South Mississippi, 142 Pine Ave, E. Wiggins, MS 39577

CIRCUIT COURT JUDGE

1. Honorable Lisa P. Dodson, Circuit Judge for the 2nd Circuit District of the State of Mississippi, Stone County, Mississippi.

COUNSEL FOR APPELLEE

1. Honorable Rebecca C. Taylor, Attorney at Law, P.O. Drawer 490, Wiggins, MS 39577

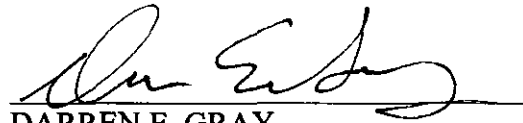
APPELLEES

1. BILL PROUT, DARRELL BERRY, DONNA ROUSE, MIKE CAIN, THOMAS E. HALL in their official capacities as Alderman for the City of Wiggins, Mississippi

RESPECTFULLY SUBMITTED, this the 9th day of June, 2008.

Stone County Publishing, Inc., d/b/a The Times of
Stone County and South Mississippi
APPELLANT

BY:



DARREN E. GRAY
ATTORNEY FOR Stone County Publishing, Inc.,
d/b/a The Times of Stone County and South
Mississippi,
APPELLANT

REQUEST FOR ORAL ARGUMENT

Comes now, the Appellant, Stone County Publishing, Inc., d/b/a The Times of Stone County and South Mississippi, and requests oral argument. Oral argument would be beneficial to the Court's understanding of the facts as they apply to the law on the issues raised in this appeal.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS.	i-ii
REQUEST FOR ORAL ARGUMENT	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES.	vi-ix.
STATEMENT OF ISSUES.	1
STATEMENT OF THE CASE	2
I. Nature of the Case	2
II Course of the Proceedings and Disposition in the Court Below.	2
II Statement of the Facts.	4
SUMMARY OF THE ARGUMENT	7
APPELLANT ARGUMENT	8
I. WHETHER THE CIRCUIT COURT CORRECTLY RULED THE DECISION BY THE BOARD OF ALDERMEN NOT TO CONSIDER THE TIMES BID COMPLIED WITH MISS. STAT. ANN. §13-3-31 AND CASE LAW PRECEDENT AND WHETHER THE COURT CORRECTLY HELD THE BOARD OF ALDERMEN DID NOT DEEM THE TIMES UNQUALIFIED TO PUBLISH LEGAL NOTICES.	8
CONCLUSION	16
CERTIFICATE OF SERVICE	17

TABLE OF AUTHORITIES

CASES:

PAGE NO.

<i>Sunland Publishing Co. Inc. v. The City of Jackson</i> 710 So. 2d 879 (Miss. 1998)	5,11,13
<i>Falco Lime, Inc. v. Mayor and Aldermen of City of Vicksburg, et al.</i> 836 So.2d 711 (Miss 2002)	8
<i>Barnes v. Bd. of Supervisors, Desoto Count</i> 553 So. 2d 508 (Miss 1989)	8
<i>Bd. of Law Enforcement Officers Standards & Training v. Butler,</i> 672 So.2d 1196 (Miss.1996)	8
<i>Johnson v. Ferguson</i> 435 So.2d 1191 (Miss.1983)	8
<i>Miss. Bureau of Narcotics v. Stacy</i> 817 So.2d 523 (Miss.2002)	8
<i>McDermert v. Miss. Real Estate Comm'n,</i> 748 So.2d 114 (Miss.1999).	8

STATUTES:

Miss. Code Ann. § 11-51-75.	2
Miss. Code Ann. §13-3-31.	2,4,5,7,9,10,11,12,13,14,15
Miss. Code Ann. §21-39-3.	4,5,10,11,13

STATEMENT OF THE CASE

I. Nature of the Case

This matter is an appeal from judgment or decision by municipal authorities pursuant to Miss. Code Ann. § 11-51-75. Appellant, Stone County Publishing, Inc. d/b/a The Times of Stone County and South Mississippi (hereinafter referred to as "The Times") began publication in the fall of 2004. In compliance with Mississippi Code Ann. §13-3-31, The Times requested the City of Wiggins inviting bids from qualified newspapers, as required by law, for the purpose of running the City's legal notices the City of Wiggins did not consider the bid of The Times thereby deeming The Times not to be qualified to publish the City's legal notices. The Times timely served a Bill of Exceptions upon the City, challenging its decision which essentially held The Times not qualified to publish legal notices for the City of Wiggins, Mississippi.

