



School Law FYI

APRIL 2018

New Laws Modify Requirements for Publishing Legal Notices

Two new laws took effect April 18, 2018, regarding the publication of legal notices in newspapers. 2017 Wisconsin Act 282 modifies the qualifications for newspapers that receive payment for such publication. 2017 Wisconsin Act 353 provides an alternate publication option for Class 2 and Class 3 legal notices.

OVERVIEW OF PUBLICATION AND POSTING OF LEGAL NOTICES

Wis. Stat. Ch. 985 provides requirements for school districts publishing or posting legal notices. A school board can, but does not have to, designate a qualified newspaper which is published or having general circulation in the school district as the official newspaper of the district. If the school board designates a qualified newspaper as the official newspaper of the district, all legal notices that are published in a newspaper must be published in that official newspaper. If the district does not designate an official newspaper, the district can choose to publish legal notices in any qualified newspaper. If no qualified newspaper is published within the school district, the school board can choose to publish legal notices in a newspaper likely to give notice.

In lieu of newspaper publication, the school board may direct that certain legal notices be posted. If the school board chooses to post these legal notices, the notice must be posted in at least 3 public places likely to give notice to persons affected or must be posted in at least one place likely to give notice and placed electronically on the school district's website. For notices required to be posted prior to acts or events, this notice must be posted no later than the time specified for the first newspaper publication, which will vary based on the class of the legal notice. For notices required to be posted after an act or event, this notice must be posted within one week after the act or event.

Only certain legal notices subject to Wis. Stat. Ch. 985 are eligible for posting in lieu of publication. Notices that are likely ineligible for posting in lieu of publication include:

- i. Notices of school board elections,
- ii. Notices related to school board referenda,
- iii. The proceedings of a school board, and
- iv. Notices related to specific individuals.

The option to post in lieu of publication does not change the notice requirements under the Open Meetings Law, which requires reasonable notice to the public of meetings. It is possible, in certain circumstances, that posting in one physical location and on the district website might be sufficient under the Open Meetings Law. However, the Wisconsin Attorney General continues to recommend that school boards post notice of their meetings in three locations. Posting meeting notices on a district's website could supplement those physical postings.

CHANGES TO THE REQUIRED QUALIFICATIONS OF NEWSPAPERS THAT PUBLISH LEGAL NOTICES

In order for a school board to satisfy the legal requirements for publishing required legal notices in a newspaper, that newspaper must be qualified. 2017 Wisconsin Act 282 makes it easier for newspapers to be qualified in light of increased consolidations and mergers in the newspaper industry. Simultaneously, the new law more clearly excludes non-newspapers from being qualified. The new law defines a newspaper as a publication that is published at regular intervals and at least once a week, containing on average, 25 percent news content per issue. News content is defined as written information and images, other than advertisements, that are printed in a publication.

To be a newspaper qualified to publish legal notices, the newspaper must file a certificate with the county clerk stating that it is qualified under Wis. Stat. Ch. 985 and stating its place of publication. Checking with the county clerk is a good first step for school districts when determining in which newspaper to publish. However, the liability for improper publishing lies with the person charged with the legal duty of causing legal notices to be published, which in certain instances is the school board clerk. If that person causes a legal notice to be published in a newspaper that is not qualified or fails to cause a legal notice to be published in a qualified newspaper, that person may be fined up to \$100 for each offense. Each day in which a legal notice should have been published, but was not, counts as a separate offense. Even if a school board publishes legal notices in a qualified newspaper, the school board cannot publish in a non-qualified newspaper without risking a fine. Due to this liability, school boards should perform due diligence to ensure that the newspaper in which the district is publishing legal notices is qualified and if a qualified newspaper is published in the district.

