

Municipal Law Newsletter

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New Laws Modify Requirements for Publishing Legal Notices

Wis. Stat. Ch. 985 provides requirements for municipalities publishing or posting legal notices. Two new laws took effect April 18, 2018 that modify this chapter of the Wisconsin Statutes, 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.

Changes to the Required Qualifications of Newspapers that Publish Legal Notices

In order for a municipality 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.

The liability for improper publishing lies with the person charged with the legal duty of causing legal notices to be published. 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 municipality publishes legal notices in a qualified newspaper, the municipality cannot publish in a non-qualified newspaper without risking a fine.

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:

- 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;
- 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

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Requirements for Publishing Legal Notices

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- 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 municipality, 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 municipality 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 municipalities 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 municipality.

Municipalities 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.

— Brian P. Goodman

PSCW Sets New Focus on Energy Funding Parameters

The Public Service Commission of Wisconsin (“PSCW”) has completed its quadrennial planning review and established new funding parameters for the FOCUS on Energy program. The decision, made at the Commission’s May 3 open meeting, allocates approximately \$5.5 million in renewable energy incentives for the four year period beginning in 2019.

The FOCUS on Energy program provides incentives and education to residential and commercial customers, including municipalities and schools, to promote energy efficiency and fund renewable energy resources. The total budget for the FOCUS program statewide is \$100 million annually.

In addition to reaffirming the high demand for, and merits of, the FOCUS program, the Commission’s decision is notable for establishing a new “mid-sized business” submarket for renewable energy projects. The new submarket is intended to fund larger renewable energy projects (*i.e.*, greater than 125 kW) and thereby address a deficiency in funding capacity that was reported by trade allies in the last funding round. Funding for mid-sized and large business applicants, which include local governments and schools, is available through a competitive proposal process under the Renewable Energy Competitive Incentive Program (“RECIP”). Funding for the residential and small business programs will continue to be on a first-come, first-serve, reservation basis.

The Commission’s quadrennial review also referenced an ongoing study of renewable energy programming best practices being conducted by Tetra Tech, a research group based in Madison. Results from the study are expected later this fall and could be the basis for additional FOCUS programming changes. The Commission also authorized PSCW staff to explore additional opportunities to provide targeted support for rural and agricultural communities, including enhancements to the Anaerobic Digester System Program, using \$5 million in unspent FOCUS funds.

Information on the RECIP program may be found at <https://focusonenergy.com/business>.

— Richard A. Heinemann

Discovery Law Changes: *What You Need To Know*

On July 1, 2018, new discovery rules are to take effect in Wisconsin by virtue of Assembly Bill 773 which was signed into law by Governor Walker as 2017 Wisconsin Act 235 (the “Act”). Specifically, the Act applies to lawsuits that are filed after July 1, 2018. The Act’s changes are the biggest to Wisconsin’s Rules of Civil Procedure since the 1970’s. Those changes include the following:

(1) Changes to the Scope of Discovery

The Act, modeled after the Federal Rules of Evidence, requires discovery to be proportional. A party can obtain discovery of any non-privileged matters that are relevant to its claims or defenses and proportional to the needs of the case. When considering proportionality, courts may consider:

- The importance of the issues at stake in the action;
- The amount in controversy;
- The parties’ relative access to relevant information;
- The parties’ resources;
- The importance of the discovery in resolving the issues; and
- Whether the burden or expense of the proposed discovery outweighs its likely benefit.

(2) Automatic Stay of Discovery

The Act provides that when a party files a motion to dismiss, a motion for judgment on the pleadings or a motion for a more definite statement, all discovery and other proceedings must be stayed for the shorter of 180 days or the date the motion is decided. If discovery related to the pending motion is necessary, the court can allow that discovery.

(3) Mandatory Disclosure of Third-Party Litigation Financing

The Act requires a party to disclose to other parties in the lawsuit any agreement under which a person, other than an attorney who is receiving a contingency fee, has a right to receive compensation from a judgment or settlement.

(4) Limits on E-Discovery

The Act provides that absent a showing of substantial need or good cause, a party is not required to disclose electronically stored information (“ESI”) if it:

- Cannot be retrieved without substantial additional programming or transferring it to another form before search or retrieval;
- Is backup data that is substantially duplicative of more accessible data;

- Is legacy data from obsolete systems; or
- Is data that is not available in the ordinary course of business and is not reasonably accessible because of undue burden or cost.

(5) Limits on Discovery Methods

The law limits the number of interrogatories to 25 inclusive of all subparts, limits the number of depositions to 10, with each not to exceed seven hours, and limits the time frame for requests for production of documents to a reasonable time period, not to exceed five years before the cause of action arose with exceptions in personal injury cases.

— Kate Harrell

OEI Launches Energy Innovation Grant Program

Following up on an item from the March/April MLN, the Office of Energy Innovation has launched its inaugural \$5 million Energy Innovation Grant program. Authorized by the Public Service Commission of Wisconsin (“PSCW”) last month, the program makes funding available to Wisconsin cities, villages, towns, counties, tribal governments and K-12 school districts to support energy efficiency initiatives, renewable energy projects, comprehensive energy planning, transportation technologies and energy system resiliency measures. Funding proposals must be uploaded to the PSCW electronic records filing (ERF) system by June 29, 2018 at 12:00 PM.

Information on Energy Innovation Grant RFP process and Application materials may be found on the PSCW website:

<https://psc.wi.gov/Pages/Programs/OEI/Request%20for%20Proposals.aspx>

— Richard A. Heinemann



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