The decision by the Board of Aldermen of Wiggins, Mississippi was arbitrary and capricious and violates a statutory right of The Times as it denies The Times the right to bid on the publication of legal notices of the City of Wiggins and the decision is not based on substantial evidence.

II. Course of Proceedings and Disposition in the Court Below

On December 28, 2006, The Times delivered the Bill of Exceptions to the person acting as President of the Board of Aldermen of the City of Wiggins by delivering the Bill of Exceptions to the City Clerk, in the absence of the person acting as President of the Board of Aldermen appealing a decision of the Board of Aldermen rendered on December 19, 2006. [R 2/ 198-207].

On January 8, 2007, a signed Bill of Exceptions was filed in the Circuit Court of Stone County, Mississippi. [R1/ 11].

On January 24, 2007, The Times filed a supplement to the Bill of Exceptions. [R 1/ 37-38].

On May 18, 2007, a response to the Bill of Exceptions, Motion to Strike or in the Alternative Dismiss and for Sanctions and Attorneys Fees was filed on behalf of the Aldermen. [R 1/ 41-78].

On May 24, 2007 an Amended Response to Bill of Exceptions and Motion to Strike or in the Alternative Dismiss and for Sanctions and Attorney Fees was filed on behalf of the Alderman. [R 1/ 79-116].

On May 24, 2007 The Times filed a Supplement to Plaintiff/Appellant's Notice of Appeal and Bill of Exceptions. [R 2/ 117-23].

On May 24, 2007 the Aldermen filed a Memorandum in Support of Response to Bill of Exceptions and Motion to Strike or in the Alternative Dismiss and for Sanctions and Attorneys Fees. [R 2/ 124-98].

On May 24, 2007 The Times filed a Memorandum of Authorities in Support of Plaintiff's Bill of Exceptions. [R2/ 199-208].

On May 25, 2007 the Court heard oral arguments. [R 3/ 1-27]

On June 20, 2007 the Court issued a Judgment on Appeal. [R 2/ 209-13].

On June 22, 2007 the Judgment on Appeal was filed. [R 2/ 209-13].

On July 2, 2007 The Times filed a Motion for Rehearing or in the Alternative, Reconsideration of Judgment Affirming the Decision of the Board of Aldermen of Wiggins, Mississippi. [R 2/ 214-21].

On July 19, 2007 The Aldermen filed a Response to Motion for Rehearing or in the Alternative Reconsideration of Judgment Affirming the Decision of the Board of Aldermen of Wiggins, Mississippi. [R 2/ 223-225].

On October 12, 2007 the Court heard oral arguments on the Motion for Rehearing. [R 3/ 28-52].

On October 31, 2007 the Court filed an Order Denying The Times Motion for Rehearing or in the Alternative Reconsideration of Judgment Affirming the Decision of the Board of Aldermen of Wiggins, Mississippi. [R 2/ 226].

On November 28, 2007 The Times filed a Notice of Appeal and Designation of the Record. [R 2/ 228].

On November 29, 2007 The Times filed an Amended Designation of the Record. [R 2/231].

On December 7, 2007 The Times filed its Certificate of Compliance with M.R.A.P. 11(B)(1).

