

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8464 SENATE STATE AFFAIRS

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Pennsylvania

the publication of legal advertisements and notices required by law, rule, order, or decree of court, to be published in a legal newspaper, legal periodical, official legal newspaper, or official legal periodical, as designated by general rule or rule of court.

"Legal notice." When required to be printed or published, either a legal advertisement, a legal notice, an official advertisement, or an official legal notice.

"Liners." Advertisements, published as reading notices, intelligence, or announcements for which compensation is intended to be charged to those interested in the publication thereof.

"Long primer." A type 10 type points in depth or height.

"Magazine." Partakes of the nature of a periodical.

"Minion." A type 7 type points in depth or height.

"News." Narrative, or recent intelligence, disseminating current information as to local, general, or world-wide happenings, concerning any person or persons, matters of private or public interest, or concerning any matters affecting the public welfare.

"Newspaper."

(1) A printed paper or publication, bearing a title or name, and conveying reading or pictorial intelligence of passing events, local or general happenings, printing regularly or irregularly editorial comment, announcements, miscellaneous reading matter, commercial advertising, classified advertising, legal advertising, and other notices, and which has been issued in numbers of four or more pages at short intervals, either daily, twice or oftener each week, or weekly, continuously during a period of at least six months, or as the successor of such a printed paper or publication issued during an immediate prior period of at least six months, and which has been circulated and distributed from an established place of business to subscribers or readers without regard to number, for a definite price or consideration, either entered or entitled to be entered under the Postal Rules and Regulations as second class matter in the United States mails, and subscribed for by readers at a fixed price for each copy, or at a price fixed per annum. A newspaper may be either a daily newspaper, weekly newspaper, newspaper of general circulation, official newspaper, or a legal newspaper, as defined in this section. Continuous publication within the meaning of this section shall not be deemed interrupted by any involuntary suspension of publication resulting from loss, destruction, failure or unavailability of operating facilities, equipment or personnel from whatever cause, and



Idaho

48-909. Remedies. — The remedies provided under this chapter are cumulative and are in addition to any other remedies provided by law. [I.C., § 48-909, as added by 1988, ch. 340, § 1, p. 1009.]

CHAPTER 10

IDAHO TELEPHONE SOLICITATION ACT

SECTION.
 48-1001. Legislative findings and intent.
 48-1002. Definitions.
 48-1003. Unlawful acts.
 48-1004. Telephone solicitor duties.
 48-1005. Exemptions.
 48-1006. Authority of the attorney general and district court.

SECTION.
 48-1007. Private causes of action and remedies.
 48-1008. Liability of minors.
 48-1009. Consumer notification — Rule making by the Idaho public utilities commission.
 48-1010. Limitation of action.

48-1001. Legislative findings and intent. — (1) The use of telephones for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but also entails special risks and the potential for abuse. Many Idaho residents and businesses have lost money or suffered harm primarily as a result of out-of-state telemarketing abuse. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, the following provisions of law are deemed necessary.

(2) It is the intent of the legislature in enacting this chapter to safeguard the public against deceit and financial hardship, to insure, foster and encourage competition and fair dealings among telephone solicitors by requiring adequate disclosure, and to prohibit representations that have the capacity, tendency, or effect of misleading a purchaser. The provisions of this chapter are remedial, and shall be construed and applied liberally to accomplish the above-stated purposes.

(3) This chapter shall be known and may be cited as the "Idaho Telephone Solicitation Act." [I.C., § 48-1001, as added by 1992, ch. 27, § 1, p. 83.]

48-1002. Definitions. — In this chapter:

(1) "Business days" mean all days of the week except Saturdays and Sundays and all other legal holidays as defined in section 73-108, Idaho Code.

(2) "Conducting business" means making telephone solicitations either to or from locations within the state of Idaho.

(3) "Goods" mean any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value.

(4) "Minor" means any person less than eighteen (18) years of age.

(5) "Newspaper of general circulation" means a newspaper which holds a second class mailing permit from the United States postal service, has at least two hundred (200) subscribers, is made up of at least four (4) pages of at least five (5) columns, is not produced through any type of mimeographing process, and has been published or distributed within the state of Idaho on a weekly basis for at least seventy-eight (78) consecutive weeks, or on a

daily basis, which week, at least solicitation done.

(6) "Person" means any natural person, partnership, firm, corporation, trust, estate, legal entity or any agent, associate, or representative.

(7) "Purchase" means any purchase, lease, or other obligation.

(8) "Services" means any service, whether or not provided.

(9) "Telephone" means any telephone, including a facsimile machine, which is published or available to the public for distribution or other purchase.

(10) "Telephone solicitation" means any solicitation, including a sales pitch, made by a telephone solicitor for the purpose of inducing a purchaser to purchase, lease, or otherwise acquire goods or services.

(11) "Telephone solicitor" means any person who, directly or indirectly, is engaged in the business of soliciting purchases, leases, or other acquisitions through the use of a telephone.

(12) "Written communication" means any communication, including a letter, card, or other written communication, which is sent to a purchaser through the use of a telephone.

(13) "Unlawful act" means any act prohibited by this chapter.

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daily basis, which is defined to be no less than five (5) days of any one (1) week, at least twelve (12) months immediately preceding any telephone solicitation done by or on behalf of such newspaper.

(6) "Person" means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

(7) "Purchaser" means a person who is solicited to become or does become obligated to a telephone solicitor.

(8) "Services" mean any work, labor, help, assistance or instruction wherever provided or performed.

(9) "Telephone directory of general circulation" means a directory containing telephone numbers of individual residents and/or businesses which is published on a community-wide or regional basis and which is widely available to persons residing in such community or region through free distribution or direct purchase of said directory without the requirement of other purchases or affiliations.

(10) "Telephone solicitation" means:

(a) Any unsolicited telephone call or facsimile transmission to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services; or

(b) Any communication in which:

(i) A free gift, award, or prize is offered, or in which it is represented or implied that goods or services are offered below the regular price of the goods or services; and

(ii) A return telephone call is invited or the communication is followed up by a call to the purchaser by the telephone solicitor; and

(iii) It is intended during the course of the return or follow-up call with the purchaser that an agreement to purchase, or a purchase be made.

(c) For purposes of this subsection, "communication" means a written or oral statement or notification or advertisement transmitted to the purchaser through any means.

(11) "Telephone solicitor" means any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing device, engages in a telephone solicitation.

(12) "Written confirmation" means a writing that includes the following information: the date of purchase, the telephone solicitor's complete address and registration number, a listing of all goods and/or services purchased, a listing of the price of each good and/or service purchased, the total obligation incurred by the purchaser, and the notice of cancellation as set forth in subsection (2) of section 48-1004, Idaho Code. [I.C., § 48-1002, as added by 1992, ch. 27, § 1, p. 83.]

48-1003. Unlawful acts. — (1) It is an unlawful act for a telephone solicitor to:

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COUNTIES

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county land use regulations enacted to implement the other elements of the adopted comprehensive plan.

(c) "County" means Kent, New Castle or Sussex County.

(d) "Developer" means any person, including a governmental agency, undertaking any development as defined in this subchapter.

(e) "Development" means any construction or reconstruction of any new or existing commercial or residential building(s) or structure(s) upon lands which are not owned by the State or its agencies or its political subdivisions, or are not within the jurisdictional control of the State or its agencies or its political subdivisions.

(f) "Development order" means any order granting, denying or granting with conditions an application for a development permit.

(g) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certificate of occupancy, special exception, variance or any other official action of local government having the effect of permitting the development of land.

(h) "Governing body" means the chief governing body of county government, however designated, or the combination of such bodies where joint utilization of the provision of this subchapter is accomplished as provided herein.

(i) "Governmental agency" means:

(1) The United States or any department, commission, agency or other instrumentality thereof.

(2) This State or any department, commission, agency or other instrumentality thereof.

(3) Any local government, as defined in this section, or any department, commission, agency or other instrumentality thereof.

(4) Any school board or other special district, authority or governmental entity.

(j) "Land" means the earth, water and air, above, below or on the surface, and includes any improvements or structures customarily regarded as land.

(k) "Land use" means the development that has occurred on the land, the development that is proposed by a developer on the land or the use that is permitted or permissible on the land under an adopted comprehensive plan.

(l) "Local government" means any municipality.

(m) "Local planning agency" means the agency designated to prepare the comprehensive plan required by this subchapter.

(n) A "newspaper of general circulation" means a newspaper published at least on a weekly basis and printed in the language most commonly spoken in the area within which it circulates, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices or a newspaper that is given away primarily to distribute advertising.

(o) "Parcel of land" means any quantity of land capable of being described with such definiteness that its locations and boundaries may be

NEWSPAPER PUBLICATION

193.010 Definitions. (1) As used in the statute laws of this state, unless the context or a specially applicable definition requires otherwise, "public notice" means any legal publication which requires an affidavit of publication as required in ORS 193.070, or is required by law to be published.

(2) As used in this section and in ORS 193.020:

(a) "Bona fide subscriber" means a person who has been a paid subscriber for an uninterrupted period of 12 months, such subscription in no case to be over six months in arrears.

(b) "Newspaper" means a newspaper of general circulation, published in the English language for the dissemination of local or transmitted news or for the dissemination of legal news, made up of at least four pages of at least five columns each, with type matter of a depth of at least 14 inches, or, if smaller pages, then comprising an equivalent amount of type matter, which has bona fide subscribers representing more than half of the total distribution of copies circulated, or distribution verified by an independent circulation auditing firm, and which has been established and regularly and uninterruptedly published at least once a week during a period of at least 12 consecutive months immediately preceding the first publication of the public notice. Interrupted publication because of labor-management disputes, fire, flood or the elements for a period not to exceed 120 days, either before or after a newspaper is qualified for publication of public notices, shall not affect such qualification. [Amended by 1979 c.760 §1]

193.020 Newspaper in which public notice may be published. (1) Any public notice of any description, the publication of which is now or hereafter required by law, shall be published in any newspaper, as defined in ORS 193.010, which is published within the county, city of which any part lies within that county, city, district or other jurisdiction where the action, suit or other proceeding is pending, or is to be commenced or had, or in which the legal publication is required to be given.

(2) If publication in only one newspaper is required by law, and if more than one newspaper fulfills the requirements of subsection (1) of this section, the public notice shall be published in that newspaper which the moving party considers best suited to

give actual notice. However, nothing in this subsection prohibits the publication in more than one newspaper if desired by the moving party.

(3) If no newspaper is published within the county, city, district or jurisdiction where the action, suit or other proceeding is pending, or is to be commenced or had, or in which the legal publication is required to be given, public notice shall be published in:

(a) The newspaper published nearest to such county, city, district or jurisdiction; or

(b) Any publication that is published in such county, city, district or jurisdiction and that satisfies all the requirements for being a newspaper except that it is published less than once a week but not less than once a month.

(4) If more than one newspaper or publication fulfills the requirements of subsection (3) of this section, the public notice shall be published in that newspaper or publication which the moving party considers most effective for providing actual notice. [Amended by 1963 c.432 §1; 1979 c.760 §2; 1983 c.331 §1]

193.030 Newspaper in which district legal advertisements and notices may be published. Legal advertisements and notices for irrigation districts and road districts, the publication of which is now required by law, shall be published in a newspaper within the district; and if there is no newspaper in the district, in the newspaper nearest to the district affected. [Amended by 1973 c.57 §3]

193.040 Publication on weekdays in daily paper. Where publication of any form of notice for successive or consecutive days in a daily paper is provided for by statute, the publication of such notice on weekdays is a full compliance with such statute.

193.050 Notice by telegraph. Whenever any notice, information or intelligence, written or otherwise, is required to be given, the same may be given by telegraph. The dispatch containing the same shall be delivered to the person entitled thereto, or to the agent or attorney of the person. Notice by telegraph is actual notice.

193.060 Computation of publication time. The time for the publication of legal notices shall be computed so as to exclude the first day of publication and to include the day on which the act or event of which notice is given is to happen, or which completes the full period required for publication.

Florida

Ch. 97 QUALIFICATION AND REGISTRATION § 97.021

(19) "Branch office" means a substantial structure, fixed or movable, or a motor vehicle, bus, or other mobile unit, in which voter registrations will be accepted, which office and location shall be designated by the supervisor.

(20) "Newspaper of general circulation" means a newspaper printed in the language most commonly spoken in the area within which it circulates and which is readily available for purchase by all inhabitants in the area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper the primary function of which is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(21) "Public office" means any federal, state, county, or school or other district office or position which is filled by vote of the electors.

Historical Note

Derivation:

Laws 1981, c. 81-105, § 1.
Laws 1979, c. 79-400, § 24.
Laws 1979, c. 79-157, § 1.
Laws 1977, c. 77-175, § 1.
Laws 1977, c. 77-104, § 23.
Laws 1973, c. 73-333, § 31.
Laws 1973, c. 73-157, § 1.
Laws 1971, c. 71-208, § 1.
Laws 1970, c. 70-439, § 1.
Laws 1970, c. 70-269, § 1.
Laws 1969, c. 69-377, § 1.
Laws 1969, c. 69-250, § 1.
Laws 1969, c. 69-137, § 1.
Laws 1967, c. 67-356, § 2.
Laws 1967, c. 67-142, § 2.
Laws 1967, c. 67-32, § 1.
Laws 1965, c. 65-80, § 2.
Laws 1961, c. 61-370, § 1.
Laws 1953, c. 28156, § 1.
Laws 1951, c. 28870, § 1.
Fla. St. 1949, § 102.02.
Laws 1939, c. 19663, § 1.
Laws 1937, c. 18060, § 1.
Laws 1929, c. 13761, § 1.

Comp. Gen. Laws 1927, § 353.
Laws 1921, c. 8582, § 1.
Rev. Gen. St. 1920, § 300.
Laws 1913, c. 6469, § 2.

Laws 1979, c. 79-157, § 1, added the provisions contained in the last sentence at the end of subsec. (18) defining "candidate" and added subsec. (21) defining "public office".

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla. St. 1977 to additions, substitutions, and deletions editorially supplied therein in order to remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

Laws 1981, c. 81-105, § 1, added at the end of subsec. (9)(a) "except when reference is made to write-in ballots", and interpolated a new par. (b) in the subsec. (19) definition of "candidate".

Cross References

Campaign financing, see § 106.011 et seq.
Corporations, political contributions, see § 106.04.
General, primary, special, bond, and referendum elections, see § 100.011 et seq.
Political parties, see § 103.091.
Executive committees, see § 103.087.

Colorado

§ 32-11-104

SPECIAL DISTRICTS

URBAN

(33) "Improvement" or "improve" means the extension, enlargement, betterment, alteration, reconstruction, replacement, and other major improvement (or any combination thereof) of the facilities, any property pertaining thereto, any project, or an interest therein, authorized in this article.

