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J. B. Van Hollen
Wisconsin Attorney General
114 East, State Capitol
Madison 53702

Re: Opinion Request Re: Publication of
Legal Notices

Dear Attorney General Van Hollen:

Kenosha County submits the following questions for opinions pertaining to the publication of legal notices by the county:

1. Must the county designate an official newspaper?
2. Must the county seek bids for the publication of legal notices and if so must the award go to the lowest bidder?
3. In lieu of bidding the publication of its proceedings, may the county print its own proceedings or in the alternative post them to its official web site?
4. In lieu of "publication in a newspaper" or posting, may the county post its legal notices on its official web site?

DESIGNATION OF OFFICIAL NEWSPAPER

With respect to designating an official newspaper, it is the opinion of this office that there is no requirement that the county designate an official newspaper. Unlike the statutory requirements of Wisconsin Statutes § 985.06 as it pertains to cities, we find no such mandate in the state statutes that would pertain to county government. Furthermore we would reference Attorney General Opinion 60 Attorney General 95 which states at page 96:

It should first be pointed out that ch. 985, Stats., does not require that your county designate **any** newspaper as its official newspaper [emphasis added].

BIDDING REQUIREMENT

With respect to bidding the publication of legal notices, we find no state statute that mandates that the county bid the publication of legal notices or for that matter the proceedings of the County Board as required in Wis. Stats. § 59.14 (2)¹ other than the publication of the proceedings of the county board in book form once a year as called for in Wisconsin Statutes §59.14(3)². These services, in our opinion, are professional services not subject to any bidding requirement. In our opinion, the criteria for choosing where to publish and how to seek a provider for these publications is a policy decision for the County Board. If an RFP is sought, we find no obligation to award to the lowest bidder and we would opine that considerations other than cost can be taken into consideration, such as circulation, frequency of publication, and the likelihood of notice being given to persons to whom the notices are intended to reach.

IN-HOUSE ANNUAL PUBLICATION OF PROCEEDINGS

With respect to the publication of the county board proceedings in book form as called for in Wisconsin Statutes § 59.14(3), we read that statute as requiring bidding only if the publication in book form is done by an entity other than the county. We find no prohibition

1

§ 59.14 (2) The board shall, by ordinance or resolution, provide for publication in one or more newspapers in the county as a class 1 notice, under ch. 985, a certified copy of all its proceedings had at any meeting, regular or special; said publication to be completed within 60 days after the adjournment of each session.

2

§ 59.14 (3) The board may at any meeting, regular or special, provide by resolution for the publication in pamphlet form by the lowest and best bidder therefor, of a sufficient and designated number of copies of its duly certified proceedings, for general distribution.

as to the county printing and binding its own booklet of county board proceedings on county printers and by county personnel. It is our opinion that there is no set number of booklets that are required to be printed and that, with the computer technology that exists today, these booklets containing the annual proceedings of the county board can be printed and bound in-house in whatever number are needed and ***OR*** on an "as needed" basis or in the alternative printed or posted to the county's official website where any individual can print the annual proceedings of the county board booklet either in whole or in part through their home computer.

SUFFICIENCY OF INTERNET POSTING OF LEGAL NOTICES

Lastly, for the following reasons it is the opinion of this office that posting legal notices to its official web site will satisfy the statutory requirements pertaining to the publication of legal notices. In this regard, our analysis begins with the requirements of the state statutes as they relate to the publication of legal notices. For purposes of this analysis the following state statutes are pertinent:

1. **Wisconsin Statutes § 985.01 Definitions.**

(2) "Legal notice" means every notice required by law or by order of a court to be ***published in a newspaper OR other publication***, except notices required by private and local laws to be published in newspapers, and includes all of the following:

(a) Every publication of laws, ordinances, resolutions, financial statements, budgets and proceedings intended to give notice in an area.

(b) Every notice and certificate of election, facsimile ballot, referenda, notice of public hearing before a governmental body, and notice of meetings of private and public bodies required by law.

(c) Every summons, order, citation, notice of sale or other notice that is intended to inform a person that the person may or shall do an act or exercise a right within a designated period or upon or by a designated date.

(4) "Proceedings", when published in newspapers, mean the substance of every official action taken by a local governing body at any meeting, regular or special.

