



TO OUR CLIENTS AND FRIENDS

OHIO GENERAL ASSEMBLY
AMENDED SUBSTITUTE HOUSE BILL 153 (BUDGET):

LEGAL NOTICES FOR PUBLIC ACTIVITY

A Legal Update
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INTRODUCTION

Constitutional due process requires that American citizens be notified of government action and activity, as essential to our democratic process. Local newspapers have served that function since the founding of our nation.

Ohio law since the 1800's has required that public subdivisions advertise and pay for public Legal Notices in a local paper of "General Circulation." That definition now is amended to include Community Newspapers and electronic Internet advertising.

PRIOR LAW

To insure adequate local notice of government activity, Ohio law historically required that "General Circulation" included only newspapers with 50% paid subscribers, as verified by a U.S. Second Class Postal Permit. When first enacted over a century ago, newspaper subscription may have been representative of the manner in which American citizens obtained their news.

Information delivery has changed remarkably since Ohio first enacted its Legal Notices law. Today, in the commercial advertising market, newspapers now rely on Circulation Audits to provide potential advertisers with detailed demographics of how an ad might reach a reader. Ohio law never required specific circulation information for Legal Notices, and no audit to verify that information might actually reach Ohio citizens.

Community Newspapers circulate widely throughout Ohio counties, not just in county seat cities. Many major city paid papers also offer free Community Newspapers that circulate broadly through neighboring suburbs. And the Internet provides instant access to information around the globe.

Yet Ohio law remained unchanged. Hypothetically, a "paid" paper with only 100 printed copies, delivered to half who subscribe, would qualify for Legal Notices, while a "free" Community Newspaper delivered to 1,000 homes was excluded.

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Public authorities had no choice but to advertise in the paid newspaper, with no circulation verification or price competition. The Legislative Service Commission estimated that political subdivisions throughout Ohio paid \$4.1 million in public notice advertising costs in fiscal year 2010.

THE NEW LAW

With enactment of Substitute Amended House Bill 153, Ohio's Biennial Budget Bill, public authorities now enjoy advertising choices and price competition when providing legal notices to Ohio citizens.

Signed into law on June 30, 2011, the provisions take effect 90 days later, or September 28, 2011. Sub. Am. H.B. 153, Sec. 812.10.

Qualified Definition: The primary statutory change appears in Ohio Revised Code §7.12, re-defining a "Newspaper of General Circulation" to include,

1. a publication bearing a title or name that is regularly issued at least once a week; and
2. It is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or sixteen pages in the tabloid format.
3. It contains at least twenty-five per cent editorial content, which includes, but is not limited to, local news, political information, and local sports.
4. It has been published continuously for at least three years immediately preceding legal publication by the state agency or political subdivision.
5. The publication has the ability to add subscribers to its distribution list.
6. The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency,

by proof of the filing of a United States postal service "Statement of Ownership, Management, and Circulation" (PS form 3526) with the local postmaster [Second Class Mail Permit],

or

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by proof of an independent audit of the publication performed, within the twelve months immediately preceding legal publication.

Any dispute about a particular publication's qualifications shall be mediated by the local common pleas court.

Daily Law Journals in circulation for three years prior to the legislation automatically qualify as a newspaper of general circulation for purposes of public notices. Several such publications operate in Ohio's major metropolitan areas.

Rates, Inserts: The legislative intent of the new law clearly is to save public funds, such as by allowing that a first notice "may be made in a preprinted insert in the newspaper" instead of the typical "tombstone" format, Ohio Revised Code §7.16(A).

The law requires the lowest favored advertising rate, and adding the ad for free to the publications' web site:

Ohio Revised Code §7.10: For the publication of advertisements, notices, or proclamations required to be published by a public officer of a county, municipal corporation, township, school, or other political subdivision, publishers of newspapers shall establish a government rate, which shall include free publication of advertisements, notices, or proclamations on the newspaper's internet web site, if the newspaper has one. The government rate shall not exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers.

Internet Advertising: In addition to requiring a newspaper to place the government ads on the newspaper's website for free, the new law directs the Office of Information Technology in the Ohio Department of Administrative Services to create a "State Public Notice Web Site." Use of the web site shall be free, both for posting and for searching legal notices. Ohio Revised Code §125.182.

Once the government agency publishes a legal notice in its entirety the first time required, the second publication may be "in abbreviated form" by including the following information:

(1) It is published in the newspaper of general circulation in which the first publication of the notice or advertisement was made and is published on that newspaper's internet web site, if the newspaper has one.

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(2) It includes a title, followed by a summary paragraph or statement that clearly describes the specific purpose of the notice or advertisement, and includes a statement that the notice or advertisement is posted in its entirety on the state public notice web site established under section 125.182 of the Revised Code. The notice or advertisement also may be posted on the state agency's or political subdivision's internet web site.

(3) It includes the internet addresses of the state public notice web site, and of the newspaper's and state agency's or political subdivision's internet web site if the notice or advertisement is posted on those web sites, and the name, address, telephone number, and electronic mail address of the state agency, political subdivision, or other party responsible for publication of the notice or advertisement.

(4) A notice or advertisement published under this section on an internet web site shall be published in its entirety in accordance with the section of the Revised Code or the administrative rule that requires the publication.

Ohio Revised Code §7.16(A). These provisions only take effect after the public authority and state begin operating the Public Notice Web Site.

Conforming Amendments: The legislature amended hundreds of statutes throughout the Ohio Revised Code for uniform application of the new “newspaper of general circulation” and Ohio Revised Code §7.16 requirements.

The antiquated requirement that a notice be published in both local newspapers “of opposite politics” or “of designated political affiliation” is eliminated, given the lack of such competing newspapers anymore.

CONCLUSION

Legislation to modernize the Legal Notices law has been debated for decades. Now with electronic communications worldwide, Ohio's law offers choice and economy. For more information, contact:

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