(34)(a) "Improvement district" means the geographical area within the urban district designated and delineated by the board, in which improvement district are located the facilities or project, or an interest therein, the cost of which is to be defrayed wholly or in part by the levy of special assessments, and in which improvement district is located each tract to be assessed therefor. An improvement district may consist of noncontiguous areas. Improvement districts shall be designated by consecutive numbers or in some other manner to identify separately each such district in the urban district.

(b) "Improvement district" does not mean the "urban district" as defined in this section.

(35)(a) "Mailed notice", "notice by mail", or any phrase of similar import means the giving by the engineer, district secretary, district treasurer, county treasurer, any deputy thereof, or other designated person, as determined by the board or as otherwise provided in this article, of any designated written or printed notice addressed to the last-known owner of each tract assessed or to be assessed or other designated person at his last-known address, by deposit at least twenty days prior to the designated hearing or other time or event, in the United States mails, postage prepaid, as first-class mail. The failure to mail any such notice shall not invalidate any proceedings under this article.

(b) The names and addresses of such property owners shall be obtained from the records of the county assessor or from such other source or sources as the engineer, district secretary, district treasurer, county treasurer, any deputy thereof, or other person so giving notice deems reliable. Any list of such names and addresses pertaining to any improvement district may be revised from time to time, but such a list need not be revised more frequently than at twelve-month intervals.

(c) Any mailing of any notice required in this article shall be verified by the affidavit or certificate of the engineer, district secretary, district treasurer, county treasurer, the deputy thereof, or other person mailing the notice, which verification shall be retained in the records of the urban district at least until all assessments and securities pertaining thereto have been paid in full or any claim is barred by a statute of limitations.

(36)(a) "Municipality" means an incorporated town, city and county, or city, whether incorporated and governed under general act or special charter.

(b) "Municipal" pertains to a municipality.

(37) "Net revenues" or "net pledged revenues" means the gross pledged revenues remaining after the deduction of the "operation and maintenance expenses" as defined in this section.

(38) "Newspaper" means a newspaper printed in the English language at least once each calendar week.

(39)(a) "Operation and maintenance expenses", or any phrase of similar import, means all reasonable and necessary current expenses of the district.

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ANCHORAGE LAW FIRM



Colorado

§ 32-11-104

SPECIAL DISTRICT

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(41)(a) "Person" means a corporation, firm, other body corporate (including the federal government or any public body), partnership, association, individual, and also includes an executor, administrator, trustee, receiver, or other representative appointed according to law.

(b) "Person" does not include the "urban district" as defined in this section.

(42) "Pledged revenues" or "revenues" means all or a portion of the pledged revenues. The designated term indicates a source of revenues and does not necessarily indicate all or any portion or other part of such revenues in the absence of further qualification.

(43) "Project" means such part of the facilities of the district as the board determines to acquire and authorize at one time.

(44) "Property" means personal property and real property, both improved and unimproved.

(45)(a) "Publication" or "publish" means three consecutive weekly publications in at least one newspaper having general circulation in the district.

(b) It is not necessary that an advertisement be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication but including the day of the last publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

(46)(a) "Public body" means the state of Colorado or any agency, instrumentality, or corporation thereof, or any county, municipality, corporate district, housing authority, urban renewal authority, other type of authority, the regents of the university of Colorado, the state board for community colleges and occupational education, or any other body corporate and political and political subdivision of the state.

(b) "Public body" does not include the "federal government" nor the "urban district" as defined in this section.

(47) "Real property" means:

(a) Land, including land under water;

(b) Buildings, structures, fixtures, and improvements on land;

(c) Any property appurtenant to or used in connection with land; and

(d) Every estate, interest, privilege, leasehold, easement, license, franchise, right-of-way, and other right in land, legal or equitable, including, without limiting the generality of the foregoing, rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens.

(48) "Revenues" means the "pledged revenues" as defined in this section.

(49) "Secretary" means the de jure or de facto secretary of the board and the urban district, or his successor in functions, if any.

(50) "Service charges" means the fees, rates, and other charges for the use of the facilities of the district, or for any service rendered by the district in the operation thereof, or otherwise pertaining thereto, as more specifically provided in section 32-11-306 and elsewhere in this article.

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Prior Compilation

§ 32-11-105.

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§ 331A.01

MINNESOTA

NEWSPAPERS

(d) this subdivision contains no independent requirement for the publication of any public notice.

Subd. 8. "Qualified newspaper" means a newspaper which complies with all of the provisions of section 331A.02. The following terms, when found in laws referring to the publication of a public notice, shall be taken to mean a qualified newspaper: "qualified legal newspaper," "legal newspaper," "official newspaper," "newspaper," and "medium of official and legal publication."

Subd. 9. "Secondary office" means an office established by a newspaper in a community other than that in which its known office of issue is located, in the same or an adjoining county, to enhance its coverage of and service to that community, open on a regular basis to gather news and sell advertisements and subscriptions, whether or not printing or any other operations of the newspaper are conducted at or from the office, and devoted primarily to business related to the newspaper.

Subd. 10. "Summary" means an accurate and intelligible abstract or synopsis of the essential elements of proceedings, ordinances, resolutions, and other official actions. It shall be written in a clear and coherent manner, and shall, to the extent possible, avoid the use of technical or legal terms not generally familiar to the public. When a summary is published, the publication shall clearly indicate that the published material is only a summary and that the full text is available for public inspection at a designated location. A summary published in conformity with this section shall be deemed to fulfill all legal publication requirements as completely as if the entire matter which was summarized had been published. No liability shall be asserted against the local public corporation in connection with the publication of a summary or agenda.

Laws 1984, c. 543, § 20. Amended by Laws 1986, c. 444.

Historical and Statutory Notes

Laws 1984, c. 543, § 70 provides that this section is effective Jan. 1, 1985, except as it applies to independent school districts, with respect to which it is effective July 1, 1985.

1986 Amendment. Laws 1986, c. 444, § 1, removed gender specific references applicable to human beings throughout Minn.Stats. by adopt-

ing by reference proposed amendments for such revision prepared by the revisor of statutes pursuant to Laws 1984, c. 420, § 21, and certified and filed with the secretary of state on Jan. 24, 1986. Section 3 of Laws 1986, c. 444, provides that the amendments "do not change the substance of the statutes amended."

331A.02. Requirements for a qualified newspaper

Subdivision 1. Qualification. No newspaper in this state shall be entitled to any compensation or fee for publishing any public notice unless it is qualified as a medium of official and legal publication. A newspaper that is not qualified must inform a public body that presents a public notice for publication that it is not qualified. To be qualified as a medium of official and legal publication, a newspaper shall:

(a) be printed in the English language in newspaper format and in column and sheet form equivalent in printed space to at least 1,000 square inches;

(b) if a daily, be distributed at least five days each week, or if not a daily, be distributed at least once each week, for 50 weeks each year. In any week in which a legal holiday is included, not more than four issues of a daily paper are necessary;

(c) in at least half of its issues each year, have no more than 75 percent of its printed space comprised of advertising material and paid public notices. In all of its issues each year, have 25 percent, if published more often than weekly, or 50 percent, if weekly, of its news columns devoted to news of local interest to the community which it purports to serve. Not more than 25 percent of its total nonadvertising column inches in any issue may wholly duplicate any other publication unless the duplicated material is from recognized general news services;

(d) be circulated in the local public corporation which it purports to serve, and either have at least 500 copies regularly delivered to paying subscribers, or have at least 500 copies regularly distributed without charge to local residents;

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(e) have its known office of issue established in either the county in which lies, in whole or in part, the local public corporation which the newspaper purports to serve, or in an adjoining county;

(f) file a copy of each issue immediately with the state historical society;

(g) be made available at single or subscription prices to any person, corporation, partnership, or other unincorporated association requesting the newspaper and making the applicable payment, or be distributed without charge to local residents;

(h) have complied with all the foregoing conditions of this subdivision for at least one year immediately preceding the date of the notice publication; and

(i) between September 1 and December 31 of each year publish and submit to the secretary of state, along with a filing fee of \$25, a sworn United States Post Office second-class statement of ownership and circulation or a statement of ownership and circulation verified by a recognized independent circulation auditing agency covering a period of not less than one year ending no earlier than the June 30 preceding the filing deadline, provided that a filing published and submitted after December 31 and before July 1 shall be effective from the date of filing through December 31 of that year. The secretary of state shall make the list of newspapers whose filings have been accepted available for public inspection. The acceptance of a filing does not constitute a guarantee by the state that any other qualification requirement has been met.

Subd. 2. Earlier qualification. Newspapers which have been qualified, on May 20, 1965, as mediums of official and legal publication shall remain qualified only if they meet the requirements of subdivision 1, except as follows:

(a) If on May 20, 1965, any newspaper is a qualified medium of official and legal publication but is printed in a foreign language, or in English and a foreign language, and otherwise qualifies as a medium of official and legal publication pursuant to the requirements of subdivision 1, it shall be a medium of official and legal publication so long as it otherwise qualifies pursuant to the requirements of subdivision 1.

(b) If on May 20, 1965, any newspaper has been circulated in and near the municipality which it purports to serve to the extent of at least 240 but less than 500 copies regularly delivered to paying subscribers and otherwise qualifies as a medium of official and legal publication pursuant to the requirements of subdivision 1, it shall be a medium of official and legal publication so long as at least 240 copies are regularly so circulated and delivered and it otherwise qualifies pursuant to the requirements of subdivision 1.

Subd. 3. Publication; suspension; changes. The following circumstances shall not affect the qualification of a newspaper, invalidate an otherwise valid publication, or invalidate a designation as official newspaper for publication of county board proceedings.

(a) Suspension of publication for a period of not more than three consecutive months resulting from the destruction of its known office of issue, equipment, or other facility by the elements, unforeseen accident, or acts of God or by reason of a labor dispute.

(b) The consolidation of one newspaper with another published in the same county; or a change in its name or ownership, or a temporary change in its known office of issue.

(c) Change of the day of publication, the frequency of publication, or the change of the known office of issue from one place to another within the same county. Except as provided in this subdivision, suspension of publication, or a change of known office of issue from one county to another, or failure to maintain its known office of issue in the county, shall deprive a newspaper of its standing as a medium of official and legal publication until the newspaper again becomes qualified pursuant to subdivision 1.

Subd. 4. Declaratory judgment of legality. Any person interested in the standing as a medium of official and legal publication of a newspaper, may petition the district court in the county in which the newspaper has its known office of issue for a declaratory judgment whether the newspaper is qualified as a medium of official and legal publication. Unless filed by the publisher, the petition and summons shall be served on the publisher as in other civil actions. Service in other cases shall be made by publication of the petition and summons once each week for three successive weeks in the newspaper or newspapers the court may order and upon the persons as the court may direct. Publica-

SB168

APR 1 1993

3/30/93

Dear Senator Leman,

Just a brief note in support of SB 168 and its House equivalent. I agree the definition of "general circulation" would encourage competition for legal ads and notices, thus saving public dollars.

In this form of "advertising", I do not believe "cost per reader reached" should be a significant influence anyway. After all, the vast majority of general readers have no interest in these notices. They are of interest and use mainly to special groups such as lawyers, real estate people, private investigators and businesses seeking contracts. These groups are usually aware of the notices before they are even publicized, and in any event, these groups actively seek out such information no matter where it is published.

I support efforts to reduce the government's cost of publishing legal notices. The cost for private sector businesses to publish their legal notices would also be reduced, thus reducing the overall cost of doing business.

Please pursue this legislation.

Matthew J Scully
6121 Austria Drive
Anchorage, Ak 99516

Matthew Scully

XC Senator Rieger
Senator Salo
Representative Bunde

ALSO -
NOTE OF THE BP SETTLEMENT MONEY
SHOULD BE USED FOR OPERATING COSTS.
SOME FOR CAPITAL PROJECTS MIGHT BE OK.
OTHERWISE, PUT IN RESERVE FUNDS OR
PERMANENT FUND.
Matthew

SB168



Alaska State Legislature

Please enter into the record my testimony to the

SENATE STATE AFFAIRS

committee name

committee on

SB168 NEWSPAPERS OF GENERAL CIRC.

dated

APRIL 2, 1993

bill/subject

ALASKA NEWSPAPERS, INC, A-MINORITY-OWNED BUSINESS PUBLISHES SEVEN RURAL COMMUNITY NEWSPAPERS. THE ARCTIC SOUNDER, COVERS & CIRCULATES IN KOTZEBE & THE NORTHWEST ARCTIC BOROUGH; THE BRISTOL BAY TIMES IN DILLINGHAM & THE BRISTOL BAY AREA; THE CORDOVA TIMES; THE DUTCH HARBOR FISHERMAN, A NEW PAPER COVERING UNALASKA & THE ALUTIAN & Pribilof ISLANDS; THE SEWARD PHOENIX LOG, COVERING SEWARD & THE EASTERN KENAI PENINSULA; THE TUNDRA DRUMS, COVERING BETHEL & THE YUKON-KUSKOKWIM DELTA; AND THE VALDEZ VANGUARD COVERING VALDEZ AND COPPER VALLEY AREA.

THE COMBINED CIRCULATION OF THESE SEVEN PAPERS IS 17,000.

OUR GOAL IS TO KEEP THE PUBLIC INFORMED OF WHAT'S HAPPENING IN THESE AREAS.

WE BELIEVE THE ELABORATION OF THE TERM "GENERAL CIRCULATION" ~~WILL~~ REGARDING THE PUBLICATION OF NOTICES WILL BETTER SERVE THE PURPOSE OF KEEPING THE PUBLIC INFORMED ABOUT WHAT'S HAPPENING IN THESE COMMUNITIES.

WE SUPPORT THIS LEGISLATION AS IT STANDS.

Signed:

ANNETTE M. STANLETT

Testifier

ALASKA NEWSPAPERS, INC.

Representing (Optional)

503 E. SIXTH AVE. ANCH

Address

272-9830

Phone No.

The Valdez Star

Sales Office

Russell M. Sell, Sales Director
821 N St. Suite 101, Anchorage, AK
(907) 344-7115 • Fax 344-5440

Pat & Jean Lynn, Editors & Publishers

P.O. Box 367 • Valdez, AK 99686
(907) 835-2405 • Fax 835-3882

Production Office

821 'N' Street, Suite 101
Anchorage, AK 99501
(907) 274-1534 • Fax 272-1077

March 31, 1993

Sen. Robin Taylor
Chairman, Judiciary Committee
State Capitol
Juneau, Alaska

Re: Senate Bill No. 168

Dear Senator;

If there was ever a flawed piece of legislation introduced in the Alaska legislature, it is Senate Bill 168, the newspaper bill, which will appear before your committee this Friday.

I realize it was not the intent of Senator Loren Leman when he introduced this bill, but the end result will be very damaging to scores of smaller newspapers around the state. This bill is decidedly anti-business with respect to smaller publications and a handicap to the start-up of new newspapers.

