

WHY LOCAL GOVERNMENT SHOULD CONTINUE TO PLACE PUBLIC NOTICES IN NEWSPAPERS

The Minnesota Newspaper Association has never opposed sensible changes to state public notice laws. In fact, most of the significant changes in those laws enacted over the last 25 years have been the product of legislation initiated by MNA, which among other things has led to the removal of dozens of requirements that were out of date or served little purpose. We only support publication of notices that are meaningful to the public.

Do we really want government to have sole responsibility and control over the dissemination of its own notices? Publishing notices in a newspaper (and through the newspaper's Website) ensures that notices are distributed by means that are totally independent of government--and prevents government from deciding when the notice is published, what information is published, how the information is published--and whether it is changed after it is published. Furthermore, newspapers provide order, accuracy and reliability in this important context, along with objectivity.

Public bodies can give little assurance that their Websites will be consistently reliable, available, permanent, or secure. Much experience over the past several years shows that local government Web operations often suffer from technical problems, are out of date, and are difficult to navigate. Indeed, even some of the most sensitive and important government Websites in the country, including those maintained by the Department of Defense, have periodically had problems with hackers. And properly maintaining a "secure" Website is an expensive proposition.

Permitting local government to simply put their notices on their Websites instead of with newspapers has the potential to cause many problems. Scattered throughout Minnesota's statutes are scores of important public notice requirements, often subject to strict timelines and other conditions. What happens when a government Website shuts down or doesn't function properly? There could be serious legal consequences for the failure to properly publish. Newspapers are published every scheduled issue, and virtually always publish notices correctly. How can government agencies really verify that a particular public notice was properly distributed where it appeared only on their Websites?

There are no standards or requirements being proposed on how government must post on

the Internet. In fact, there is no real incentive for them to do the job right, and no penalty for that failure. Current law has extensive requirements for what newspapers must do in order to disseminate notices and how it must be done—including a mandate that newspapers post notices on their own Websites.

When local government attempted to pass this legislation in prior years, both the Attorney General and State Auditor voiced concerns with the lack of standards or any method of independent verification. The Attorney General of Wisconsin has also stated that "a government Internet Website can offer no clear equivalent to a newspaper's affidavit of publication that is sworn to and notarized by the publisher."

Legal notices are the permanent records of what a public body does as well as the notification of what it intends to do. There is no archival history to government Websites as there is with newspapers. Years from now, any citizen could go back to a newspaper file and read a notice of action by a government agency--that would not be available if the notices were only published on a government Website. The reliability of newspaper publication is so well established that courts freely accept the published contents of newspapers as evidence in court, and in fact require it for many court actions.

The more the public knows about what elected officials do, the better off we all are. The more open government is, the less room there is for speculation and rumor. Public notices in newspapers are in reality a critical check and balance on potential government errors--or even corruption. Indeed, as the resources available to the traditional media for gathering news about government diminish, a strong argument can be made that government should have an expanded duty to provide critical information for citizens.

According to a 2009 Minnesota State Fair public poll, newspapers overwhelmingly rank as the number one source for the public to acquire government or political information, surpassing television and radio by over 14 percentage points. Additionally, a recent study concluded that newspapers remain the main source of original local news reporting.

Local governments often acknowledge that newspapers get the message out best. Government agencies regularly use newspapers to publicize issues of concern to the community that they are not required to publish---because they obviously see the newspaper as a prime avenue for getting information out. A column in another state's League of Cities bulletin actually urged their members to lobby local legislators to get rid of newspaper publication requirements--and to get their message out by having their arguments published in newspapers across the state and by writing guest columns for those newspapers!

The article nowhere suggests that the League members should use the Internet to get the word out. In recent newspaper meetings we have had with county

auditors where they suggested repeal of publication mandates, they also requested help in getting newspapers across the state to publish free all of their "press releases" educating the public about county government; we diplomatically suggested that they post their press releases on their Websites instead if they thought it was a superior method of communicating with their constituents.

Newspapers acknowledge that not everyone gets their news from newspapers, and that there is a role for use of the Internet to supplement newspaper publishing. That's why in past sessions, we have supported legislation that mandated that all public notices appear in both the print and web version of newspapers. We have also supported a requirement that notices should appear in several mediums, including the Internet.

Most of the claimed cost savings to government are illusory. The expenses of running, properly maintaining, and updating a Website are significant, if done right—designing a site that convenient to use, loading material, putting it in the right places, building in adequate search engines, managing the files, archiving the material. In effect, these costs would be shifted to citizens, because currently the newspapers cover most of them.

Some Websites require specific software to view content, or are available only through specific Web browser software. For example, the Minnesota court website is not accessible with an Apple computer.

The fact remains that many citizens do not have ready access to the Internet, or prefer not to use it much. That is why AARP (the Association of Retired Persons) opposes the removal of public notices from newspapers. And with the recent downturn in the economy, some families have cancelled their Internet and cable access, and are relying more heavily on libraries. Most libraries significantly limit any one individual's access time on computers--which will be the only place anyone will be able to find out what all their local government entities are doing--towns, cities, counties and schools.

Rates for government public notices are often well below the standard rates charged for other advertising in newspapers, especially because newspapers must frequently bid against each other to obtain designation to publish such notices.

One of the public notices that county government has complained about most often at the Legislature is publication of the delinquent property tax list--even though the publication commonly results in many individuals paying their taxes to avoid having their name in the paper--and even though Minnesota law actually permits the county to recoup ALL their costs for the publication from the delinquent taxpayer!

Web only access to public notices raises issues of citizen privacy, since government can track the use of government Websites.

Leaving public notice solely up to government is something even America's founders shied away from. In one of its first official acts, the federal government in 1789 ordered the publication in at least three of the public newspapers of every bill, order, resolution and vote. We believe that government still has an affirmative duty to inform the public of what actions they take and how they spend the public's money.