(5) A newspaper is "published" at the place from which its mailing permit is issued, except that if the place where the newspaper has its major concentration of circulation has no primary post office, then at the place it shall designate as its place of publication in the affidavit required by s. 985.03 (2), but no newspaper shall have more than one place of publication during the same period of time. [Emphasis added]

2. **985.02. Method of notification.**

(1) Except as otherwise provided by law, a legal notice shall be published in a newspaper likely to give notice in the area or to the person affected. Whenever the law requires publication in a newspaper published in a designated municipality or area and no newspaper is published therein publication shall be made in a newspaper likely to give notice. [Emphasis added]

3. **985.03. Qualifications of newspapers.**

(1) (a) No publisher of any newspaper in this state shall be awarded or be entitled to any compensation or fee for the publishing of any legal notice unless, for at least 2 of the 5 years immediately before the date of the notice publication, the newspaper has been published regularly and continuously in the city, village or town where published, and has had a bona fide paid circulation:

1. That has constituted 50% or more of its circulation; and,

2. That has had actual subscribers at each publication of not less than 1,000 copies in 1st and 2nd class cities, or 300 copies if in 3rd and 4th class cities, villages or towns.

(b) Suspension of publication resulting from the mobilization of troops being called to active duty with the armed forces, strike, lockout or damage, or destruction due to war, fire or act of God, shall not count as an interval in publication.

(bm) A period of disqualification not to exceed 2 years due only to the place of publication shall not count as an interval in publication.

(c) A ***newspaper***, under this chapter, is a publication appearing at ***regular intervals and at least once a week, containing reports of happenings of recent occurrence of a varied character***, such as political, social, moral and religious subjects, ***designed to inform the general reader***. The definition includes a daily newspaper published in a county having a population of 500,000 or more, devoted principally to business news and publishing of records, which has been designated by the courts of record of the county for publication of legal notices for a period of 6 months or more. ***[Emphasis added]***

Unless technical terms and definitions are to control the general rule is that statutory words are to have their common and generally accepted definition. In this regard, we would look to the commonly accepted definition for the following words:

- Publish: To make or effect a publication. To give publicity. [BALLENTINE'S LAW DICTIONARY]
- Publish: 1a. to declare publicly: make generally known: disclose, circulate b. to proclaim officially: promulgate. . . . c. to make public announcement d. publicize: to give publication [Webster's Third New International Dictionary]
- Publication: A newspaper or magazine; a book. Dissemination of information by notice given the public. . . . [BALLENTINE'S LAW DICTIONARY]
- Publication: 1. Communication [as of news or information] to the public: public announcement: proclamation: legal notification. 2a: the act or process of issuing copies . . . for general distribution to the public [Webster's Third New International Dictionary]
- Newspaper: A publication appearing at regular, or almost regular, intervals at short periods of time, as daily or weekly, usually in sheet form, and containing news, that is, reports of happenings of recent occurrence of a varied character, such as political, social, moral, religious, and other subjects of a similar nature, local or foreign, intended for the information of the general reader. [BALLENTINE'S LAW DICTIONARY]
- Newspaper: A publication, usually in sheet form, intended for general circulation, and published regularly at short intervals, containing intelligence of current events and news of general interest. [Blacks Law Dictionary, Fourth Edition]

Does an Internet Site Meet the Definition of a "Newspaper"?

HERNANDEZ v. ALCORTA ,45 V.I. 305 (2003) is a recent case that stands for the proposition that "publication" on the internet is an acceptable form of giving notice. In that case the court summary stated:

Plaintiff entered into an agreement with the owners' agent to use equipment to raze damaged buildings and remove debris at the condominium complex. Plaintiff later filed an action to recover money that was owed to him for the clean-up work. Plaintiff moved to serve the owners by publication, stating that, after a diligent search, they could not be located in the Virgin Islands. Plaintiff was given leave to serve the owners by publication in a newspaper of general circulation. Plaintiff provided an affidavit stating that the summons was published for four consecutive weeks in a **newspaper that was published solely on the Internet.** After the owners failed to plead to the complaint, plaintiff moved to have their default entered. In granting the motion, **the court found merit to plaintiff's argument that a notice printed on paper was not inherently more likely to reach the intended recipient than one published on the Internet.** The Internet newspaper possessed numerous attributes that made it a desirable vehicle for alerting defendants to cases pending against them. Accordingly, the court held that the Internet newspaper was an appropriate means of serving the owners by publication. [Emphasis added]

In fact, if one views the official website for the State of Wisconsin and its link to "Government" and then its link to "Legislature" there is a link to "Legal Notices" which takes the individual to legal notices at the Capital Times web site <http://www.madison.com/marketplace/>. Many local municipality web sites with legal notices can also be accessed through the state's own web site.