In addition to filing that certificate, to be qualified to publish legal notices, a newspaper must have a bona fide circulation, meaning the publisher of the newspaper sells 50 percent or more of the circulation of the newspaper, and the publisher has actual subscribers at each publication of not less than 1,000 copies in 1st and 2nd class cities or 300 copies in 3rd and 4th class cities, villages, or towns. Additionally, the newspaper must meet one of the following criteria:

- i. For at least 2 of the 5 years immediately before the date of the publication of the legal notice, the newspaper has been published regularly and continuously in the city, village, or town where published;
- ii. The newspaper is a successor to a newspaper described in (i) above and the successor newspaper has resumed publication following succession within 30 days; or
- iii. The newspaper has merged or consolidated with one or more newspapers and one of the newspapers subject to the consolidation or merger has been continuously published at regular intervals of at least once each week for at least 50 issues each year for at least one year prior to the first publication of the notice.

If no newspaper in a city, village, or town satisfies these requirements (including the requirement of bona

fide circulation), a newspaper will be qualified if it is published regularly and continuously in the city, village, or town and publishing in the newspaper is likely to give notice in the area or to the affected person and the newspaper is otherwise qualified.

By law, a newspaper is “published” at the post office from which its mailing permit is issued. If the newspaper has no primary post office, then the newspaper must designate its place of publication. No newspaper can have more than one place of publication during the same period of time.

If no qualified newspaper is published within the school district, the publication of legal notices must be made in a newspaper likely to give notice. However, a “shopper” or other advertising publication that is less than 25% news content is not a newspaper, and publication of legal notices should not be made in such an advertising publication.

NEW OPTION FOR PUBLISHING CLASS 2 AND 3 LEGAL NOTICES

Current law provides for the publication of three types of legal notices, Class 1, Class 2, and Class 3. A Class 1 notice requires one insertion in a newspaper which must be at least one week before the act or event. A Class 2 notice requires two insertions in a newspaper, once a week for consecutive weeks, the last of which must be at least one week before the act or event. A Class 3 notice requires three insertions in a newspaper, once a week for consecutive weeks, the last of which must be at least one week before the act or event. Certain statutes might provide for slightly different insertion requirements, but these are the default rules.

2017 Wisconsin Act 353 creates a new publication option for certain Class 2 and Class 3 notices. With certain exceptions, a school district may now publish a summary of the legal notice, in lieu of the entire legal notice, in the second and third insertions of a Class 2 or Class 3 notice. The summary must be accompanied by notice that the full text of the material included in the first insertion is available for viewing at all of the following locations:

- i. As an electronic document on the school board’s website;
- ii. In the newspaper in which the initial insertion was published;
- iii. As an electronic document on the Wisconsin newspapers legal notices website; and,
- iv. In a readily accessible physical location within the school district.

School districts cannot publish summaries of legal notices required to be published by order of a court or for legal notices related to court proceedings required to be published. Depending on the length of the legal notice, a district might be able to save money on publication costs by taking advantage of this new option to publish just a summary and the additional required information in subsequent insertions of Class 2 and Class 3 notices.

CONCLUSION

The legal requirements for publication and posting of legal notices remain complex. However, the law provides a certain amount of flexibility for some legal notices. On the other hand, the law still requires physical publication in many circumstances, even at a time when the public increasingly accesses legal notices online.

Districts should evaluate their current practices regarding publication and posting of legal notices in light of

these changes to the law. A good first step for districts is to confer with the newspaper in which legal notices are currently being published. However, districts should recognize that the liability for improper publishing of legal notices is on the person with the legal duty to cause the notices to be published, not on the newspaper publishing the notices. As a result, districts should review their policies and practices and consult with legal counsel, when necessary.

■ Brian P. Goodman	(608) 283-1722	■ JoAnn M. Hart	(608) 286-7162	■ Frank C. Sutherland	(608) 286-7243
■ Michael J. Julka	(608) 286-7238	■ Douglas E. Witte	(608) 283-7529	■ M. Tess O'Brien-Heinzen	(608) 283-1798
■ James K. Ruhly	(608) 283-1738	■ Steven C. Zach	(608) 283-1736		
■ Eileen A. Brownlee	(608) 822-3251	■ Richard F. Verstegen	(608) 286-7233		

Disclaimer: Boardman & Clark LLP provides this material as information about legal issues. It does not offer legal advice with respect to particular situations and does not purport that this newsletter is a complete treatment of the legal issues surrounding any topic. Because your situation may differ from those described in this Newsletter, you should not rely solely on this information in making legal decisions. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.