As I understand it, the bill is an attempt to resolve a dispute between the Anchorage Daily News and the Journal of Commerce. Unfortunately, scores of other newspapers in the state are being victimized as a result.

The bill seeks to define a "newspaper" by format, frequency of publication, circulation, percentage of coverage, post office mailing permits, etc. in order to qualify for state legal advertising.

If this bill is adopted in its present form, I know of seven newspapers immediately that will lose legal advertising from the state; more importantly, there will be thousands of readers who will be denied access to state notices on such wide-ranging subjects as road weight limits, reapportionment hearings, LIO schedules, help wanted ads, requests for proposals, amended fish & game regulations, public hearings, etc.

The seven newspapers that would immediately lose access to this advertising would be the Valdez Star, the Copper Country Journal, The North Pole Independent, the Mukluk News, the Delta Wind the Barrow Whaler and the Aniak newspaper. While all of these are legitimate community newspapers, some having been published for years, none of them have second class mailing permits from the United States Postal Service as required in the bill.

You should also be advised that a second class mailing permit requires a fee of \$275 and takes anywhere from six months to two years for approval, according to Eddie Strong of the USPS in Anchorage.

The bill also says newspapers should be printed "in a newspaper format" whatever that means. I have more than 25 years experience in the newspaper business and I can tell you that newspapers come in all shapes and sizes--from broadsheet to tabloid to newsletter size. For the life of me, I can't define "newspaper format."

There is also the requirement that newspapers have at least 2,500 paid circulation and that they provide 25 per cent of their circulation area.

Most community newspapers actually start as "freebie" newspapers; for many months, sometimes years, beginning newspapers distribute their papers for free to build up reader loyalty.

A case in point is The Barrow Whaler, a newspaper just two weeks old, which is now going through the same process. The Whaler has virtually no paid circulation at the present time. But in six months or a year, they will pick up a substantial number of subscribers.


In addition to damaging many community newspapers in the state, Senate Bill 168 will require the state to place its advertising in distant newspapers. At the present time, for example, the City of Barrow and the North Slope Borough are placing their legal advertising (at exorbitant prices) in the Anchorage Daily News which has only a handful of subscribers in Barrow and the borough.

Under Bill 168, which would exclude the Barrow Whaler, all state advertising would have to be printed in the Daily News. Does that make sense? Obviously not.

Senator, this bill was tailor made to resolve a dispute between the Journal of Commerce and the Anchorage Daily News. Unfortunately, it's going to have considerable negative fallout on scores of others papers not involved in that dispute.

You can do us all a favor by consigning this bill to oblivion.

Sincerely,



Patrick K. Lynn
Editor & Publisher
The Valdez Star

c.c. Above mentioned newspapers
Sens. Lincoln, Hudson, Kertulla, Leman & Rep. Olberg

SB168

ALASKA NEWSPAPERS, INC.
P.O. BOX 100319 ANCHORAGE, ALASKA 99510
Phone: (907) 279-5516 Fax: (907) 272-5080

April 9, 1993

Hon. Loren Leman
Alaska State Senate
P. O. Box V
Juneau, AK 99811

*PB - for action
share w/ Indiv.
Comm.*

APR 13 1993

RE: CS for Senate Bill 168

Dear Senator Leman:

The purpose of writing this letter pertains to Senate Bill 168. To help encourage newspapers in Alaska, we support CS SB 168 amendment for circulation of 1000 bona fide subscribers.

We want to see the requirement for second class mailing permits remain in the language. Legal notices should have the speediest and widest possible dissemination to the public. Third class permits mailed from outside and within urban Alaska takes too long to be delivered into rural Alaska.

We do not support any further amendments to this bill. We are content with the present language of CS SB 168 as written.


We are an Alaska Native-owned and Alaska based newspaper company with circulation of 20,000 mailed to rural Alaska.

Enclosed is a list of the names of the newspapers within Alaska Newspapers, Inc.

If you have any questions please contact Dave Hunter, General Manager at 272-9830, or myself at 279-5516.

Sincerely,

ALASKA NEWSPAPERS, INC.


Matthew Nicolai
Director

ALASKA NEWSPAPERS INC.

COMMITMENT

- Alaska Newspapers is committed to providing rural Alaskans with the highest quality **local** newspapers available in their hometowns.

READERSHIP

- Our loyal and faithful readership ensures that your message is not only well read but also well received.

RESULTS

- Our network of **paid-circulation** newspapers delivers more readers to our advertisers than any other rural newspapers.
- *Readership means results.*

ALASKA NEWSPAPERS, INC.

503 E. 6th Ave.
Anchorage, Alaska 99501

(907) 272-9830 • FAX: (907) 272-9512

ALASKA NEWSPAPERS, INC.
503 E. 6th Ave.
Anchorage, Alaska 99501

ALASKA NEWSPAPERS INC.

1993 RATE CARD



Our
Story
is
Local
Commitment

ALASKA NEWSPAPERS INC.

COMMITMENT

- Alaska Newspapers is committed to providing rural Alaskans with the highest quality **local** newspapers available in their hometowns.

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Anchorage, Alaska 99501

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ALASKA NEWSPAPERS, INC.
503 E. 6th Ave.
Anchorage, Alaska 99501

ALASKA NEWSPAPERS INC.

1993 RATE CARD

The collage features the following newspaper front pages:

- CHANNEL MARKERS**: A TV supplement with the tagline "In Developing Area, all the days in a week".
- Bristol Bay Times**: A local newspaper from Bristol Bay.
- THE VALDEZ VANGUARD**: A local newspaper from Valdez, featuring a headline "Water well for..." and a large article titled "Sounder".
- DUTCH HARBOR FISHERMAN**: A local newspaper from Dutch Harbor.
- The Cordova Times**: A local newspaper from Cordova.
- SEWARD**: A local newspaper from Seward.
- The Drums**: A local newspaper from The Drums, featuring a headline "\$1 million needed for excavation of lagoon" and a photo of a person in a hat.

Our
Story
is
Local
Commitment

ALASKA NEWSPAPERS INC.

The most cost-effective way to reach rural Alaska. Each ANI newspaper is paid circulation — locally reported and written. We are the newspapers of choice in each of the communities we serve. From Cordova to Kotzebue, Alaska Newspapers delivers the results you need for your advertising dollar.

THE ARCTIC SOUNDER

- Serving residents of Kotzebue and the Northwest Arctic Borough since 1986.
- Paid circulation: 1,900

THE BRISTOL BAYTIMES

- Serving the residents of Dillingham, Dutch Harbor, Naknek, King Salmon and the Bristol Bay area since 1980.
- Paid circulation: 3,150

THE CORDOVA TIMES

- Serving Cordova residents since 1914. The Times is a Prince William Sound institution.
- Paid circulation: 1,650

THE DUTCH HARBOR FISHERMAN

- Serving the Aleutians from Nelson Lagoon to Adak, and the Pribilof islands.
- Circulation: 2,500

THE SEWARD PHOENIX LOG

- Serving eastern Kenai Peninsula residents in the communities of Seward, Moose Pass, Cooper Landing and Hope since 1966.
- Paid circulation: 2,200

THE TUNDRA DRUMS

- Serving residents of Bethel and the entire Yukon-Kuskokwim Delta area since 1974.
- Paid circulation: 6,700

THE VALDEZ VANGUARD

- Serving the residents of Valdez and the entire Copper River Basin, since 1975.
- Paid circulation: 1,600

CHANNEL MARKERS

- A weekly television guide providing complete coverage of cable and RATNET programming.

RATES & MECHANICALS

OPEN RATES per column inch

THE ARCTIC SOUNDER	\$7.25
THE BRISTOL BAYTIMES	\$7.25
THE CORDOVA TIMES.....	\$7.25
THE DUTCH HARBOR FISHERMAN.....	\$8.75
THE SEWARD PHOENIX LOG	\$7.25
THE TUNDRA DRUMS	\$8.75
THE VALDEZ VANGUARD	\$6.75

CHANNEL MARKERS • \$25.00

CHANNEL MARKERS CONTRACT RATES
13 weeks • 3% discount
26 weeks • 5% discount
52 weeks • 10% discount
(3 column inch minimum)

COMBINATION RATES

per column inch

4 OR 5 PAPERS	\$30.00
6 OR 7 PAPERS	\$35.00

ANNUAL

BULK CONTRACT RATES

150 column inches • 3% discount
300 column inches • 5% discount
500 column inches • 10% discount
750 plus column inches • 15% discount

ANNUAL WEEKLY

FREQUENCY CONTRACT RATES

6 column inches • 15% discount
18 column inches • 20% discount
35 column inches • 30% discount
75 plus column inches • 40% discount
26 weeks • add 50¢ per column inch
13 weeks • add \$1.00 per column inch
Plus applicable local sales tax, if any.

SIZES

Five column by 15 inch format containing 75 column inches per page.

1 column	1-13/16"	3 column	5 3/4"
2 column	3-13/16"	4 column	7 3/4"
5 column	9-3/4"		

COLOR

Black and 1 color • \$150
Black and 2 colors • \$300
Black and 3 colors • \$400
Full color reproduction • \$425
(does not include color separation)

PREPRINTED INSERTS

1 to 8 pages (up to 1 ounce) • \$85 per 1,000
9 to 16 pages (up to 2 ounces) • \$115 per 1,000
over 16 pages (over 2 ounces) • call for quote
(maximum non-folded size, 11-inches by 17-inches)

CLASSIFIED ADS

20¢ per word or \$1 per line
(\$3.00 minimum, per week)
Legal Notices • \$1 per line

MULTIPLE PAPER DISCOUNTS

3 papers • 40¢ or \$2 per line
4 to 6 papers • 80¢ or \$4 per line
7 papers • \$1.00 or \$5 per line

PROMPT PAYMENT DISCOUNTS

10 days • 3%	Prepaid • 5%
--------------	--------------

15% AGENCY COMMISSION

Standard agency commission is honored for recognized agencies providing camera-ready materials and payment within 30 days from date of invoice. Reserve space by 5 p.m. Friday - deliver camera ready ads by 5 p.m. Tuesday (Channel Markers - 5 p.m. Monday).

DEADLINES

5 p.m. Friday before publication
Channel Markers • 5 p.m. Wednesday

POSITION PLACEMENT POLICY


Back Page • 1 color minimum

All other position placements will be on a space available basis only. We strive to accommodate position requests but cannot guarantee position.

ALASKA NEWSPAPERS INC.

Eric Hancock • Advertising Director
Karen Huston • Advertising Manager
503 E. 6th Ave., Anchorage, AK 99501
(907) 272-9830 • FAX: (907) 272-9512

Memorandum

To: Members of the Senate
From: John McKay 
Re: CSHB 236(RLS) am
The "Newspaper of General Circulation" Bill
Dated: 5/1/93

CSHB 236 (RLS) am. is a poorly thought out and unnecessary bill. If you want to hurt many small papers throughout the state, and create a field day for lawyers, you should pass it. If not, the bill should be voted down on reconsideration. The effect of killing this bill would be to leave the law in this area settled, as it has been since 1976. Nobody will be hurt by doing this. I am offering these comments in part on behalf of the Anchorage Daily News, although the paper's interests probably are not significantly affected one way or the other if this passes. I have also been asked by a number of smaller papers to point out to you why this bill should die.

The purpose and intended effect of this bill is simply to provide one Anchorage business, the Journal of Commerce, a marketing tool to use against its competitor, the Anchorage Daily News. Some will think that is just fine, for whatever reason, and others may vote for it because they see the bill as innocuous. The problem is, this is just a bad bill, because it is not fair to the smaller papers in numerous communities throughout the state. The Daily News has no interest in profiting from ill-conceived special interest legislation that could financially cripple Alaska's community newspapers.

The Daily News has tried from the beginning to point out how the Journal of Commerce's bill would hurt the smaller papers, and has tried to protect the smaller community papers. For example, it pointed out that the Journal's original bill would have eliminated any papers with a paid circulation of less than 2,500. [The Journal's circulation was 2,530 according to the memo it submitted to legislators.] Even though the problem with the numbers was fixed there are other provisions in this bill that will have the same effect. This may well mean that if this bill passes, only the Daily News and maybe the Journal of Commerce will be qualified to carry the foreclosure ads for many Southcentral Alaska communities outside of Anchorage.

Besides hurting a lot of smaller papers like the Bristol Bay Times, Chugiak Eagle River Star, Homer News, Cordova Times, Frontiersman, Wrangell Sentinel, Seward Phoenix-Log, and many more, this bill is a Christmas present for lawyers. If people or companies have lost their property, especially when there is a lot of money at stake, lawyers have always looked for arguments to get the foreclosure set aside. Now there will be lots of new arguments about the validity of every foreclosure. Was at least 25% of the contents of *each issue* editorial comments and news content? What is that? Does it include Ann Landers and the comics and the food pages? The courts will have to decide. They can bring in journalism professors with rulers to do content analyses and provide expert testimony. And if there is 25% in each issue, is it of interest to the judicial district generally, or just part of it? More experts, more litigation. And, did the paper distribute more than an insubstantial number of copies throughout the judicial district?

It might be different if there were some pressing need to fix something with this bill, but it is totally unnecessary. If it passes, no papers that are not already qualified as newspapers of general circulation will become qualified. As everyone knows, this bill is intended simply to benefit the Journal of Commerce. But the Journal is already a newspaper of general circulation. It already carries these ads, and advertises that it is a newspaper of general circulation. The court system uses the Journal as a newspaper of general circulation, and every legal opinion I am aware of, including the one the Journal gave the legislature from its own lawyers, shows that this bill is not necessary to qualify the Journal as a newspaper of general circulation.

POSITION PAPER

TO: Senator Loren Leman
Attn: Portia Babcock (FAX: 465-3810)

FROM: Alaska Journal of Commerce

SUBJECT: SB 168
"An Act relating to newspapers of general circulation"

PURPOSE OF
LEGISLATION: To promote competition within the private sector among
newspapers for publication of legal notices required by state law

DISCUSSION:

Alaska is one of the few (perhaps only) states where publication of legal notices occurs in metropolitan daily newspapers (e.g., The Juneau Empire, The Anchorage Daily News, The Fairbanks News-Miner and The Nome Nugget). In most other jurisdictions, required legal notices are published in daily or weekly newspapers catering in part to legal, banking and real estate professionals that provide the most efficient dissemination of notice at a cost of publication substantially less than that charged to larger circulation metro dailies. In these other jurisdictions, state statutes typically define with specificity the requirements and qualifications for newspapers suitable for public notice. Such statutory qualifications address editorial content, publication schedule, minimum paid circulation and other criteria to ensure that the widest potential audience with interest in public notices may be reached at the most competitive cost.