III. Statement of the Facts

The Times is a locally owned and operated newspaper in Stone County, Mississippi. In September of 2006, when The Times first approached the Board of Aldermen of the City of Wiggins (hereinafter referred to as "Board") about publication of legal notices, the newspaper had been in publication for nearly two (2) years. The Times has now been published for more than three (3) years. The Times has been deemed qualified by the Stone County Board of Supervisors and has been approved by the Board of Supervisors to publish all legal notices for Stone County, Mississippi. [R 1/ 23-24].

On September 5, 2006, The Times first approached the City of Wiggins Board of Aldermen and notified the board of Miss. Code Ann. §21-39-3 which requires the municipality to invite competitive bids from qualified newspapers for the publication of legal notices. At this meeting the Board was presented with relevant statute and case law and evidence of qualification pursuant to Miss. Code Ann. §13-3-31. The Times also notified the Board and the Board's

attorney Rebecca Taylor of Miss. Code Ann. §13-3-31 which clearly sets forth the criteria a newspaper must meet to be qualified to publish legal notices.

The Times has provided the Mayor and Board of Aldermen a sworn affidavit stating The Times is, and will continue to be, in compliance with §13-3-31 and the Board has not demonstrated that The Times is not in compliance with §13-3-31. [R 1/ 21-22] The Times also submitted an order from the Board of Supervisors of Stone County Mississippi which previously recognized The Times as a qualified paper and has contracted with The Times to publish legal notices. [R 1/ 23-24].

In an effort to prevent the Board from mistakenly basing their decision on advice which is in direct contradiction to both statutory and case law, The Times filed a Complaint for Mandamus to require the Board to invite bids as required by Miss. Code Ann. §21-39-3 to require the Board of Aldermen, City of Wiggins, and the Mayor abide by the law as it is written and interpreted by the Mississippi Supreme Court. To this date the Board of Aldermen of the City of Wiggins has denied The Times its statutory right by denying to consider whether The Times is a qualified newspaper pursuant to Miss. Code Ann. §13-3-31. This decision not to consider The Times a qualified newspaper is arbitrary and capricious and is based on a total lack of evidence.

On September 19, 2006, and October 2, 2006, The Times provided the Board with case law which clearly interprets the meaning of "general circulation" as it applies in this matter. *Sunland Publishing Co. Inc. v. The City of Jackson* 710 So. 2d 879, 883-84 (Miss. 1998). [R 1/ 25-32]. The Times individually informed any member of the Board that inquired how many paid subscribers receive The Times. At a November 7, 2006 meeting the Board of Aldermen voted to invite bids for the publication of legal notices. [R 1/63]. The Times timely submitted its bid and on December 5, 2007, the Board of Aldermen opened the two bids received and took them under advisement. [R 1/ 67]. On December 19, 2007 the Board of Alderman voted not to consider The

Times bid for the publication of legal notices. The record in this matter is totally absent any evidence The Time is not a newspaper qualified to publish legal notices under the statutory and case law of Mississippi. The Aldermen did not analyze or set forth a basis for the decision, as required by statute, finding only one qualified newspaper or deciding not to consider The Times bid and as Plaintiff has submitted evidence of qualification such decision was arbitrary and capricious, not supported by substantial evidence and violates The Times statutory rights.

SUMMARY OF THE ARGUMENT

APPELLANT'S ISSUES

- I. WHETHER THE CIRCUIT COURT CORRECTLY RULED THE DECISION BY THE BOARD OF ALDERMEN NOT TO CONSIDER THE TIMES BID COMPLIED WITH MISS. STAT. ANN. §13-3-31 AND CASE LAW PRECEDENT AND WHETHER THE COURT CORRECTLY HELD THE BOARD OF ALDERMEN DID NOT DEEM THE TIMES UNQUALIFIED TO PUBLISH LEGAL NOTICES.**

The December 19, 2006 decision by the Board of Aldermen of Wiggins, Mississippi not to consider the bid submitted by The Times was arbitrary and capricious, not based on substantial evidence and violated The Times statutory rights. The Board did not analyze The Times pursuant to Miss. Code Ann. §13-3-31 as interpreted by the Mississippi Supreme Court. The Board presented no evidence The Times was not qualified to publish legal notices while The Times presented evidence of qualification. The Board's action of not considering The Times bid was in fact a finding that The Times is not qualified and such decision is arbitrary and capricious, not based on substantial evidence and violates a statutory right of The Times.

