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SHOPPERS MAY PUBLISH NOTICES

House Bill 4724 as passed by the House
Sponsor: Rep. Dianne Byrum

House Bill 4725 as passed by the House
Sponsor: Rep. Dale Shugars

Second Analysis (8-9-93)

Committee: Local Government

THE APPARENT PROBLEM:

Public Act 247 of 1963 and the Revised Judicature Act specify that for a publication to be used for posting certain notices that, by law or under a judicial proceeding, must be published in a "newspaper," it must meet various criteria. These include that the newspaper is published in English, that it has either a "bona fide" list of paid subscribers or has been consistently published at least weekly in its community for no less than two years, that it has been consistently circulated for at least one year in the area where notice must be given, and that it annually averages no less than 25 percent "news and editorial content" (anything except advertising). These limitations generally are meant to ensure that when municipalities are required to publish information about, for instance, public meetings, local ordinances, or other information required to be posted by state law or a court, that the information is placed in a publication of general circulation where it most likely will be read by the public.

In most cases a municipality decides where to post a notice based on whether a publication's circulation area falls within the municipality's jurisdictional boundaries, if it has a large readership level and, of course, if it meets the acts' criteria for a newspaper. Some local governments, however, complain that the act's definition of newspaper unnecessarily restricts their ability to post notices in local publications that are often well-established, regularly published and circulated, and serve a large number of community residents who consistently read them, but which do not meet the act's criteria that they contain at least 25 percent news and editorial content, publications otherwise known as "shopping guides" or "shoppers." Moreover, because local governments must pay a newspaper to post such information some feel the acts restrict competition

on bids for this information, which raises costs to municipalities. To address these concerns, legislation has been introduced that would liberalize the acts' definitions for "newspaper" so that an advertising-only newspaper could qualify as one for purposes of publishing certain public notices required by law or a court.

THE CONTENT OF THE BILLS:

The bills would amend Public Act 247 of 1963 and the Revised Judicature Act to revise the criteria that would have to be met for a publication to meet the acts' definitions of "newspaper," for purposes of publishing a notice as required by state law or under a judicial proceeding.

Under current law, a newspaper must, among other things, 1) have a bona fide list of paying subscribers or have been published at least weekly in the same community without interruption for at least two years, 2) have been published and in general circulation at not less than weekly intervals without interruption for at least one year in the jurisdiction (county, township, village, etc.) where the notice is required to be published, and 3) annually average at least 25 percent "news and editorial content" (meaning any printed matter other than advertising) per issue. The bills would delete the requirement that a newspaper would have to annually average at least 25 percent news and editorial content per issue.

Also, the bills specify that "general circulation" would mean dispersal in a way that involved more than depositing a stack of newspapers at a site for public availability and would include, but not be limited to, door-to-door circulation.

House Bills 4724 and 4725 (8-9-93)

House Bill 4724 would amend Public Act 247 of 1963 (MCL 691.1051); House Bill 4725 would amend the Revised Judicature Act (MCL 600.1461).

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bills would not affect state budget expenditures but could have fiscal implications for local governments. Fiscal impact on local governments could not be determined but would depend on the number of newspapers in an area that would be eligible for publishing public notices under the bills. It is assumed that increasing the number of newspapers bidding to publish this information would lower what local governments have to pay for this service. (6-7-93)

ARGUMENTS:

For:

The bills would expand the definition of "newspaper" under Public Act 247 of 1963 and the Revised Judicature Act so that more publications could qualify to publish information that must be published either by state law or under a judicial proceeding. The acts currently require, among other things, that a newspaper have at least 25 percent editorial content in order to be able to publish public notices, which effectively prevents advertising-only newspapers, otherwise known as "shoppers" or "shopping guides," from being able to bid to publish this information within a community. Some local governments believe shoppers could be used to adequately reach citizens in their communities concerning information that they must be notified of, whether it involves a public meeting, a new local ordinance, something related to a court proceeding, or some other bit of "legal" news. (A shopping guide is a newspaper that usually is distributed free to every household in a community, and only provides advertising.) In some areas it would make more sense for a municipality to post such information in this type of newspaper as it is often circulated to a larger audience than the general interest newspaper. By revising the definition for a newspaper under the acts, the bills would expand the choices that local governments would have for posting this information and, thus, could lower their costs in providing this service to the general public while still ensuring that public notices are made.

