

# The fight for public notices is never-ending

In the summer of 2021, one of the counties in Missouri prepared to run its delinquent real property tax payment list prior to the annual sale of those properties. The list should have been published in a newspaper that met the requirements in chapter 493 of the Missouri statutes — the law that governs what a “legal notice” newspaper is under state law. Instead, the county chose to run the ad in a total market coverage, free circulation, newspaper.

The local legal notice paper was very upset about the situation. Protests were made and citations to the requirements in Section 493.050 were issued. But the county collector was unmoved and the sale was held anyway.

I don't know if the local title company was formally advised of this defective notice. But it seems to me that any sale of the property under such a notice would result in a possible defect to the title if the former owner whose property was sold was to subsequently attempt to invalidate the actions of the county collector in preparing for this tax sale. Nobody wants to buy land at a county tax sale and then subsequently find that the county official responsible for conducting the sale did not do what had to be done to protect the buyer of the property at such a sale.

What can a newspaper do about a situation like that? Not much, I assumed. Certainly, I believe, a paper should point the governmental official to the statute that governs such matters and do whatever the paper can to ensure that county's residents are protected regarding such matters. Educating county residents via news coverage about such situations seems appropriate, too.

That's why the Missouri Press Association urges its members to run columns and advertisements promoting the importance of public notices on a regular basis. Public bodies often publish ads or send press releases to papers seeking to advise the public of certain meetings or information

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they believe important for the local community. Newspapers are free to decide to publish the press releases, or not. The advertisements are paid for by public bodies because they want the information disseminated and they pay the newspaper to provide that service.

However, unless it is a notice that the public body is required by federal law or state statute to publish, the newspaper is not obligated to issue an affidavit in regard to the publication of that ad. (Certainly the paper could voluntarily choose for some reason to issue an affidavit certifying the notice was published, but that doesn't change this notice into a “public notice” under the requirements of Section 493.050 inasmuch as the notice is not being published pursuant to state or federal law.)

In another case, a Missouri paper found itself in a situation where a public body that bridged several counties (but had its operations primarily in one county) chose to publish its annual tax rate notice required by law in another county's newspaper.

I don't see any provision in state law that mandates where such a notice must be published, and I couldn't advise this client that there was a definite violation of state law. There is definite case law allowing legal notices to be published

in papers that “circulate” within the county. That might provide a legal basis on which to argue another county's paper was an appropriate location for such a notice.

On the other hand, let me note that I came across an article recently where a Colorado paper filed a lawsuit against a county board that had just completed taking bids for its annual contract on publishing public notices.

The lawsuit alleged that the board's selection of a competing paper was solely an effort to violate the First Amendment rights of the county's primary paper. That paper claimed the decision to use the competing paper was an effort to retaliate against the paper for its prior reporting on that county's operations and the potential misconduct it had discovered.

A county official admitted it saw no reason to support a paper that gave the county negative publicity. Other governmental officials echoed the comments that the paper's editorial content was the sole basis for the selection of the other newspaper to receive the contract.

I will watch what happens in this lawsuit because it raises issues that newspapers across the country need to monitor. Meanwhile, I continue to believe that educating your local officials about the law is the best position to take in defending your status as a legal notice paper and as the best place for such notices to be placed.

And by the way, this year that first county's tax collector chose to run the notices in the county's valid legal notice paper. Sometimes it's hard for folks to admit they made a mistake, but perhaps they are listening anyway.



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