Currently no such statutory specificity exists in Alaska. Where requirements for publication are stated by law, it is only with the general language of "publication in a newspaper of general circulation." Therefore, definition of "of general circulation" is subject to interpretation by reference to case law precedent and statutory authority in Alaska and other jurisdictions

In the case of certain types of legal notices, in particular default notices pursuant to

real estate foreclosures, this situation has prompted interested Alaskan parties (banks, title companies and attorneys) who are ultra cautious by nature to use only metro dailies for legal notices where qualification of the publishing venue would seem to be unassailable in the event of litigation. In addition, until recently a targeted legal publication alternative has not existed in Alaska unlike most other jurisdictions. The result has been to create de facto monopoly publishing entities in each of Alaska's four judicial districts.

SB 168 would provide the specificity that is currently lacking for qualifying newspapers of general circulation. In so doing, it would establish a needed level of comfort for banks, title companies and attorneys to consider alternatives to the publishing status quo.

At current advertising rates, the cost savings would be substantial. For example, in the Third Judicial District, the Anchorage Daily News charges almost triple the cost of legal advertising compared to the Alaska Journal of Commerce. Presumably, similar cost savings would be available for public sector legal notice advertising as well which would benefit the state's executive branch as well as municipalities.

It is important to note that SB 168 in no way changes the status of existing metro dailies which would continue to qualify as papers of general circulation. It would merely provide statutory certainty that other papers (e.g., The Alaska Journal of Commerce, The Eagle River Star, The Frontiersman) also qualify thereby allowing the legal advertiser additional flexibility to choose the paper best suited for the purpose at the most competitive cost.

Other than the potential public sector cost savings noted above, SB 168 has no fiscal impact.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 12, 1993

SUBJECT: Considerations in draft relating to newspapers of general circulation (Work Order No. 8-LS0838\A)

TO: Senator Loren Leman
Attn: Portia

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft of the bill that you requested relating to newspapers of general circulation.

The two-year publication requirement makes your bill vulnerable to an equal protection challenge. The outcome of a challenge is unclear. To reduce the chances of a challenge succeeding, the legislative record on the bill should indicate that the two-year period, as opposed to, for example, a one-year period, is needed to ensure that the newspaper is sufficiently established. The record should also indicate the reasons for this conclusion.

With regard to the declaration that a publication qualifies as a newspaper of general circulation for a particular area, you may wish to consider having an executive branch agency provide this service. However, please keep in mind that, whether the executive or judicial branch provides this service, the determination will have to be made for each specific statute due to the "relevant area" factor. In other words, the publication cannot make one request for a determination and thereafter be considered a "newspaper of general circulation" for all the statutes. Since the definition of "newspaper of general circulation" is tied to a "relevant area," each determination will have to be made based on the relevant area that the governing statute or regulation is addressing.

Regulations are covered by the definition in this bill because AS 01.10.060 applies to the "laws of the state," and "laws" includes regulations.

If I may be of further assistance, please advise.

TLB:lmb
93-070.lmb

Sec. 01.10.055. Residency. (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state. (§ 1 ch 67 SLA 1983)

NOTES TO DECISIONS

Jurisdiction over divorce action. — This section does not affect the common-law rule that Alaska courts have jurisdiction over a divorce action when one of the parties is domiciled in Alaska, where "domicile" is defined as physical presence plus an intent to remain permanently. *Perito v. Perito*, 756 P.2d 895 (Alaska 1988).

Sec. 01.10.060. Definitions. In the laws of the state, unless the context otherwise requires,

(1) "action" includes any matter or proceeding in a court, civil or criminal;

(2) "daytime" means the period between sunrise and sunset;

(3) "month" means a calendar month unless otherwise expressed;

(4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

(5) "nighttime" means the period between sunset and sunrise;

(6) "oath" includes affirmation or declaration;

(7) "peace officer" means

(A) an officer of the state troopers;

(B) a member of the police force of a municipality;

(C) a village public safety officer;

(D) a United States marshal or deputy marshal; and

(E) an officer whose duty it is to enforce and preserve the public peace;

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

(9) "personal property" includes money, goods, chattels, things in action, and evidences of debt;

(10) "property" includes real and personal property;

(11) "real property" is coextensive with land, tenements, and hereditaments;

(12) "signature" or "subscription" includes the mark of a person who cannot write, with the name of that person written near the mark by a witness who writes the witness's own name near the name of the person who cannot write; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names to the sworn statement;

(13) "state" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;

(14) "writing" includes printing. (§ 4 ch 62 SLA 1962; am § 2 ch 66 SLA 1965; am § 10 ch 117 SLA 1968; am § 19 ch 74 SLA 1985; am § 1 ch 60 SLA 1990)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

Cross references. — For additional definition of "peace officer", see AS 11.81.900(b); for listing of peace officers for purposes of the Fish and Game Code, see AS 16.05.150; for a definition of "police officer", see AS 18.65.290.

Effect of amendments. — The 1990 amendment rewrote paragraph (7).

Opinions of attorney general. — The statutory framework of the Alaska Statutes viewed as a whole contemplates that for any publicly employed law enforcement officer to be considered a peace officer within the meaning of present paragraph (7), he or she must be empowered with a full range of police duties and authority and must be currently functioning on essentially a full-time basis in that role. September 18, 1977, Op. Att'y Gen.

Law enforcement officers within the category "peace officers" as used in present paragraph (7) include, but are not limited to, state troopers, fish and wildlife protection officers and police officers employed by police departments of incorporated municipalities. September 18, 1977, Op. Att'y Gen.

Law enforcement officers with limited police authority with respect to specific statutes or ordinances are not police officers and are not necessarily peace officers either, at least within the meaning of present paragraph (7). September 18, 1977, Op. Att'y Gen.

Comparing the classification of "peace officer" in present paragraph (7) with that of "police officer," it is apparent that police officers, as defined in AS 18.65.290(2), are always peace officers since they have full police duties that are exercised on a full-time basis. However, the converse of this proposition can never be the case; that is, peace officer status does not automatically vest one with the status of a police officer since peace officers are not necessarily employees of a police department and do not necessarily have the power to enforce all the penal, traffic or highway laws of the state. September 18, 1977, Op. Att'y Gen.

Because AS 11.55.020 (now AS 11.61.220) excepts only "peace officers" from the general prohibition against carrying concealed weapons, other persons, including state employees charged with limited law enforcement duties, unless a peace officer within the meaning of present paragraph (7), may not carry concealed weapons. December 22, 1977, Op. Att'y Gen.

A comparison of the language of AS 18.65.010(b), which describes the general powers and duties of a specially commissioned officer, with that of AS 18.65.080, which describes the powers and duties of commissioned officers of the Department of Public Safety with particular reference to "member" of the state troopers, supports the conclusion that a specially commissioned officer is a "peace officer" for

8-LS0838VA
Bannister
3/16/93

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATE STATE AFFAIRS COMMITTEE

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to newspapers of general circulation."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 01.10.060 is amended by adding a new paragraph to read:

4 (15) "newspaper of general circulation" means a publication that

5 (A) is published in newspaper format;

6 (B) contains, in at least 25 percent of each issue, editorial

7 comments and news content that is of general interest in the relevant area, not

8 just to a particular part of the relevant area; has more than an insignificant

9 circulation throughout the relevant area; and for at least two years, has been

10 distributed at least once a week and for at least 50 weeks a year within the

11 relevant area, excluding a period when publication is interrupted by a labor

12 dispute or by a natural disaster, or other casualty that the publisher cannot

13 control; in this subparagraph, "relevant area" means the judicial district,

14 municipality, or other geographical area specified in or otherwise used in the

1 governing statute or regulation to determine where the publication, advertising,
2 or other activity is to be accomplished by using a newspaper of general
3 circulation;

4 (C) holds a second class mailing permit from the United States
5 Postal Service;

6 (D) is not published primarily to distribute advertising;

7 (E) is not intended primarily for a particular professional or
8 occupational group; and

9 (F) have a total paid circulation of at least 2,500 bona fide
10 subscribers.

11 * Sec. 2. AS 09.65 is amended by adding a new section to read:

12 Sec. 09.65.160. ACTION TO ESTABLISH NEWSPAPER STATUS. A person
13 who owns a publication may bring an action under AS 22.10.020(g) to establish that
14 the publication is a newspaper of general circulation under AS 01.10.060.

8-LS0838E
Bannister
3/22/93

CS FOR SENATE BILL NO. 168(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to newspapers of general circulation "

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 01.10.060 is amended by adding a new paragraph to read:

4 (15) "newspaper of general circulation" means a publication that

5 (A) is published in newspaper format;

6 (B) contains, in at least 25 percent of each issue, editorial

7 comments and news content that is of general interest in the relevant area, not

8 just to a particular part of the relevant area; has more than an insignificant

9 circulation throughout the relevant area; for at least two years, has been

10 distributed at least two times a month each year within the relevant area,

11 excluding a period when publication is interrupted by a labor dispute or by a

12 natural disaster, or other casualty that the publisher cannot control; and has a

13 total paid circulation of at least 1,000 bona fide subscribers, or a total paid

14 circulation of at least 20 percent of the total population of the relevant area,

1 whichever is less; in this subparagraph, "relevant area" means the judicial
2 district, municipality, or other geographical area specified in or otherwise used
3 in the governing statute or regulation to determine where the publication,
4 advertising, or other activity is to be accomplished by using a newspaper of
5 general circulation;

6 (C) holds a second class mailing permit from the United States
7 Postal Service; and

8 (D) is not published primarily to distribute advertising.

9 * Sec. 2. AS 09.65 is amended by adding a new section to read:

10 Sec. 09.65.160. ACTION TO ESTABLISH NEWSPAPER STATUS. A person
11 who owns a publication may bring an action under AS 22.10.020(g) to establish that
12 the publication is a newspaper of general circulation under AS 01.10.060.

A M E N D M E N T



OFFERED IN THE SENATE
TO: CSHB 236(RLS) am

BY SENATOR DONLEY

Page 1, line 12, after "property":

Insert ", including the property's street address if there is a street address for the property,"

Page 2, line 1, after "sale":

Insert "; an inaccuracy in the street address may not be used to set aside a sale if the legal description is correct"

Page 2, after line 23:

Insert a new bill section to read:

"* Sec. 3. AS 34.20.070(b) is amended to read:

(b) Not less than 30 days after the default and not less than three months before the sale the trustee shall record in the office of the recorder of the recording district in which the trust property is located a notice of default setting out (1) the name of the trustor, (2) the book and page where the trust deed is recorded, (3) a description of the trust property, including the property's street address if there is a street address for the property, (4) a statement that a breach of the obligation for which the deed of trust is security has occurred, (5) the nature of the breach, (6) the sum owing on the obligation, (7) the election by the trustee to sell the property to satisfy the obligation, and (8) the date, time, and place of the sale. An inaccuracy in the street address may not be used to set aside a sale if the legal description is correct. At any time before the sale, if the default has arisen by failure to make payments required by the trust deed, the default may be cured by payment of the sum in default other than the principal which would not then be due if no default had occurred, plus attorney fees or court costs actually incurred by the trustee due to the

default. If under the same trust deed notice of default under this subsection has been recorded two or more times previously and the default has been cured under this subsection, the trustee may elect to refuse payment and continue the sale."

Amendment

#2

Offered in the Senate
TO: CS HB236 am (RLS)

By R. Phillips

Page 2, Section 1, Line 4 after (B)

Delete "contains, in at least 25 percent of each issue, editorial comments and news content that is of general interest in the judicial district, not just to a particular part of the judicial district; has more than an insignificant circulation throughout the judicial district."

CS FOR HOUSE BILL NO. 236(RLS) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Amended: 4/19/93

Offered: 4/16/93

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to notices for the sale of certain real property."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 09.35.140 is amended to read:

4 Sec. 09.35.140. NOTICE OF SALE ON EXECUTION. Before the sale of
5 property on execution, notice of the sale shall be given as follows:6 (1) notice [NOTICE] of the sale of personal property is given by
7 posting a written or printed notice of the time and place of sale in three public places
8 within five miles of the place where the sale is to be held, not less than 10 days
9 before [PRIOR TO] the day of sale; one [. ONE] of the notices shall be posted at the
10 post office nearest to the place where the sale is to take place; [.]11 (2) notice [NOTICE] of the sale of real property is given by posting
12 a similar notice particularly describing the property not less than 30 days before the
13 day of sale in three public places, as provided in (1) of this section, and publishing a
14 copy of the notice four times, once a week for four successive weeks in a newspaper

HB 236

- Newspapers defined for Notices
for the Sale of Real Property

Current statute requires foreclosure sales to be published in a "newspaper of general circulation." However, there is no definition of this term in statute.

Alaska is one of a small minority of states without a statutory definition of this term.

As a result, many title companies and others, are reluctant to use other than a handful of papers located in Alaska's major cities for foreclosure notices, for fear of possible litigation.

Passage of the bill promotes competition, gives title companies the comfort they need, and would benefit any newspaper that meets the requirements of the bill by enabling it to publish foreclosure notices.

Provisions in earlier versions of the bill that might have worked to the detriment of newspapers in small communities have been deleted. This bill addresses foreclosure notices only, other types of legal and public notices are not affected.

Foreclosure notices are to encourage persons to show up to bid at the foreclosure sale- for this type of notice, the focus should be on getting notice to those most likely to be willing to show up to bid.

The foreclosing mortgagee should be allowed to target publication by using a paper that is calculated to reach interested persons, whether it be in a small community or large, without concern for potential litigation because of a lack of a definition of a "newspaper of general circulation."

This bill allows smaller publications to compete and would permit this kind of advertising.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

CS FOR HOUSE BILL NO. 236(RLS) am
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Amended: 4/19/93

Offered: 4/16/93

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to notices for the sale of certain real property."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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 5 property on execution, notice of the sale shall be given as follows:

6 (1) notice [NOTICE] of the sale of personal property is given by
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 8 within five miles of the place where the sale is to be held, not less than 10 days
 9 before [PRIOR TO] the day of sale; one [. ONE] of the notices shall be posted at the
 10 post office nearest to the place where the sale is to take place; [.]

11 (2) notice [NOTICE] of the sale of real property is given by posting
 12 a similar notice particularly describing the property not less than 30 days before the
 13 day of sale in three public places, as provided in (1) of this section, and publishing a
 14 copy of the notice four times, once a week for four successive weeks in a newspaper

1 of general circulation published nearest to the place of sale; in this paragraph,
2 "newspaper of general circulation" means a publication that

3 (A) is published in newspaper format;

4 (B) contains, in at least 25 percent of each issue, editorial
5 comments and news content that is of general interest in the judicial
6 district, not just to a particular part of the judicial district; has more than ←
7 an insignificant circulation throughout the judicial district; is distributed ←
8 at least once a week for at least 50 weeks each year within the judicial
9 district, excluding a period when publication is interrupted by a labor
10 dispute or by a natural disaster or other casualty that the publisher cannot
11 control; and has a total paid circulation or paid distribution of at least 500
12 copies, or 10 percent of the total population of the judicial district,
13 whichever is less; in this subparagraph, "judicial district" means the
14 judicial district where the place of sale is located;

15 (C) holds a second class mailing permit from the United
16 States Postal Service;

17 (D) is not published primarily to distribute advertising; and

18 (E) is not intended primarily for a particular professional
19 or occupational group.