APPELLANT ARGUMENT

I. WHETHER THE CIRCUIT COURT CORRECTLY RULED THE DECISION BY THE BOARD OF ALDERMEN NOT TO CONSIDER THE TIMES BID COMPLIED WITH MISS. STAT. ANN. §13-3-31 AND CASE LAW PRECEDENT AND WHETHER THE COURT CORRECTLY HELD THE BOARD OF ALDERMEN DID NOT DEEM THE TIMES UNQUALIFIED TO PUBLISH LEGAL NOTICES.

- A. The decision of the Board not to consider the bid of The Times was in error and does not comply with Mississippi statutory and case law.

RELEVANT LAW

The Mississippi Supreme Court has set forth the following standards when reviewing a municipality Board's decision. The Mississippi Supreme Court applies the same standard of review to a Board's legislative act as they apply in review of an administrative agency's decisions. *Falco Lime, Inc. v. Mayor and Aldermen of City of Vicksburg, et al.* 836 So.2d 711, 721, (Miss 2002), citing *Barnes v. Bd. of Supervisors, Desoto County*, 553 So. 2d 508, 511 (Miss 1989). Such decisions or orders are to be upheld unless the order was unsupported by substantial evidence; was arbitrary or capricious; was beyond the agency's scope or powers; or violated a constitutional or statutory right of the aggrieved party. *Bd. of Law Enforcement Officers Standards & Training v. Butler*, 672 So.2d 1196, 1199 (Miss.1996).

The Mississippi Supreme Court deems the substantial evidence requirement is met when the record includes "such relevant evidence as reasonable minds might accept as adequate to support a conclusion," which must be "more than a 'mere scintilla' of evidence." *Falco Lime, Inc. v. Mayor and Aldermen of City of Vicksburg, et al.* 836 So.2d 711, 721, (Miss 2002), (quoting *Johnson v. Ferguson*, 435 So.2d 1191, 1195 ((Miss.1983)). "This Court has held that 'a holding which is supported by substantial evidence cannot be arbitrary and capricious.' " *Miss. Bureau of Narcotics v. Stacy*, 817 So.2d 523, 526 (Miss.2002) (quoting *McDermert v. Miss. Real Estate Comm'n*, 748 So.2d 114, 117 (Miss.1999)).

Whether a newspaper is qualified to publish legal notices is determined by Miss. Code Ann. §13-3-31 which sets forth the criteria newspapers must meet to be qualified thereunder.

Miss Code Ann. sets forth the following:

§ 13-3-31. Publication requirements

(1) Whenever it is required by law that any summons, order, citation, advertisement or other legal notice shall be published in a newspaper in this state, it shall mean, in addition to any other requirements imposed by law, publication in some newspaper which:

(a) Maintains a general circulation predominantly to bona fide paying subscribers within the political subdivision within which publication of such legal notice is required. The term "general circulation" means numerically substantial, geographically widespread, demographically diversified circulation to bona fide paying subscribers. In no event shall the term "general circulation" be interpreted to require that legal notices be published in a newspaper having the greatest circulation. The term "bona fide paying subscribers" means persons who have subscribed at a subscription rate which is not nominal, whether by mail subscriptions, purchases through dealers and carriers, street vendors and counter sellers, or any combination thereof, but shall not include free circulation, sales at a token or nominal subscription price and sales in bulk for purposes other than for resale for individual subscribers.

(b) Maintains a legitimate list of its bona fide paying subscribers by the following categories where applicable:

(i) Mail subscribers;

(ii) Dealers and carriers; and

(iii) Street vendors and counter sellers.

