

Same-sex announcements: not 'if' but 'when'

Some decisions whether to publish may be ethical, not legal

The election is over and year's end is rapidly approaching. As we catch our breath before the next election cycle begins, I urge you think about an issue that is just around the corner for some of you and which is going to be on your front door before you know it. It's not a present from Santa, although I can vouch for all of you that you've been good this year!

So many times, calls to the hotline ask for legal advice about an issue for which there is not a real legal answer. Rather than dealing with libel, copyright or consumer fraud issues, sometimes the answer is that there is nothing wrong with an ad (and often we are talking about a political ad) but the tone of it is just offensive to the publisher who is calling.

The role of the hotline attorney must be sharply drawn to distinguish between legal concerns, which I am here to discuss with you, and editorial decisions, which I strongly believe must rest solely with you, the publisher. When I tell you that the decision is not a legal one, but an editorial policy one, it's because I don't want to influence you in terms of representing the interests of your community and managing your paper the way you think is best for your readers.

Vying with election news during the last few weeks in the major metropolitan papers has been all about the states opening the door to same-sex marriages. Missouri has joined those states, although an appeal of the decision is pending. While the appeal moves along, several counties, including St. Louis and Jackson, have started issuing marriage licenses to such couples.

The day is coming when you are going to get a same-sex wedding or engagement announcement for publication in your paper. Those of you reading this in the larger markets have already crossed this hurdle some time ago. This column is not for you – this column is for the rest of you.

From the legal side, while the door is opened for same-sex couples to assert that the government cannot discriminate against them on the ba-



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sis of sex in the choice of their partner, there is no legal right to demand publication of any content in ANY newspaper.

Just as you can refuse an ad for any reason at all, you have a right, under the First Amendment, to refuse to publish this announcement, if you choose, whether as a paid ad or whether as editorial content, just as you have a right to select Letters to the Editor that you publish.

I know newspapers across the country are struggling with this decision, and that most of them facing this are in smaller communities – typical strong community newspapers.

Some struggle because they believe if they run these announcements, there will be long-time devoted readers and strong supporters in the community who will cancel subscriptions and turn their backs on the local paper. After hanging on by their fingernails during the economic downturn and surviving, some newspapers fear this might be the last straw, despite the fact that they are passing on a revenue source in making this decision.

Other papers fear the bad publicity they may garner if they choose to not run such notices. They hear stories of businesses that close after being picketed or otherwise ostracized in the community after making a decision like this.

Many publishers feel this is a lose-lose decision for them. While I have no legal advice for you, I urge you to take the opportunity to talk to your community about this issue. There is much to discuss.

A CBS/*New York Times* survey in September indicated that 56 percent of Americans believe same-sex marriage should be legal. There is evidence that this sea-change in Ameri-

ca is due to the fact that many people have discovered children, neighbors, friends who are in same-sex relationships.

Only you can decide when or if the time is right to run these announcements. There are good odds your community already has some folks within it who have faced these issues. What has changed minds in this country is finding that neighbors, relatives, and friends are involved in such relationships.

There may well be leaders in your community with a child who has a same-sex partner or is in such a relationship.

Hearing those stories will open the door in your community to discussion of the issue. You can do stories with local connections that will help you gauge the temperature in your community as you weigh this decision.

While in parts of Missouri, it is clear citizens strongly oppose this trend,

what is amazing is the shift that has occurred in regard to this issue over the last 10 years, when Missouri adopted its constitutional ban on such marriages. Ten years from now, will this issue still generate the controversy it does today? Twenty years from now, what will the situation be? Meanwhile, what will you tell a good friend and supporter in your community who comes in with a photo of his grandson or granddaughter who is in such a relationship?

These are decisions you need to think about now.

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