20 * Sec. 2. AS 09.65 is amended by adding a new section to read:

21 Sec. 09.65.160. ACTION TO ESTABLISH NEWSPAPER STATUS. A person
22 who owns a publication may bring an action under AS 22.10.020(g) to establish that
23 the publication is a newspaper of general circulation under AS 09.35.140(2).

HB236

- Newspapers defined for Notices
for the Sale of Real Property

Current statute requires foreclosure sales to be published in a "newspaper of general circulation." However, there is no definition of this term in statute.

Alaska is one of a small minority of states without a statutory definition of this term.

As a result, many title companies and others, are reluctant to use other than a handful of papers located in Alaska's major cities for foreclosure notices, for fear of possible litigation.

Passage of the bill promotes competition, gives title companies the comfort they need, and would benefit any newspaper that meets the requirements of the bill by enabling it to publish foreclosure notices.

Provisions in earlier versions of the bill that might have worked to the detriment of newspapers in small communities have been deleted. This bill addresses foreclosure notices only, other types of legal and public notices are not affected.

Foreclosure notices are to encourage persons to show up to bid at the foreclosure sale- for this type of notice, the focus should be on getting notice to those most likely to be willing to show up to bid.

The foreclosing mortgagee should be allowed to target publication by using a paper that is calculated to reach interested persons, whether it be in a small community or large, without concern for potential litigation because of a lack of a definition of a "newspaper of general circulation."

This bill allows smaller publications to compete and would permit this kind of advertising.

Alaska is one of the few (perhaps only) states where publication of foreclosure notices occurs in metropolitan daily newspapers (e.g. The Juneau Empire, The Anchorage Daily News, The Fairbanks News-Miner and The Nome Nugget). In most other jurisdiction, required legal notices are published in daily or weekly newspapers catering in part to legal, banking and real estate professionals that provide the most efficient dissemination of notice at a cost of publication substantially lower than that charged by larger circulation metro dailies. In these other jurisdictions, state statute typically define with specificity the requirements and qualifications for newspapers suitable for public notice. Such statutory qualifications address editorial content, publication schedule, minimum paid circulation and other criteria to ensure that the widest potential audience with interest in public notices may be reached at the most competitive cost.

Currently no such statutory specificity exists in Alaska. For notice of sale on execution (foreclosure sale) our statute states that such notice shall be published in a "newspaper of general circulation", therefore, definition of "general circulation" is subject to interpretation.

Because of this lack of specificity, title companies, banks and attorneys are very cautious about using other than the metropolitan dailies for fear of potential litigation. The result has been to create de facto monopoly publishing entities in each of Alaska's four judicial districts.

CSHB 236 would provide the specificity currently lacking in our statute

and would establish a needed level of comfort for title companies and others to consider alternatives to the publishing status quo.

It is important to note that CSHB 236 in no way changes the status of existing metro dailies which would continue to qualify as papers of general circulation. It would merely provide the statutory certainty that other papers also qualify, thereby allowing the advertiser of foreclosure notices the flexibility to choose the paper best suited for the purpose at the most competitive price.

In its original form HB 236 addressed "newspapers of general circulation" in Title 01 for the purpose of defining that term. However, it was brought to our attention by the attorney general's office that by using Title 01 it would impact over 80 (eighty) references to "newspapers of general circulation" in statute. Since the primary objective of the bill is to address foreclosure notices it was suggested by the attorney general's office to address the matter in Title 09. Notice of sale on execution - - this has been done with the CS.

ROUTH & CRABTREE

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April 23, 1993

Senator Robin Taylor, Chairman
Senate Judiciary Committee
State Capital
Juneau, Alaska 99801-1182

Post-It™ brand fax transmittal memo 7671		# of pages	3
To	Ken Leaf	From	Stephen Routh
Co.		Co.	Routh & Crabtree
Dept.		Phone #	258-3333
Fax #	465-3922	Fax #	258-2834

RE: House Bill 236/Senate Bill 168
Response to comments of D. John McKay
Our File No. 469-1

Dear Senator Taylor:

The *Alaska Journal of Commerce* would like to respond to the comments made by the attorney for the *Anchorage Daily News*, D. John McKay, in his letter to you of April 22, 1993, concerning the above-referenced legislation.

1. The Bill is necessary and is intended to prevent lawsuits. The law in Alaska needs clarification even if no change to the law is involved, because there is no definition of "newspaper of general circulation" currently in the Alaska statutes, placing Alaska in a very small minority of states without a statutory definition of this term. As a result, title companies are reluctant to accept publication of notices in the *Journal of Commerce* or any other paper that has not customarily published such notices. This makes foreclosure notices a monopoly of a handful of daily papers located in Alaska's major cities. Smaller weekly papers, although admittedly of general circulation, must sue the title companies to accept publication in them, and both they and the title companies must face the risk of nuisance lawsuits by those foreclosed upon, challenging the publication. A statutory definition provides a safe harbor that discourages the nuisance suits and renders the others unnecessary.

2. The Bill does not benefit one particular business, but not passing the bill does. While the *Journal of Commerce* has been a major supporter of the bill, its passage would benefit any newspaper that meets the requirements of the bill, by enabling it to publish foreclosure notices. Promoting competition among newspapers benefits not only the newspapers but also those who make use of their services, through lower advertising rates. Not passing the bill would continue the status quo, which is inimical to competition and essentially benefits Mr. McKay's client, the *Anchorage Daily News*. Mr. McKay's assertion that advertising in the *Journal of Commerce* is eleven times as expensive as advertising in the *Daily News* simply demonstrates how statistics can be manipulated. The issue is not cost

Senator Robin Taylor
 April 23, 1993
 Page 2

per notice, but cost per effective notice. The vast bulk of the *Daily News's* subscribers would have no interest in bidding at a foreclosure sale, while a *Journal of Commerce* subscriber is much more likely to be a potential bidder. As to Mr. McKay's remarks concerning what the various title companies told him, all I can say is that is not the story that they have been giving the *Journal of Commerce*.

3. Newspapers in smaller communities are protected. As Mr. McKay notes, provisions of the bill that might have worked to the detriment of newspapers in smaller communities have been deleted. While any piece of legislation might have unintended results, it is clear that the *Daily News's* intended result in arguing against passage of the bill is to discourage competition both from the *Journal of Commerce* and from newspapers in smaller communities.

4. Passage of the Bill would encourage more effective notice of foreclosures. Mr. McKay first asserts that passage of the bill would affect Municipal tax foreclosure notices. This is not the case, as these notices are governed by AS 29.45.330, and not by AS 09.35.140. Only judicial and non-judicial foreclosure notices would be affected by the bill. With respect to that type of notice, it must be remembered that the purpose of publishing foreclosure notice is to encourage interested parties to appear and bid at the foreclosure sale. It is not "elitist" but realistic to suggest that the *Journal of Commerce's* readership is more likely to include potential bidders than is the *Daily News's* readership. Note that there is no bidding on tax foreclosures in Alaska. To the extent that broader notice to the community is relevant, that notice is better provided by publication in the local community newspaper than in a distant metropolitan daily. Mr. McKay's arguments concerning the need for broader notice of tax foreclosures are simply irrelevant to the type of notice addressed by the bill.

5. The Bill does maximize effective notice of foreclosures. Again, Mr. McKay's argument is simply irrelevant to what the bill now addresses, judicial and non-judicial foreclosure notices. Other types of legal notices publication are not affected, so that notice to the public is likewise not affected. As noted above, for foreclosure notices the purpose of the notice is to encourage persons to show up to bid at the foreclosure sale, thus maximizing the value realized from the property. For this type of notice, the focus should be on getting notice to those most likely to be willing to show up to bid. For the reasons already given above, the foreclosing mortgagee should be allowed to target publication by using a paper that is calculated to reach such persons. The bill will permit this kind of advertising. The proposed changes suggested by Mr. McKay in his letter would prevent this, and are obviously intended to benefit the *Daily News* exclusively.

SURVEY OF NEWSPAPERS RE: SECOND CLASS MAIL PERMIT

<u>Newspaper</u>	<u>Permit (Y/N)</u>
Anchorage Daily News	Yes
Palmer Frontiersman	Yes
Valley Sun	No
Eagle River Star	Yes
Kodiak Daily Mirror	Yes
Tundra Times	
Valdez Pioneer	Number Not in Service
Barrow Sun	Number Not in Service
Nome Nugget	Yes
Juneau Empire	Yes
Fairbanks News Miner	Yes
Homer News	Yes
Peninsula Clarion	Yes
Kodiak Fisherman	Number Not in Service
Capital City Weekly	Yes
Southeast Alaska Business Journal	Yes
Bristol Bay Times	No
Ketchikan Daily News	Yes
Seward Phoenix Log	Yes
Sitka Sentinal	Yes

Post-It™ brand fax transmittal memo 7671 # of pages 1

To: Wes Couter	From: Rick Ullstrom
Co. 40 Loren Leman	Co. Routh & Crabtree
Dept.	Phone # 258-3333
Fax # 465-3810	Fax # 258-2834

RE: Proposed Statute Defining "Newspaper of General Circulation"

We suggest that what should be introduced in the legislature is an amendment to Chapter 10 (Laws and Statutes) of Title 1 (General Provisions) of the Alaska Statutes. A.S. 1.10.060 contains a list of definitions to be applied throughout the Alaska Statutes. The proposed legislation should therefore amend Section 1.10.060 by renumbering paragraphs (5) through (14) as (6) through (15), and adding a new paragraph (5) to read:

- (5) a "newspaper of general circulation" must meet the following requirements:
- (A) Be a publication in newspaper format, printed in the English language, distributed at least once each week and at least 50 weeks per year within the relevant area, and which has been so distributed for at least two years, excluding any period during which publication was interrupted by act of God, labor dispute, or other casualty over which the publisher had no control;
 - (B) have been entered into the U.S. Mail as second-class matter for at least two years;
 - (C) not be given away primarily to distribute advertising or intended primarily for distribution to a particular professional or occupational group, organization, sect or class;
 - (D) contain editorial comment and news content of general interest amounting to at least 25% on average of each issue;
 - (E) such news content must not be primarily of interest to those residing within a circumscribed portion of the relevant area;
 - (F) have more than a de minimis circulation throughout the relevant area. As used herein, "relevant area" means the judicial district, municipality, or other geographic area, if any, in which publication in a newspaper of general circulation is required by statute, court rule, or regulation.

Page 1 SDR/RMU/doc/vic 469\001\gold.memo

(G) have a total paid circulation of 2,500 bona fide subscribers.

To provide a right of action to establish a newspaper's rights, amend AS 22.10.020(g) by adding the following sentence:

"A newspaper published in the state may file a petition under this subsection for a declaration that it meets the requirements of AS 01.10.060(5)."

meaning?
purpose?
insignificant

Terry Bannister

Pick (C)
Routh -
Skepton
258-3333

* RESEARCH MEMORANDUM *

SUBJ: Use of the Alaska Journal of Commerce for the Publication of Legal Notices

DATE: September 22, 1992

ISSUE:

Does the Alaska Journal of Commerce constitute a "newspaper of general circulation" within the meaning of various provisions of law requiring publication of legal notices in such a newspaper?

BACKGROUND:

Since the demise of the Anchorage Times, the rates for legal advertising in the Daily News have increased approximately 50%, or to over twice what comparable ads used to cost in the Times. Rates for legal advertising in the Alaska Journal of Commerce (AJC) are comparable to the rates formerly charged by the Times. Use of the AJC as an alternative forum for publication of legal notices would therefore result in a substantial cost savings, as well as bring competitive market forces to bear on the prices and quality of service offered by the Daily News.

According to information provided by the AJC (see Appendix A), as of August 1, 1992, it had 2,530 paid subscribers. An additional 2,000-3,000 copies are distributed through other channels. Readership is spread across a wide range of professions, trades, and businesses. While focusing primarily on business, legal, and financial news, the AJC also contains articles of general interest, such as would be included in the lead section or Metro section of the Daily News.

ANALYSIS:

Based on the one Alaska Supreme Court opinion to consider the meaning of the phrase "newspaper of general circulation," as well as cases on the issue from other jurisdictions, the AJC does qualify as a newspaper of general circulation.

In Moore vs. State, 553 P.2d 8 (Alaska 1976), the Alaska Supreme Court considered whether the Anchorage Times qualified as a newspaper of general

circulation in the Kachemak Bay area. The Times had a circulation of approximately 130 in the Horner area, out of the population of approximately 3,500. The court held that this number of readers, "albeit small, was not so insignificant that the newspaper would fail to reach a diverse group within the community." 553 P.2d at 22. In reaching this conclusion, the court noted that both qualitative and quantitative aspects were involved in determining whether a newspaper was one of general circulation. Because the Times carried news on a variety of subjects of general interest to the average reader, it satisfied the qualitative aspect. In holding that the Times also satisfied the quantitative aspect of the term "general circulation," the court noted that a statistical analysis would be "most inappropriate because size of readership is only one factor which must be considered in determining whether a particular newspaper is one of general circulation." 553 P.2d at 22, note 21.

The Moore opinion is consistent with cases from other jurisdictions. Unless expressly required by the specific statute in question, no case found holds that publication must take place in the newspaper with the largest circulation within the relevant area. One case specifically notes that interpreting the statute at issue as favoring metropolitan dailies over smaller weekly papers would be "contrary to the established policy of this State [California] which is to encourage competitive enterprise and to proscribe monopolistic tendencies." Petitions of Herald Publishing Company, 313 P.2d 584, 590 (Cal.App. 1957). All of the cases make it clear that, while more than a de minimis number of readers is required, the quantitative aspect of "general circulation" is of less importance than its qualitative aspect. Readership need only be large enough to assure that the desired notice does reach a diverse group within the community, or the specific group affected by the notice in question.

The qualitative aspect of "general circulation" focuses on the substantive content of the paper in question and the diversity of its readership. The newspaper must not be so restricted in content or distribution that it reaches only a narrow class of persons within the community, such as a specific trade group. However, newspapers similar to the AJC, that are devoted primarily to legal and business news, are routinely held to be of general circulation, as long as they contain some items of general interest. See Generally, Annotation, What Constitutes Newspaper of "General Circulation," 24 ALR4th 822, § 5; Shulansky vs. Michaels, 484 P.2d 14 (Ariz.App. 1971); Bankers Trust Co. vs. Terll, 231 NYS 2d 374 (1962); Burak vs. Ditson, 229 N.W. 227 (Iowa 1930). In the Shulansky case, a weekly paper dealing basically with legal and business news, and with a paid circulation of 2,169, was held to be a newspaper of general circulation within the city of Phoenix, Arizona. At that time, Phoenix had a population of over 500,000. The court noted that the newspaper included among its readers a wide range of occupations and businesses, and concluded that the readership was of sufficient size and diversity to give notice to those concerned and to qualify as a newspaper of general circulation in Phoenix. 484 P.2d at 70. In comparison, the AJC has a somewhat larger circulation within a smaller population base, and circulates to the same sort of persons and businesses as did the Arizona paper.