Response:

The reason for having a narrow definition of newspaper under the acts for purposes of publishing notices is to ensure that such vital public information is posted in places where it is most likely to be seen and read by the general public. To revise the definition merely to help save municipalities money in carrying out this requirement would be a disservice to voting citizens of local communities. Though it may cost municipalities a little more to have this information published in newspapers that are read more frequently (and where citizens now expect to find such information), it is worth it to guarantee that the public is properly informed of public activities--knowledge of which democracy itself depends on for its vitality.

Against:

The bills would be a radical departure from the way other states regulate this issue. Most other states currently prohibit shoppers from qualifying as newspapers for purposes of publishing public notices. In fact, the Random House College Dictionary defines a "newspaper" as a "publication printed on newsprint, usually issued daily or weekly, and commonly containing news, comment, features, photographs, and advertising." The bills essentially would permit publications that most people do not consider to be general newspapers and where they do not expect to find such important information to be used for publishing notices. Although shoppers are usually distributed free to nearly every home in a community, most of the time they are either ignored or are simply thrown away. Besides, these publications usually do not have the editorial and reporting staffs that general newspapers need and, thus, would have a competitive advantage over general newspapers by being able to offer reduced rates for publishing notices. The argument that municipalities could, but would not have to, use shopping guides to publicize important public notices to more people seems entirely disingenuous; the fact is, with many local governments fiscally squeezed, they might decide where to publish based on what's best for their budgets, not on what's best for the citizens they serve. Moreover, the types of newspapers that currently qualify for publishing notices often see themselves as providing an historical record of public events or information that citizens can consult months or even years later. The back issues of most published shoppers usually are not held for such purposes.

Against:

The versions of the bills reported from the House Committee on Local Government would expand the definition of newspaper so that newspapers that publish twice a month could qualify for publishing notices; this provision was removed from both bills on the House floor. Local publications that are published and distributed twice a month are often the main source of news for small communities, and local citizens rely on them for general information. As such, these papers would work well for purposes of publishing notices for local citizens. The bills should be amended again to allow bi-monthly newspapers to qualify for publishing notices.

Response:

The fact that these publications are published so infrequently would make it more likely that citizens who rely on them for news might be informed too late of certain important public information. Besides, a number of other acts that require notices to be published specify that the notice must be published in a newspaper published at least once a week; departing from this standard would be confusing to those who must ensure notice is published as well as to the general public.

Against:

Although it appears that Michigan courts have not addressed the issue of what constitutes a newspaper for purposes of publishing public notices, courts in a number of other states have issued rulings that generally support Michigan's current law. In most instances, the rulings have required both that a publication be published regularly (usually daily or weekly) and that it contain information that appeals to the general public in order for it to be considered a newspaper for purposes of publishing notices.

Against:

Some people argue that the bills may be unconstitutional as they could deprive citizens of their right to obtain due process in certain public, especially judicial, matters.

POSITIONS:

The Michigan Municipal League supports the bills. (8-4-93)

The Michigan Association of Counties supports the bills. (8-5-93)

The Michigan Townships Association supports the bills. (8-9-93)

The Community Papers of Michigan, which publishes a number of free community newspapers (mostly "shoppers") throughout the state, supports the bills. (8-4-93)

The "View," a general interest newspaper published twice a month in Belleville, supports the bills. (8-4-93)

The "Kalamazoo Gazette" strongly opposes the bills. (8-5-93)

The Michigan Press Association, which represents about 300 newspapers (mostly weeklies) in the state that publish at least 25 percent editorial and news content per issue, opposes the bills. (8-4-93)

Vicksburg Publications, Inc., which publishes the "Commercial Express" (a general news weekly) and "The Broadcast" (a free, advertising-only paper) in the Vicksburg-Schoolcraft area, opposes the bills. (8-4-93)

The American Court and Commercial Newspapers Association, which represents over 60 legal and commercial newspapers in the U.S. (about eight of which are in Michigan), opposes the bills. (8-5-93)

The News-Press Publishing Company, Inc., of East Tawas, which publishes the "Iosco County News Herald" and the "Oscoda Press," opposes the bills. (8-4-93)

The "Detroit Legal News" opposes the bills. (8-5-93)