(c) Is not published primarily for advertising purposes and has not contained more than seventy-five percent (75%) advertising in more than one-half (1/2) of its issues during the period of twelve (12) months next prior to the first publication of any legal notice therein, excluding separate advertising supplements inserted into but separately identifiable from any regular issue or issues.

(d) Has been established and published continuously for at least twelve (12) months next prior to the first publication of such matter to be published, is regularly issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively; provided, however, that publication on legal holidays of this state or of the United States and on Saturdays and Sundays shall not be required, and failure to publish not more than two (2) regular issues in any calendar year shall not disqualify a paper otherwise qualified.

(e) Is issued from a known office of publication, which shall be the principal public business office of the newspaper and need not be the place at which the newspaper's printing presses are physically located. A newspaper shall be deemed to be "published" at the place where its known office of publication is located.

(f) Is formed of printed sheets. However, the word "printed" does not include reproduction by the stencil, mimeograph or hectograph process.

(g) Is originated and published for the dissemination of current news and intelligence of varied, broad and general public interest, announcements and notices, opinions as editorials on a regular or irregular basis, and advertising and miscellaneous reading matter.

(h) Is not designed primarily for free circulation or for circulation at nominal rates.

(2) "Newspaper," as used in this section, shall not include a newspaper, publication, or periodical which is published, sponsored by, is directly supported financially by, or is published to further the interests of, or is directed to, or has a circulation restricted in whole or in part to any particular sect, denomination, labor or fraternal organization or other special group or class of citizens, or which primarily contains information of a specialized nature rather than information of varied, broad and general interest to the general public, or which is directed to any particular geographical portion of any given political subdivision within which publication of such legal notice is required, rather than to such political subdivision as a whole. No newspaper otherwise qualified under this section shall be disqualified from publishing legal notices for the sole reason that such newspaper does not have as great a circulation as some other newspaper publishing in the same political subdivision.

(3) In the event of the discontinuance of the publication of all newspapers in any county qualified under this section to publish legal notices, any other such newspaper published in the same county, regardless of the length of time it has been published, shall be deemed qualified to publish such legal notices, provided such newspaper meets all requirements of this section other than the requirements of subsection (1)(d) of this section.

(4) A newspaper otherwise qualified under this section which is published in a municipality whose corporate limits encompass territory in more than one (1) county shall be qualified to publish legal notices, including foreclosure sale notices as described in Section 89-1-55, for any county a portion of whose territory is included within the municipality, irrespective of the actual physical location within the municipality of the principal public business office of the newspaper.

Miss. Code Ann. §13-3-31.

Pursuant to Miss Code Ann. § 21-39-3, in municipalities where there exists more than one qualified newspaper, the municipality is required to invite bids for the publication of its proceedings, ordinances, resolutions, and other notices required to be published. Section 21-39-3 set forth the following requirements:

§ 21-39-3. Publishing contracts

In municipalities in which there is more than one newspaper qualified to publish legal notices, the governing authorities of such municipality shall enter into a contract for the publication of its proceedings, ordinances, resolutions, and other notices required to be published only after inviting competitive bids from such newspapers. Such contracts shall be let to the lowest bidder among them for a period of not more than twelve months from the date of such contract. It shall not be necessary, however, that the governing authorities of such municipality advertise its intention to accept such competitive bids but it shall be sufficient if notice thereof in writing be given to all of such newspapers by mail or delivery at least five days prior to the date on which said bids will be received, which said notice shall specify the date on which such bids will be received.

Miss. Code Ann. § 21-39-3.

The Mississippi Supreme Court has interpreted the meaning of general circulation contained in §13-3-31(1)(a). In *Sunland Publishing Co. Inc. v. The City of Jackson the City Council et al.* 710 So. 2d 879, 882 (Miss. 1998) the City Council deemed a paper not qualified because the paper did not submit a breakdown of its subscription base as did the other two newspapers and the fact that three council members had not seen the paper in their neighborhood. In *Sunland*, the Court held a paper was one of general circulation if, “as long as that newspaper publishes, news, human interest, advice columns, sports, arts, etc. which are of interest to the general public, its distribution is not entirely limited to one geographic area is available to anyone who wishes to subscribe and there exists paid subscribers, the newspaper is one of general circulation.” *Id.* at 883.