Several other cases were reviewed that dealt with newspapers that appear to have been very similar to the AJC, and nearly all of the cases hold those newspapers to be of general circulation. Bulldog Concrete Forms Sales Corp. vs. Taylor, 195 F.2d 417 (7th Cir. 1952); In re Green, 131 P. 91 (Cal.App. 1913); Baldwin vs. Brown, 224 P. 462 (Cal. 1924). The exceptions involved newspapers that had no circulation at all among those to be affected by the notice published, or which had only a de minimis number of subscribers and no news of general interest. Wahl vs. Hart, 332 P.2d 195 (Ariz. 1958); State ex rel. Yaegar vs. Rose, 114 So. 373 (Fla. 1927). These newspapers are easily distinguished from the AJC. The Alaska Journal of Commerce should therefore be considered a newspaper of general circulation.



Official Business

Alaska State Legislature

SENATE STATE AFFAIRS COMMITTEE

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

TO: Legislative Legal

FROM: Senator Loren Leman, Chairman
Senate State Affairs Committee *Loren Leman*

DATE: March 10, 1993

SUBJECT: State Affairs Draft Legislation

Please draft legislation to better define "Newspaper of General Circulation."
Please see attached document for proposed draft language.

Thank you. If you have any questions, please contact the Senate State
Affairs Committee Aide, Portia Babcock at 4522.

WORK ORDER REQUEST FORM

W.O. [18] LS-0838

KEYWORDS: MEDIA/NEWS MEDIA ASSIGNED: Bannister

REQUEST FOR: New Bill TAKEN BY: Barnes

SUBJECT: Definition of Newspaper

REQUESTED FOR: SC SSTA BY: Sen. Leman PHONE: 465-4522

DELIVER TO: Sen. Leman, Cap 113

INSTRUCTIONS: Draft statutory definition for a "newspaper of general circulation".

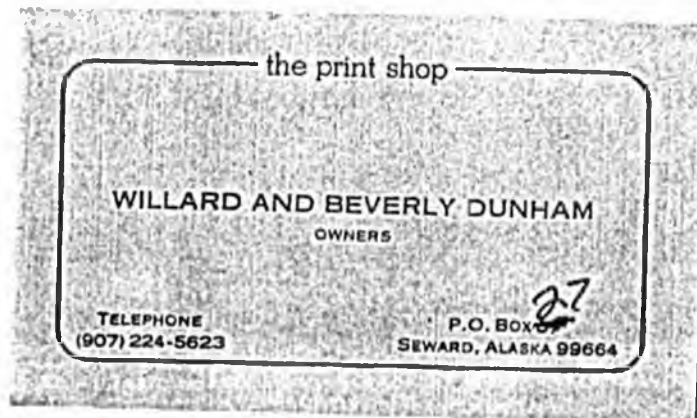
OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED []
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Senate Committee On
State Affairs

Kenny Leaf, Committee Aide
Senator Robin Taylor's
Office -



* Strongly supports SB168,
"Newspaper of general circulation"



Senate Committee On
State Affairs

Stephen
Rawls
(Palph)

258-3333

(Rick)



Senate Committee On
State Affairs

① John McKay, (ADN)

So why is there
a problem with
carrying in statute?

Why ~~do~~ ^{have} Court
~~not~~ interpret?

Legislature should
define in statute + not
leave all work to Court.

* RESEARCH MEMORANDUM *

.....

SUBJ: Use of the Alaska Journal of Commerce for the Publication of Legal Notices

DATE: September 22, 1992

.....

ISSUE:

Does the Alaska Journal of Commerce constitute a "newspaper of general circulation" within the meaning of various provisions of law requiring publication of legal notices in such a newspaper?

BACKGROUND:

Since the demise of the Anchorage Times, the rates for legal advertising in the Daily News have increased approximately 50%, or to over twice what comparable ads used to cost in the Times. Rates for legal advertising in the Alaska Journal of Commerce (AJC) are comparable to the rates formerly charged by the Times. Use of the AJC as an alternative forum for publication of legal notices would therefore result in a substantial cost savings, as well as bring competitive market forces to bear on the prices and quality of service offered by the Daily News.


According to information provided by the AJC (see Appendix A), as of August 1, 1992, it had 2,530 paid subscribers. An additional 2,000-3,000 copies are distributed through other channels. Readership is spread across a wide range of professions, trades, and businesses. While focusing primarily on business, legal, and financial news, the AJC also contains articles of general interest, such as would be included in the lead section or Metro section of the Daily News.

ANALYSIS:

Based on the one Alaska Supreme Court opinion to consider the meaning of the phrase "newspaper of general circulation," as well as cases on the issue from other jurisdictions, the AJC does qualify as a newspaper of general circulation.

In Moore vs. State, 553 P.2d 8 (Alaska 1976), the Alaska Supreme Court considered whether the Anchorage Times qualified as a newspaper of general

circulation in the Kachemak Bay area. The Times had a circulation of approximately 130 in the Homer area, out of the population of approximately 3,500. The court held that this number of readers, "albeit small, was not so insignificant that the newspaper would fail to reach a diverse group within the community." 553 P.2d at 22. In reaching this conclusion, the court noted that both qualitative and quantitative aspects were involved in determining whether a newspaper was one of general circulation. Because the Times carried news on a variety of subjects of general interest to the average reader, it satisfied the qualitative aspect. In holding that the Times also satisfied the quantitative aspect of the term "general circulation," the court noted that a statistical analysis would be "most inappropriate because size of readership is only one factor which must be considered in determining whether a particular newspaper is one of general circulation." 553 P.2d at 22, note 21.

The Moore opinion is consistent with cases from other jurisdictions. Unless expressly required by the specific statute in question, no case found holds that publication must take place in the newspaper with the largest circulation within the relevant area. One case specifically notes that interpreting the statute at issue as favoring metropolitan dailies over smaller weekly papers would be "contrary to the established policy of this State [California] which is to encourage competitive enterprise and to proscribe monopolistic tendencies." Petitions of Herald Publishing Company, 313 P.2d 584, 590 (Cal.App. 1957). All of the cases make it clear that, while more than a de minimis number of readers is required, the quantitative aspect of "general circulation" is of less importance than its qualitative aspect. Readership need only be large enough to assure that the desired notice does reach a diverse group within the community, or the specific group affected by the notice in question. 

The qualitative aspect of "general circulation" focuses on the substantive content of the paper in question and the diversity of its readership. The newspaper must not be so restricted in content or distribution that it reaches only a narrow class of persons within the community, such as a specific trade group. However, newspapers similar to the AJC, that are devoted primarily to legal and business news, are routinely held to be of general circulation, as long as they contain some items of general interest. See Generally, Annotation, What Constitutes Newspaper of "General Circulation," 24 ALR4th 822, § 5; Shulansky vs. Michaels, 484 P.2d 14 (Ariz.App. 1971); Bankers Trust Co. vs. Terll, 231 NYS 2d 374 (1962); Burak vs. Ditson, 229 N.W. 227 (Iowa 1930). In the Shulansky case, a weekly paper dealing basically with legal and business news, and with a paid circulation of 2,169, was held to be a newspaper of general circulation within the city of Phoenix, Arizona. At that time, Phoenix had a population of over 500,000. The court noted that the newspaper included among its readers a wide range of occupations and businesses, and concluded that the readership was of sufficient size and diversity to give notice to those concerned and to qualify as a newspaper of general circulation in Phoenix. 484 P.2d at 70. In comparison, the AJC has a somewhat larger circulation within a smaller population base, and circulates to the same sort of persons and businesses as did the Arizona paper.

Several other cases were reviewed that dealt with newspapers that appear to have been very similar to the AJC, and nearly all of the cases hold those newspapers to be of general circulation. Bulldog Concrete Forms Sales Corp. vs. Taylor, 195 F.2d 417 (7th Cir. 1952); In re Green, 131 P. 91 (Cal.App. 1913); Baldwin vs. Brown, 224 P. 462 (Cal. 1924). The exceptions involved newspapers that had no circulation at all among those to be affected by the notice published, or which had only a de minimis number of subscribers and no news of general interest. Wahl vs. Hart, 332 P.2d 195 (Ariz. 1958); State ex rel. Yaegar vs. Rose, 114 So. 373 (Fla. 1927). These newspapers are easily distinguished from the AJC. The Alaska Journal of Commerce should therefore be considered a newspaper of general circulation.

SURVEY OF NEWSPAPERS RE: SECOND CLASS MAIL PERMIT

<u>Newspaper</u>	<u>Permit (Y/N)</u>
Anchorage Daily News	Yes
Palmer Frontiersman	Yes
Valley Sun	No
Eagle River Star	Yes
Kodiak Daily Mirror	Yes
Tundra Times	
Valdez Pioneer	Number Not in Service
Barrow Sun	Number Not in Service
Nome Nugget	Yes
Juneau Empire	Yes
Fairbanks News Miner	Yes
Homer News	Yes
Peninsula Clarion	Yes
Kodiak Fisherman	Number Not in Service
Capital City Weekly	Yes
Southeast Alaska Business Journal	Yes
Bristol Bay Times	No
Ketchikan Daily News	Yes
Seward Phoenix Log	Yes
Sitka Sentinel	Yes

STATE-BY-STATE COMPARISON OF STATUTES DEFINING NEWSPAPER OF GENERAL CIRCULATION

State	1	2	3	4	5	6	7	8	9	10	11	12	13
AL	X								51 WK			X	
AR			X	1 YR	4 PP/ 5 CL		X	40%	X	50% OF CIR			X
AZ									1 YR				
CA				1 YR			X			X	1 YR	1 YR	X
CO	X		X										
CT			X										
DE			X										X
FL													X
ID				70 WK 1 YR	4 PP/ 5 CL				X	200			
IN		X	X	3 YR					3 YR	50%			

1. English
2. Published Daily
3. Published Weekly
4. Continuous Publication Existence
5. Size
6. Published Within County

7. Local/Telegraphic News of General Character
8. Percentage of News Content
9. Second Class Postal Permit
10. Paid Subscriptions
11. Printed at Place of Publication
12. Physical Publication Within Affected Area
13. Not Intended for Particular Class/Trade or Primarily for Advertising or Legal Notices

STATE	1	2	3	4	5	6	7	8	9	10	11	12	13
KY		X	X	2 YR	4 PP			25%	X	X		X	
LA	X			5 YR					5 YRS	5 YRS		X	
ME	X									X		X	
MA				6 MO	4 PP		X		X			X	
MI	X			1-2 YR			X	25%		X			
MN	X	X	X		1,000 SQ IN			25-50%		500		X	
MS				X									X
MO		X	X	3 YR					X	X			
MT				1 YR	X				X				
NE	X		X	1 YR						300	X		
NV		X	X	1-2 YR		X			X				
NJ	X		X	1 YRS	X			35%	2 YRS				
NM		X	X	26 WK					X				
NC				26 WK					X	X		X	
ND	3/4			1 YR			X		X	150			

1. English
2. Published Daily
3. Published Weekly
4. Continuous Publication Existence
5. Size
6. Published Within County

7. Local/Telegraphic News of General Character
8. Percentage of News Content
9. Second Class Postal Permit
10. Paid Subscriptions
11. Printed at Place of Publication
12. Physical Publication Within Affected Area
13. Not Intended for Particular Class/Trade or Primarily for Advertising or Legal Notices

STATE	1	2	3	4	5	6	7	8	9	10	11	12	13
OH			X	4 PP		X	X		X	50% OF CJR			
OK			2/WK	104 WK		X			X	X			
OR	X			1 YR	4 PP/ 5 CL					50% OF CJR.		X	
PA		X	X						X				X
SD	X	X	X	1 YR	X		X	25%		200/ 50% OF CJR			
TX			X	1 YR			X	25%	X				
UT				18 MO					X	200			
VT			X			X							
VA	X		X	24 WK					X	X			
WA	X			6 MO					X			X	

- 1. English
- 2. Published Daily
- 3. Published Weekly
- 4. Continuous Publication Existence
- 5. Size
- 6. Published Within County

- 7. Local/Telegraphic News of General Character
- 8. Percentage of News Content
- 9. Second Class Postal Permit
- 10. Paid Subscriptions
- 11. Printed at Place of Publication
- 12. Physical Publication Within Affected Area
- 13. Not Intended for Particular Class/Trade or Primarily for Advertising or Legal Notices

Arizona

COUNTIES Title II

- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

ARTICLE 1. ADMINISTRATION AND ENFORCEMENT

Historical and Statutory Notes

For establishment of joint legislative committee on zoning changes and urban growth policy provision of Laws 1986, Ch. 348, effective May 9, 1986, see Historical Note preceding § 9-361.

Law Review Commentaries

City planning, Swedish techniques. 21 Ariz. L.Rev. 795 (1979). Exclusionary zoning: Damage actions under Civil Rights Act. Law & Soc. Order, 1971, p. 538.

§ 11-801. Definitions

In this chapter, unless the context otherwise requires:

1. "Area of jurisdiction" means that part of the county outside the corporate limits of any municipality.
2. "Board" means the board of supervisors.
3. "Commission" means the county planning and zoning commission.
4. "Inspector" means the county zoning inspector.
5. "Newspaper of general circulation in the county seat" means a daily or weekly newspaper if any is published in the county seat.
6. "Zoning district" means any portion of a county in which the same set of zoning regulations applies.
7. "Zoning ordinance" means an ordinance adopted by the board of supervisors, which shall contain zoning regulations together with a map setting forth the precise boundaries of zoning districts within which the various zoning regulations are effective.
8. "Zoning regulations" means provisions governing the use of land or buildings, or both, the height and location of buildings, the size of yards, courts and open spaces, the establishment of setback lines and such other matters as may otherwise be authorized under this chapter and which the board deems suitable and proper.

Amended by Laws 1971, Ch. 129, § 1, eff. May 6, 1971; Laws 1987, Ch. 225, § 2, eff. May 6, 1987.

