

September 25, 2016

Scott Grosz
Principal Attorney
Wisconsin Legislative Council
Study Committee on Publication of
Government Documents and Legal Notices

VIA EMAIL

Dear Scott:

This is to respond to your request for contributions to the options memo you're working on for the committee. You'd advised that the ideas don't have to be fully developed. Taking your advice, rather than specific options I'd like to offer a basic, guiding principle to follow as we contemplate revising public notice practices in the state.

That principle, which I'm hopeful the Committee would enthusiastically endorse, is pretty fundamental. It is:

Any change to public notice forms must result in improved access and delivery of this vital government information to the public.

The corollary to this principle: *The Committee would be failing in its duty if we make it harder for citizens to become aware of the activities of their government.*

I'd also like to suggest a way to grade whether or not a proposed change to the laws will improve (or worsen) access to and delivery of notices.

The Public Notice Resource Center (www.pnrc.net), a nonprofit foundation that examines and tracks the development of public notice laws, traditions and practices around the nation (I served as the group's president from 2005 to 2012), has identified four key elements to a valid public notice that we should apply to any suggested new form of notice or change to Wisconsin's notice laws.

If any one of the four is absent, the proposal clearly is weakening our notice provisions.

I. Public Notice Must be Published by an Independent Body

Comment: Unfortunately, government cannot always be depended upon to provide transparency into its activities. While Wisconsin has a long tradition of open government and accountability, it also has many examples of public officials choosing to reduce visibility into their plans and activities. Public interest in and support for openness and transparency in government – as shown by the statewide, adverse reaction to the legislature's efforts to weaken the state's Open Records Law last summer – remains very high. Giving government officials the option not to publish notices of their own activities in an independent forum would *not* result in more openness in government – and would increase the likelihood of *less* visibility.

In Wisconsin, local community newspapers provide that “watchdog” function – today both in print and via their digital information platforms. These include locally-focused

web and mobile platforms and a statewide public notice website, which provides online posting of all notices from Wisconsin governments at no additional charge to taxpayers.

II. Public Notice Must Be Archivable

Comment: The means of digital archiving continue to evolve, with formats shifting constantly via upgrades or system replacement. Monitoring these changes and ensuring today's common digital formats can remain archived in a format that can be read in the future is a technically challenging and costly task. (See 8-track tapes.) Governments across the U.S. continue to struggle with a lack of digital standards for archiving – and with the very high cost.

Today a printed newspaper remains the only truly archivable and stable format for public notice in Wisconsin. When a citizen or government or other legal authority must prove in court that the public has been given notice of an action in the near or distant past, they turn to newspaper archives.

III. Public Notice Must Be Accessible

Comment: A public notice must be capable of being accessed by all segments of society in the local community. As noted during the Committee's first hearing, reliable high-speed internet access is not available in much of northern Wisconsin. In some regions, the cost of data access is not insignificant to some citizens. Websites are also regularly subjected to hacking, malware and technical woes that can overwhelm operators – including local government clerks. Assurances that security protocols and provisions for websites, given by both governments and the private sector, are firm and impenetrable regularly are followed by news of another embarrassing hack.

Wisconsin's public notice statute contains provisions requiring continuous publication and operation in order for a newspaper to qualify to carry notices. A local community newspaper in Wisconsin never blocks citizens with a "404 error."

IV. Public Notice Must Be Verifiable

Comment: The public and the source of the notice must be able to verify that the notice was published and not altered once published. Today, the means of verifying that content on a website has not been electronically altered – hacked in some way – remain sketchy; the technology to do so continues to evolve and remains highly complex and costly. The federal government, including the Government Publishing Office, and some U.S. states have been working with a public key authentication system to verify online documents, but that system is expensive, not 100 percent accurate and likely well beyond the means of a local Wisconsin government or web-only provider.

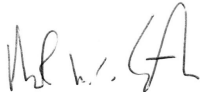
Today the only fully verifiable notice is in a local newspaper, as demonstrated by the statutorily required publisher's affidavit. Unlike a "print screen," that notarized document can be used in court in an evidentiary proceeding to demonstrate that a true copy was published as well as the exact wording that was used.

In Wisconsin today, a public notice published in a print publication, in a local newspaper, contains all four of these elements. In addition, the Wisconsin Newspaper Association expands the distribution of notices via its continuously updated website of public notices from every government in the state, www.wisconsinpublicnotices.org, at no cost to taxpayers.

My hope is that Committee members can keep that guiding principle – that we shall do no harm to public notice in Wisconsin, and perhaps improve it – and the four elements of public notice in mind as we wade through the confusing sea of options for change.

Public notice is a vital and fundamental function of government. Changing how we go about informing the public of government activity shouldn't be driven by today's momentary budget challenges, political pressures or this afternoon's latest technology option. Far too much is at stake: if we do this wrong and diminish government transparency we risk undermining citizens' confidence in their government; if we do this right, we will maintain and perhaps even increase the likelihood citizens will be better informed and engaged with their government.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark W.C. Stodder". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mark W.C. Stodder
Public Member
President
Xcential Legislative Technologies