ANALYSIS

On December 19, 2006 the Board of Aldermen of Wiggins, Mississippi voted not to consider the bid for publication of legal notices submitted by The Times of Stone County and South Mississippi. [RE 3]. This decision is in direct opposition to the statutory and case law in Mississippi. After months of prodding and the filing of a Motion for Mandamus, the Board

issued invitations for bids to publish its proceedings, ordinances, resolutions, and other notices required to be published. [RE 5]. The Board received bids from two (2) newspapers on December 5, 2006 and took them under advisement. [RE 6]. In the December 19, order the Board ordered The Times bid not be considered since no determination can be made as to whether or not the newspaper complies with Section 13-3-31 or whether it is qualified to publish legal notices of the City of Wiggins. This decision is arbitrary and capricious, unsupported by substantial evidence and violates The Times statutory right to bid on the publication of legal notices of the City of Wiggins. There is simply no evidence upon which the Board decided not to consider The Times bid. In fact the record shows an affidavit submitted to the Board attesting to The Times compliance with all aspects of 13-3-31 *et seq.* [R 1/ 21]. The affidavit is an exhibit to The Times Bill of Exceptions which was timely presented to the Board.

In the affidavit, Starann Lamier, Chief Operating Officer of Stone Publishing Inc, d/b/a The Times of Stone County and South Mississippi on oath that The Times satisfies all of the elements of Miss. Code Ann. Section 13-3-31(1)(a-h). This affidavit was signed on September 21, 2006 and presented to the Board of Aldermen. The record is does not contain one discussion regarding any factor set forth in 13-3-31 *et seq.* other than the number of paid subscribers, which is one factor that cannot be considered to find a paper is not qualified if all other aspects are met. Miss. Code Ann. Section 13-3-31(1)(a) states "In no event shall the term "general circulation" be interpreted to require that legal notices be published in a newspaper having the greatest circulation." And Miss. Code Ann. 13-3-31(2) states "No newspaper otherwise qualified under this section shall be disqualified from publishing legal notices for the sole reason that such newspaper does not have as great a circulation as some other newspaper publishing in the same political subdivision." There is absolutely no evidence in the record that The Times does not have paying subscribers and the record contains the order of the Board of Supervisors of Stone

County deeming The Times qualified under Miss. Code Ann. Section 13-3-31 *et seq.* along with a sworn affidavit that carries with it penalties if found to be untrue.

The record evinces The Times appeared at numerous meetings and would answer all question other than a specific number of subscribers. It has not been alleged The Times does not maintain a general circulation predominantly to bona fide paying subscribers within the political subdivision as this was never discussed at a meeting. Although the affidavit attests The Times does maintain a general circulation as required by the statute in question. As the phrase general circulation has been interpreted to by the Mississippi Supreme Court a paper was one of general circulation if, "as long as that newspaper publishes, news, human interest, advice columns, sports, arts, etc. which are of interest to the general public, its distribution is not entirely limited to one geographic area is available to anyone who wishes to subscribe and there exists paid subscribers, the newspaper is one of general circulation." *Sunland Publishing Co. Inc. v. The City of Jackson the City Council et al.* 710 So. 2d 879, 883 (Miss. 1998). Based on this interpretation the number of paid subscribers becomes irrelevant as long as paid subscribers exist. There has been no evidence presented by The Board that paid subscribers do not exist and evidence has been presented by The Times that paid subscribers do exist. Once again, not one other element of section 13-3-31 was even discussed by the Board in rendering its order not to consider the bid and therewith deeming The Times unqualified to publish legal notices, stripping The Times of the statutory right.