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s in Real Property	6950
.....	7000
Public Purposes	7050
.....	7100
ration Act [Repealed]	7200
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Chapter 1

PUBLICATIONS AND OFFICIAL ADVERTISING

Article	Section
1. General	6000
2. Establishing Standing as Newspaper of General Circulation	6020
3. Publications	6040
4. Manner of Publications	6060
5. Foreign Language Newspapers	6075

California

Article 1

GENERAL

- Sec.
- 6000. Newspaper of general circulation.
 - 6001. Newspapers for particular classes.
 - 6002. Established; modification of name.
 - 6003. Printed.
 - 6004. Published.
 - 6004.5. General circulation.
 - 6005. Printed and published as not synonymous.
 - 6006. Standing of prior newspaper.
 - 6007. Discontinuance of publication because of war.
 - 6008. Newspaper of general circulation.

§ 6000. Newspaper of general circulation

A "newspaper of general circulation" is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers, and has been established, printed and published at regular intervals in the State, county, or city where publication, notice by publication, or official advertising is to be given or made for at least one year preceding the date of the publication, notice or advertisement.

(Stats. 1943, c. 134, p. 987, § 6000.)

Washington

LEGAL PUBLICATION

65.16.020

Key Number Digests:

Newspapers 4-4.
Notice 11.

NOTES OF DECISIONS

When weekly newspaper's regular day of publication falls on holiday, publication therein of notice on such holiday is valid. *Kellner v Investment & Securities Co.* (1934) 177 Wn 32, 30 P2d 935.

65.16.020 Qualifications of legal newspaper. The qualifications of a legal newspaper are that such newspaper shall have been published regularly, at least once a week, in the English language, as a newspaper of general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; and shall hold a second class mailing permit: *Provided*, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: *Provided*, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified.

LEGISLATIVE HISTORY

1. Enacted Laws 1921 ch 99 § 1 p 293, which read: "No newspaper shall be considered a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding or other official document now or hereafter required by law to be published unless such newspaper shall have been published in the English language continually (legal holidays and Sundays excepted) as a daily or weekly newspaper, as the case may be, in the city or town where the same is published at the time of the publication of such official document, for at least six months prior to the date of such publication, and shall be printed either in whole or in part in an office maintained at the place of publication: *Provided*, That in case of the consolidation of two or more newspapers such consolidated newspaper shall be considered a legal newspaper if either or any of the papers so consolidated would be a legal newspaper at the date of such legal publication, had not such consolidation taken place: *Provided*, further, That nothing in this

Pennsylvania

45 Pa.C.S.A. § 101

LEGAL NOTICES

any newspaper so affected shall not be disqualified to publish official and legal advertising in the event that publication resumed within one week after it again becomes possible.

(2) A printed paper or publication, regardless of size, content or time of issue, or number of copies issued, distributed and circulated gratuitously, is not a newspaper.

(3) A printed paper or publication, not entitled to be entered or which has been denied entry, as second class matter in the United States mails under the Postal Rules and Regulations of the United States is not a newspaper.

"Newspaper of general circulation." A newspaper issued daily, or not less than once a week, intended for general distribution and circulation, and sold at fixed prices per copy per week, per month, or per annum, to subscribers and readers without regard to business, trade, profession or class.

"Nonpareil." A type 6 type points in depth or height.

"Notice." A formal printed announcement, transmitting intelligence, information, or warning, to a particular person, or generally to all persons who may read such notice.

"Official advertisement." A notice, advertisement, publication, or statement, or an abstract of a notice, advertisement, publication, or statement, required to be made by law, rule, order, or decree of court, by any person, or in the conduct of the business of a private or public corporation, or on the order of any government unit, or in the performance of any official duty imposed by law, rule, order, or decree of court, resolution or ordinance.

"Official advertising and legal advertising." Any advertisement, notice, statement, report, resolution, ordinance, or abstract of the same, required by law, rule, order or decree of court, by resolution of any board of directors, shareholders or officers of any corporation or unincorporated association, or any government unit to be printed and published for a valuable consideration in a newspaper.

"Official newspaper." A newspaper designated by a government unit for the publication of notices and statements required by rule, order, resolution, or ordinance of such unit.

"Ordinance." A municipal rule or regulation, adopted in the manner required by statute or home rule charter, by the lawfully constituted officers of any political subdivision or municipal or other local authority.

"Periodical." A printed paper or publication, issued in pamphlet or book form, regardless of page size or number of pages, at stated

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Pennsylvania

the publication of legal advertisements and notices required by law, rule, order, or decree of court, to be published in a legal newspaper, legal periodical, official legal newspaper, or official legal periodical, as designated by general rule or rule of court.

"Legal notice." When required to be printed or published, either a legal advertisement, a legal notice, an official advertisement, or an official legal notice.

"Liners." Advertisements, published as reading notices, intelligence, or announcements for which compensation is intended to be charged to those interested in the publication thereof.

"Long primer." A type 10 type points in depth or height.

"Magazine." Partakes of the nature of a periodical.

"Minion." A type 7 type points in depth or height.

"News." Narrative, or recent intelligence, disseminating current information as to local, general, or world-wide happenings, concerning any person or persons, matters of private or public interest, or concerning any matters affecting the public welfare.

"Newspaper."

(1) A printed paper or publication, bearing a title or name, and conveying reading or pictorial intelligence of passing events, local or general happenings, printing regularly or irregularly editorial comment, announcements, miscellaneous reading matter, commercial advertising, classified advertising, legal advertising, and other notices, and which has been issued in numbers of four or more pages at short intervals, either daily, twice or oftener each week, or weekly, continuously during a period of at least six months, or as the successor of such a printed paper or publication issued during an immediate prior period of at least six months, and which has been circulated and distributed from an established place of business to subscribers or readers without regard to number, for a definite price or consideration, either entered or entitled to be entered under the Postal Rules and Regulations as second class matter in the United States mails, and subscribed for by readers at a fixed price for each copy, or at a price fixed per annum. A newspaper may be either a daily newspaper, weekly newspaper, newspaper of general circulation, official newspaper, or a legal newspaper, as defined in this section. Continuous publication within the meaning of this section shall not be deemed interrupted by any involuntary suspension of publication resulting from loss, destruction, failure or unavailability of operating facilities, equipment or personnel from whatever cause, and

For Title 45, Purdon's Statutes, see text preceding this Appendix.

Idaho

48-909. Remedies. — The remedies provided under this chapter are cumulative and are in addition to any other remedies provided by law. [I.C., § 48-909, as added by 1988, ch. 340, § 1, p. 1009.]

CHAPTER 10

IDAHO TELEPHONE SOLICITATION ACT

SECTION.

48-1001. Legislative findings and intent.

48-1002. Definitions.

48-1003. Unlawful acts.

48-1004. Telephone solicitor duties.

48-1005. Exemptions.

48-1006. Authority of the attorney general and district court.

SECTION.

48-1007. Private causes of action and remedies.

48-1008. Liability of minors.

48-1009. Consumer notification — Rule making by the Idaho public utilities commission.

48-1010. Limitation of action.

48-1001. Legislative findings and intent. -- (1) The use of telephones for commercial solicitation is rapidly increasing. This form of communication offers unique benefits, but also entails special risks and the potential for abuse. Many Idaho residents and businesses have lost money or suffered harm primarily as a result of out-of-state telemarketing abuse. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, the following provisions of law are deemed necessary.

(2) It is the intent of the legislature in enacting this chapter to safeguard the public against deceit and financial hardship, to insure, foster and encourage competition and fair dealings among telephone solicitors by requiring adequate disclosure, and to prohibit representations that have the capacity, tendency, or effect of misleading a purchaser. The provisions of this chapter are remedial, and shall be construed and applied liberally to accomplish the above-stated purposes.

(3) This chapter shall be known and may be cited as the "Idaho Telephone Solicitation Act." [I.C., § 48-1001, as added by 1992, ch. 27, § 1, p. 83.]

48-1002. Definitions. — In this chapter:

(1) "Business days" mean all days of the week except Saturdays and Sundays and all other legal holidays as defined in section 73-108, Idaho Code.

(2) "Conducting business" means making telephone solicitations either to or from locations within the state of Idaho.

(3) "Goods" mean any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value.

(4) "Minor" means any person less than eighteen (18) years of age.

(5) "Newspaper of general circulation" means a newspaper which holds a second class mailing permit from the United States postal service, has at least two hundred (200) subscribers, is made up of at least four (4) pages of at least five (5) columns, is not produced through any type of mimeographing process, and has been published or distributed within the state of Idaho on a weekly basis for at least seventy-eight (78) consecutive weeks, or on a

daily basis, which week, at least one (1) time solicitation done

(6) "Person" means an individual, general, corporation, partnership, trust, legal entity or any agent, assistant, or representative.

(7) "Purchase" means any purchase, whether or not the purchaser is obligated to purchase.

(8) "Services" means any service, whether or not the provider is obligated to provide the service.

(9) "Telephone solicitation" means any telephone solicitation which is published or otherwise made available to the public by distribution or other purchase.

(10) "Telephone solicitor" means any person who solicits a purchase.

(a) Any person who solicits a purchase for the purpose of encouraging the purchase.

(b) Any person who solicits a purchase.

(i) A free gift or other thing of value impliedly or otherwise included in the purchase of goods or services.

(ii) A return or other thing of value up by a purchaser.

(iii) It is in violation of this section to encourage the purchase.

(c) For purposes of this section, a written statement or other communication soliciting a purchase through the telephone is a telephone solicitation.

(11) "Telephone solicitation" means any telephone solicitation which is published or otherwise made available to the public by distribution or other purchase.

(12) "Written statement" means any written statement, including a list, which sets forth the terms and conditions of a purchase, and which is used to solicit a purchase.

(13) "Written statement" means any written statement, including a list, which sets forth the terms and conditions of a purchase, and which is used to solicit a purchase.

48-1003. Unlawful acts. — (1) A telephone solicitor shall not engage in any of the following practices:

(a) Intimidation or coercion in connection with the purchase of goods or services.

Idaho ←

daily basis, which is defined to be no less than five (5) days of any one (1) week, at least twelve (12) months immediately preceding any telephone solicitation done by or on behalf of such newspaper.

(6) "Person" means natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof.

(7) "Purchaser" means a person who is solicited to become or does become obligated to a telephone solicitor.

(8) "Services" mean any work, labor, help, assistance or instruction wherever provided or performed.

(9) "Telephone directory of general circulation" means a directory containing telephone numbers of individual residents and/or businesses which is published on a community-wide or regional basis and which is widely available to persons residing in such community or region through free distribution or direct purchase of said directory without the requirement of other purchases or affiliations.

(10) "Telephone solicitation" means:

(a) Any unsolicited telephone call or facsimile transmission to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services; or

(b) Any communication in which:

(i) A free gift, award, or prize is offered, or in which it is represented or implied that goods or services are offered below the regular price of the goods or services; and

(ii) A return telephone call is invited or the communication is followed up by a call to the purchaser by the telephone solicitor; and

(iii) It is intended during the course of the return or follow-up call with the purchaser that an agreement to purchase, or a purchase be made.

(c) For purposes of this subsection, "communication" means a written or oral statement or notification or advertisement transmitted to the purchaser through any means.

(11) "Telephone solicitor" means any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing device, engages in a telephone solicitation.

(12) "Written confirmation" means a writing that includes the following information: the date of purchase, the telephone solicitor's complete address and registration number, a listing of all goods and/or services purchased, a listing of the price of each good and/or service purchased, the total obligation incurred by the purchaser, and the notice of cancellation as set forth in subsection (2) of section 48-1004, Idaho Code. [I.C., § 48-1002, as added by 1992, ch. 27, § 1, p. 83.]

48-1003. Unlawful acts. — (1) It is an unlawful act for a telephone solicitor to:

(a) Intimidate or torment any person of normal and reasonable sensitivities in connection with a telephone solicitation;

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COUNTIES

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county land use regulations enacted to implement the other elements of the adopted comprehensive plan.

(c) "County" means Kent, New Castle or Sussex County.

(d) "Developer" means any person, including a governmental agency, undertaking any development as defined in this subchapter.

(e) "Development" means any construction or reconstruction of any new or existing commercial or residential building(s) or structure(s) upon lands which are not owned by the State or its agencies or its political subdivisions, or are not within the jurisdictional control of the State or its agencies or its political subdivisions.

(f) "Development order" means any order granting, denying or granting with conditions an application for a development permit.

(g) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certificate of occupancy, special exception, variance or any other official action of local government having the effect of permitting the development of land.

(h) "Governing body" means the chief governing body of county government, however designated, or the combination of such bodies where joint utilization of the provision of this subchapter is accomplished as provided herein.

(i) "Governmental agency" means:

(1) The United States or any department, commission, agency or other instrumentality thereof.

(2) This State or any department, commission, agency or other instrumentality thereof.

(3) Any local government, as defined in this section, or any department, commission, agency or other instrumentality thereof.

(4) Any school board or other special district, authority or governmental entity.

(j) "Land" means the earth, water and air, above, below or on the surface, and includes any improvements or structures customarily regarded as land.

(k) "Land use" means the development that has occurred on the land, the development that is proposed by a developer on the land or the use that is permitted or permissible on the land under an adopted comprehensive plan.

(l) "Local government" means any municipality.

(m) "Local planning agency" means the agency designated to prepare the comprehensive plan required by this subchapter.

(n) A "newspaper of general circulation" means a newspaper published at least on a weekly basis and printed in the language most commonly spoken in the area within which it circulates, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices or a newspaper that is given away primarily to distribute advertising.

(o) "Parcel of land" means any quantity of land capable of being described with such definiteness that its locations and boundaries may be

NEWSPAPER PUBLICATION

193.010 Definitions. (1) As used in the statute laws of this state, unless the context or a specially applicable definition requires otherwise, "public notice" means any legal publication which requires an affidavit of publication as required in ORS 193.070, or is required by law to be published.

(2) As used in this section and in ORS 193.020:

(a) "Bona fide subscriber" means a person who has been a paid subscriber for an uninterrupted period of 12 months, such subscription in no case to be over six months in arrears.

(b) "Newspaper" means a newspaper of general circulation, published in the English language for the dissemination of local or transmitted news or for the dissemination of legal news, made up of at least four pages of at least five columns each, with type matter of a depth of at least 14 inches, or, if smaller pages, then comprising an equivalent amount of type matter, which has bona fide subscribers representing more than half of the total distribution of copies circulated, or distribution verified by an independent circulation auditing firm, and which has been established and regularly and uninterruptedly published at least once a week during a period of at least 12 consecutive months immediately preceding the first publication of the public notice. Interrupted publication because of labor-management disputes, fire, flood or the elements for a period not to exceed 120 days, either before or after a newspaper is qualified for publication of public notices, shall not affect such qualification. (Amended by 1977 c.760 §1)

193.020 Newspaper in which public notice may be published. (1) Any public notice of any description, the publication of which is now or hereafter required by law, shall be published in any newspaper, as defined in ORS 193.010, which is published within the county, city of which any part lies within that county, city, district or other jurisdiction where the action, suit or other proceeding is pending, or is to be commenced or had, or in which the legal publication is required to be given.