If the elements of the definition of a "newspaper" are dissemination of news or to give notice, then it is submitted that internet sites fit the definition. It is recognized that newspapers today are 1) not always in sheet form and 2) that if sheet form is desired, it can be accomplished by hitting the "print" button. It would be disingenuous for a news organization to suggest that a website does not fit that definition when in fact all such major news organizations have, in fact, their own web sites that do just that, ie., disseminate news and give notice to the public. In fact the Wisconsin Newspaper Association web site at <https://wisconsin.arcasearch.com/us/wi/?paper=uswi> is devoted to the dissemination of legal notices for the State of Wisconsin and must therefore be indicative of their

acceptance of the fact that the internet can be and is in fact used as a vehicle for providing legal notice. Other sites such as Legalnotice.org are more ambitious and attempt to provide a forum for posting legal notices on a national scale.

The official county web site for Kenosha County is located at: <http://www.co.kenosha.wi.us/> with its legal notices posted at http://www.co.kenosha.wi.us/news_releases.phtml. The Legal Notices and Press Release page is a work in progress and is currently not operational but can serve as a template of what is going to be available on the web site.

If an Internet Site can be a "Newspaper," Is It a "Qualified" Newspaper?

If one can accept the fact that an internet site can be classified as a "newspaper" in the generic sense of the word, that is, a public communication intended to put people on notice or to disseminate information at regular intervals, then the question remains as to whether it is a "qualified" newspaper as called for in [Wisconsin Statutes § 985.03](#). In other words:

1. **has this site been published regularly and continuously for at least 2 of the 5 years immediately before the date of the notice publication, and**
2. has it published at **regular intervals and at least once a week**, and
3. does it contain **reports of happenings of recent occurrence of a varied character**, such as political, social, moral and religious subjects, **designed to inform the general reader**, and
4. does this site have a bona fide paid circulation of 50% of its readership;
5. does this site have 300 actual subscribers for cities, villages and towns of the 3rd and 4th class, and

With respect to qualifications 1 and 2 above, the official County web site has "published," as this word is defined above, regularly and continuously at regular intervals evinced by daily updates since 1997.

Furthermore, with respect to qualification number 3 above, this site, in addition to posting news of county government, links to such newspapers as the Kenosha News and the Milwaukee Journal- Sentinel as well as to a multitude of other general interest web sites which also contain a broader spectrum of news "designed to report happenings of recent occurrences of a varied character . . . designed to inform the general reader." Furthermore, the on-line newspapers can themselves link to the Kenosha County legal notices web site.

As to qualifications 4 and 5 above pertaining to a paid circulation of 50% of its readership and 300 actual subscribers we would note that the cost and upkeep of this site is paid for through the county property tax levy. As to the requirement of 300 actual subscribers for cities of the 3rd and 4th class, the law is ambiguous in that it is not clear as to whether that

pertains to a city's publication of legal notices or to a county which has a 3rd or 4th class city located within that county. Also, are we to assume that if a county had both a 3rd and a 1st class city that the larger number applies?

While, it could charge a subscription for access to its posted legal notices on this site, the County provides this service free of charge because the taxpayer subscriber has in fact already paid for access through the property tax levy. The County obviously has more than 300 taxpayers contributing to the cost and upkeep of this site. Furthermore, while the County does not currently track or report the number of "hits" to this site it will in the future and it is submitted that more than 50% of its readership are County taxpayers paying for this site through their property tax.

Realizing that the use of the word "subscribers" in Wis. Stats. § 985.03 may be problematic, we are of the opinion that any objection to the validity and legality of internet posting based upon the argument that the paid "subscriber" criteria for a qualified newspaper is not met can in fact be complied with by offering a paid subscription service to the public for the convenience of having direct e-mail of notices to them for a fee.

A second alternative would be to simply pay for an advertisement of the web site as the place to view public notices in an otherwise already qualified newspaper. By way of an analogy, the advertisement by reference is already provided for with respect to the printing of lengthy ordinances or codes by Wisconsin Statutes § 61.0103.³ This statute states that there can be a legal notice that an ordinance has been passed and is available for viewing in the office of the County Clerk.

Facts Supporting Internet Posting of Legal Notices

Other facts to supplement the above position appear in the United States Census Bureau Special Study on Computer and Internet Use in the United States: 2003⁴ [a copy of which is attached] [at page 5] which reports that approximately 62% to 67% of Wisconsin households have a computer and approximately 55% to 60% of all Wisconsin households

3

66.0103. Code of ordinances.

(1) The governing body of a city, village, town or county may authorize the preparation of a code of some or all of its general ordinances. The code maybe enacted by an ordinance that incorporates the code by reference. A copy of the code shall be available for public inspection not less than 2 weeks before it is enacted. After the code is enacted, a copy shall be maintained and available for public inspection in the office of the city, village, town or county clerk.

(2) Publication of a code enacted under sub. (1), in book or pamphlet form, meets the publication requirements of ss. 59.14, 60.80, 61.50 (1)and 62.11 (4) (a)

4

<http://www.census.gov/prod/2005pubs/p23-208.pdf>