The Board actions seem contradictory at best and disingenuous at worst. While the Board issued invitations for bids to publish legal notices, after much prodding by The Times, the Board was not required to issue bids unless it deemed The Times qualified to publish legal notices. As Miss Code Ann. Section 21-39-3 sets forth "In municipalities in which there is **more than one newspaper qualified to publish legal notices**, the governing authorities of such

municipality **shall** enter into a contract for the publication of its proceedings, ordinances, resolutions, and other notices required to be published only after inviting competitive bids from such newspapers.” It would seem when the Board invited bids it deemed The Times qualified only to vote not to consider The Times’ bid because it did not receive a number of subscribers without any evidence that paid subscribers did not exist. This decision not to consider The Times’ bid is clearly arbitrary and capricious, unsupported by substantial evidence and denies a The Times a statutory right to bid on the publication of legal notices.

The Court’s finding that the Board did not determine that The Times was not qualified is not supported by the facts. [RE 2 R 2/ 212]. The Board’s action not to consider The Times’ bid is in fact a finding that The Times’ is not qualified to publish legal notices without a scintilla of evidence to the contrary. Once again there is not one item in the record or minutes where any other factor of Section 13-3-31(1)(a-h) besides a number of subscribers or circulation is considered by the Board. This is in fact admitted by counsel as at oral arguments on appeal. The exchange is quoted as follows:

THE COURT: Was the board only waiting on circulation figures or did they have other information that they needed about The Times?

MS. TAYLOR: Yes, ma’am. That was their sole request throughout all of this.

[Record Transcript 3/ 23 lines 19-23].

The Board ruled not to consider The Times’ bid, effectively determining The Times was not qualified to publish legal notices pursuant to Miss. Code Ann. 13-3-31 *et seq.* This decision was not supported by substantial evidence, was arbitrary and capricious and deprives The Times of its statutory right to bid on the publication of legal notices of the City of Wiggins. There is no evidence of any type The Times is not qualified to publish legal notices for the City of Wiggins, Mississippi and to be in effect deemed not qualified without any evidence does not comply with

the interpretation of Miss. Code Ann. Section 13-3-31 *et seq.* as set forth by the Mississippi Supreme Court.

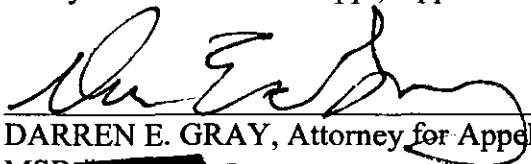
CONCLUSION

The Board of Aldermen of Wiggins, Mississippi voted not to consider the bid submitted by The Times for publication of its proceedings, ordinances, resolutions, and other notices required to be published. This vote deemed The Times not qualified to publish legal notices as, if qualified, the Board would have been required to consider its bid. There is no evidence on the record that supports the Board's decision. As Section 13-3-31(1)(a) is interpreted by the Mississippi Supreme Court The Times is qualified to publish legal notices. The Times submitted evidence of such to the Board and that evidence is eligible for consideration as it is a part of The Times Bill of Exceptions filed in this matter. The Times respectfully requests this honorable Court reverse the decision of the Circuit Court and remand to the Circuit Court instructing the Circuit Court to instruct the Board of Aldermen of Wiggins, Mississippi to reconsider the qualifications of The Times pursuant to Miss Code Ann. §13-3-31 *et seq.* and find The Times qualified or not qualified based on the evidence.

Respectfully submitted this the 9th day of June, 2008

Stone County Publishing, Inc. d/b/a The Times of
Stone County and South Mississippi, Appellant

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CERTIFICATE OF SERVICE

I, Darren E. Gray, do hereby certify that I have this date mailed, postage prepaid, by First Class United States mail an original and three (3) copies to the Clerk of the Mississippi Supreme Court and Court of Appeals and additional copies of the foregoing Brief of Appellant to the following:

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COUNSEL FOR APPELLEES

SO CERTIFIED, this the 9th day of June, 2008.



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