(2) If publication in only one newspaper is required by law, and if more than one newspaper fulfills the requirements of subsection (1) of this section, the public notice shall be published in that newspaper which the moving party considers best suited to

give actual notice. However, nothing in this subsection prohibits the publication in more than one newspaper if desired by the moving party.

(3) If no newspaper is published within the county, city, district or jurisdiction where the action, suit or other proceeding is pending, or is to be commenced or had, or in which the legal publication is required to be given, public notice shall be published in:

(a) The newspaper published nearest to such county, city, district or jurisdiction; or

(b) Any publication that is published in such county, city, district or jurisdiction and that satisfies all the requirements for being a newspaper except that it is published less than once a week but not less than once a month.

(4) If more than one newspaper or publication fulfills the requirements of subsection (3) of this section, the public notice shall be published in that newspaper or publication which the moving party considers most effective for providing actual notice. (Amended by 1963 c.422 §1; 1979 c.760 §2; 1983 c.331 §1)

193.030 Newspaper in which district legal advertisements and notices may be published. Legal advertisements and notices for irrigation districts and road districts, the publication of which is now required by law, shall be published in a newspaper within the district; and if there is no newspaper in the district, in the newspaper nearest to the district affected. (Amended by 1973 c.57 §3)

193.040 Publication on weekdays in daily paper. Where publication of any form of notice for successive or consecutive days in a daily paper is provided for by statute, the publication of such notice on weekdays is a full compliance with such statute.

193.050 Notice by telegraph. Whenever any notice, information or intelligence, written or otherwise, is required to be given, the same may be given by telegraph. The dispatch containing the same shall be delivered to the person entitled thereto, or to the agent or attorney of the person. Notice by telegraph is actual notice.

193.060 Computation of publication time. The time for the publication of legal notices shall be computed so as to exclude the first day of publication and to include the day on which the act or event of which notice is given is to happen, or which completes the full period required for publication.

Florida

Ch. 97 QUALIFICATION AND REGISTRATION § 97.021

(19) "Branch office" means a substantial structure, fixed or movable, or a motor vehicle, bus, or other mobile unit, in which voter registrations will be accepted, which office and location shall be designated by the supervisor.

(20) "Newspaper of general circulation" means a newspaper printed in the language most commonly spoken in the area within which it circulates and which is readily available for purchase by all inhabitants in the area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper the primary function of which is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

(21) "Public office" means any federal, state, county, or school or other district office or position which is filled by vote of the electors.

Historical Note

Derivation:

Laws 1981, c. 81-105, § 1.
Laws 1979, c. 79-400, § 24.
Laws 1979, c. 79-157, § 1.
Laws 1977, c. 77-175, § 1.
Laws 1977, c. 77-104, § 23.
Laws 1973, c. 73-333, § 31.
Laws 1973, c. 73-157, § 1.
Laws 1971, c. 71-208, § 1.
Laws 1970, c. 70-439, § 1.
Laws 1970, c. 70-269, § 1.
Laws 1969, c. 69-377, § 1.
Laws 1969, c. 69-250, § 1.
Laws 1969, c. 69-137, § 1.
Laws 1967, c. 67-356, § 2.
Laws 1967, c. 67-142, § 2.
Laws 1967, c. 67-32, § 1.
Laws 1965, c. 65-60, § 2.
Laws 1961, c. 61-370, § 1.
Laws 1953, c. 28156, § 1.
Laws 1951, c. 28870, § 1.
Fla.St.1949, § 102.02.
Laws 1939, c. 19663, § 1.
Laws 1937, c. 18060, § 1.
Laws 1929, c. 13781, § 1.

Comp.Gen.Laws 1927, § 356.
Laws 1921, c. 8562, § 1.
Rev.Gen.St.1920, § 300.
Laws 1913, c. 6469, § 2.

Laws 1979, c. 79-157, § 1, added the provisions contained in the last sentence at the end of subsec. (18) defining "candidate" and added subsec. (21) defining "public office".

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla. St.1977 to additional substitutions and deletions editorially supplied therein in order to remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

Laws 1981, c. 81-105, § 1, added at the end of subsec. (9)(a) "except when reference is made to write-in ballots", and interpolated a new par. (b) in the subsec. (14) definition of "candidate".

Cross References

Campaign financing, see § 108.011 et seq.
Corporations, political contributions, see § 108.04.
General, primary, special, bond, and referendum elections, see § 100.011 et seq.
Political parties, see § 103.091.
Executive committees, see § 103.047.

Colorado

§ 32-11-104

SPECIAL DISTRICTS

(35) "Improvement" or "improve" means the extension, enlargement, betterment, alteration, reconstruction, replacement, and other major improvement (or any combination thereof) of the facilities, any property pertaining thereto, any project, or an interest therein, authorized in this article.

(34)(a) "Improvement district:" means the geographical area within the urban district designated and delineated by the board, in which improvement district are located the facilities or project, or an interest therein, the cost of which is to be defrayed wholly or in part by the levy of special assessments, and in which improvement district is located each tract to be assessed therefor. An improvement district may consist of noncontiguous areas. Improvement districts shall be designated by consecutive numbers or in some other manner to identify separately each such district in the urban district.

(b) "Improvement district:" does not mean the "urban district" as defined in this section.

(35)(a) "Mailed notice", "notice by mail", or any phrase of similar import means the giving by the engineer, district secretary, district treasurer, county treasurer, any deputy thereof, or other designated person, as determined by the board or as otherwise provided in this article, of any designated written or printed notice addressed to the last-known owner of each tract assessed or to be assessed or other designated person at his last-known address, by deposit at least twenty days prior to the designated hearing or other time or event, in the United States mails, postage prepaid, as first-class mail. The failure to mail any such notice shall not invalidate any proceedings under this article.

(b) The names and addresses of such property owners shall be obtained from the records of the county assessor or from such other source or sources as the engineer, district secretary, district treasurer, county treasurer, any deputy thereof, or other person so giving notice deems reliable. Any list of such names and addresses pertaining to any improvement district may be revised from time to time, but such a list need not be revised more frequently than at twelve-month intervals.

(c) Any mailing of any notice required in this article shall be verified by the affidavit or certificate of the engineer, district secretary, district treasurer, county treasurer, the deputy thereof, or other person mailing the notice, which verification shall be retained in the records of the urban district at least until all assessments and securities pertaining thereto have been paid in full or any claim is barred by a statute of limitations.

(36)(a) "Municipality" means an incorporated town, city and county, or city, whether incorporated and governed under general act or special charter.

(b) "Municipal" pertains to a municipality.

(37) "Net revenues" or "net pledged revenues" means the gross pledged revenues remaining after the deduction of the "operation and maintenance expenses" as defined in this section.

(39) "Newspaper" means a newspaper printed in the English language at least once each calendar week.

(39)(a) "Operation and maintenance expenses", or any phrase of similar import, means all reasonable and necessary current expenses of the district.

THE
FOLLOWING
DOCUMENTS
ARE
POOR
ORIGINAL
COPIES

Colorado

§ 32-11-104

SPECIAL DISTRICT

(41)(a) "Person" means a corporation, firm, other body corporate (including the federal government or any public body), partnership, association, individual, and also includes an executor, administrator, trustee, receiver, or other representative appointed according to law.

(b) "Person" does not include the "urban district" as defined in this section.

(42) "Pledged revenues" or "revenues" means all or a portion of the pledged revenues. The designated term indicates a source of revenues and does not necessarily indicate all or any portion or other part of such revenues in the absence of further qualification.

(43) "Project" means such part of the facilities of the district as the board determines to acquire and authorize at one time.

(44) "Property" means personal property and real property, both improved and unimproved.

(45)(a) "Publication" or "publish" means three consecutive weekly publications in at least one newspaper having general circulation in the district.

(b) It is not necessary that an advertisement be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication but including the day of the last publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

(46)(a) "Public body" means the state of Colorado or any agency, instrumentality, or corporation thereof, or any county, municipality, corporate district, housing authority, urban renewal authority, other type of authority, the regents of the university of Colorado, the state board for community colleges and occupational education, or any other body corporate and political and political subdivision of the state.

(b) "Public body" does not include the "federal government" nor the "urban district" as defined in this section.

(47) "Real property" means:

(a) Land, including land under water;

(b) Buildings, structures, fixtures, and improvements on land;

(c) Any property appurtenant to or used in connection with land; and

(d) Every estate, interest, privilege, leasehold, easement, license, franchise, right-of-way, and other right in land, legal or equitable, including, without limiting the generality of the foregoing, rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens.

(48) "Revenues" means the "pledged revenues" as defined in this section.

(49) "Secretary" means the de jure or de facto secretary of the board and the urban district, or his successor in functions, if any.

(50) "Service charges" means the fees, rates, and other charges for the use of the facilities of the district, or for any service rendered by the district in the operation thereof, or otherwise pertaining thereto, as more specifically provided in section 32-11-306 and elsewhere in this article.

§ 331A.01

MINNESOTA

NEWSPAPERS

(d) this subdivision contains no independent requirement for the publication of any public notice.

Subd. 8. "Qualified newspaper" means a newspaper which complies with all of the provisions of section 331A.02. The following terms, when found in laws referring to the publication of a public notice, shall be taken to mean a qualified newspaper: "qualified legal newspaper," "legal newspaper," "official newspaper," "newspaper," and "medium of official and legal publication."

Subd. 9. "Secondary office" means an office established by a newspaper in a community other than that in which its known office of issue is located, in the same or an adjoining county, to enhance its coverage of and service to that community, open on a regular basis to gather news and sell advertisements and subscriptions, whether or not printing or any other operations of the newspaper are conducted at or from the office, and devoted primarily to business related to the newspaper.

Subd. 10. "Summary" means an accurate and intelligible abstract or synopsis of the essential elements of proceedings, ordinances, resolutions, and other official actions. It shall be written in a clear and coherent manner, and shall, to the extent possible, avoid the use of technical or legal terms not generally familiar to the public. When a summary is published, the publication shall clearly indicate that the published material is only a summary and that the full text is available for public inspection at a designated location. A summary published in conformity with this section shall be deemed to fulfill all legal publication requirements as completely as if the entire matter which was summarized had been published. No liability shall be asserted against the local public corporation in connection with the publication of a summary or agenda.

Laws 1984, c. 543, § 20. Amended by Laws 1986, c. 444.

Historical and Statutory Notes

Laws 1984, c. 543, § 70 provides that this section is effective Jan. 1, 1985, except as it applies to independent school districts, with respect to which it is effective July 1, 1985.

1986 Amendment. Laws 1986, c. 444, § 1, removed gender specific references applicable to human beings throughout Minn.Stats. by adopt-

ing by reference proposed amendments for such revision prepared by the revisor of statutes pursuant to Laws 1984, c. 480, § 21, and certified and filed with the secretary of state on Jan. 24, 1986. Section 3 of Laws 1986, c. 444, provides that the amendments "do not change the substance of the statutes amended."

331A.02. Requirements for a qualified newspaper

Subdivision 1. Qualification. No newspaper in this state shall be entitled to any compensation or fee for publishing any public notice unless it is qualified as a medium of official and legal publication. A newspaper that is not qualified must inform a public body that presents a public notice for publication that it is not qualified. To be qualified as a medium of official and legal publication, a newspaper shall:

(a) be printed in the English language in newspaper format and in column and sheet form equivalent in printed space to at least 1,000 square inches;

(b) if a daily, be distributed at least five days each week, or if not a daily, be distributed at least once each week, for 50 weeks each year. In any week in which a legal holiday is included, not more than four issues of a daily paper are necessary;

(c) in at least half of its issues each year, have no more than 75 percent of its printed space comprised of advertising material and paid public notices. In all of its issues each year, have 25 percent, if published more often than weekly, or 50 percent, if weekly, of its news columns devoted to news of local interest to the community which it purports to serve. Not more than 25 percent of its total nonadvertising column inches in any issue may wholly duplicate any other publication unless the duplicated material is from recognized general news services;

(d) be circulated in the local public corporation which it purports to serve, and either have at least 500 copies regularly delivered to paying subscribers, or have at least 500 copies regularly distributed without charge to local residents;

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- (e) have its known office of issue established in either the county in which lies, in whole or in part, the local public corporation which the newspaper purports to serve, or in an adjoining county;
- (f) file a copy of each issue immediately with the state historical society;
- (g) be made available at single or subscription prices to any person, corporation, partnership, or other unincorporated association requesting the newspaper and making the applicable payment, or be distributed without charge to local residents;
- (h) have complied with all the foregoing conditions of this subdivision for at least one year immediately preceding the date of the notice publication; and
- (i) between September 1 and December 31 of each year publish and submit to the secretary of state, along with a filing fee of \$25, a sworn United States Post Office second-class statement of ownership and circulation or a statement of ownership and circulation verified by a recognized independent circulation auditing agency covering a period of not less than one year ending no earlier than the June 30 preceding the filing deadline, provided that a filing published and submitted after December 31 and before July 1 shall be effective from the date of filing through December 31 of that year. The secretary of state shall make the list of newspapers whose filings have been accepted available for public inspection. The acceptance of a filing does not constitute a guarantee by the state that any other qualification requirement has been met.

Subd. 2. Earlier qualification. Newspapers which have been qualified, on May 20, 1965, as mediums of official and legal publication shall remain qualified only if they meet the requirements of subdivision 1, except as follows:

- (a) If on May 20, 1965, any newspaper is a qualified medium of official and legal publication but is printed in a foreign language, or in English and a foreign language, and otherwise qualifies as a medium of official and legal publication pursuant to the requirements of subdivision 1, it shall be a medium of official and legal publication so long as it otherwise qualifies pursuant to the requirements of subdivision 1.
- (b) If on May 20, 1965, any newspaper has been circulated in and near the municipality which it purports to serve to the extent of at least 240 but less than 500 copies regularly delivered to paying subscribers and otherwise qualifies as a medium of official and legal publication pursuant to the requirements of subdivision 1, it shall be a medium of official and legal publication so long as at least 240 copies are regularly so circulated and delivered and it otherwise qualifies pursuant to the requirements of subdivision 1.

Subd. 3. Publication; suspension; changes. The following circumstances shall not affect the qualification of a newspaper, invalidate an otherwise valid publication, or invalidate a designation as official newspaper for publication of county board proceedings.

- (a) Suspension of publication for a period of not more than three consecutive months resulting from the destruction of its known office of issue, equipment, or other facility by the elements, unforeseen accident, or acts of God or by reason of a labor dispute.
- (b) The consolidation of one newspaper with another published in the same county; or a change in its name or ownership, or a temporary change in its known office of issue.
- (c) Change of the day of publication, the frequency of publication, or the change of the known office of issue from one place to another within the same county. Except as provided in this subdivision, suspension of publication, or a change of known office of issue from one county to another, or failure to maintain its known office of issue in the county, shall deprive a newspaper of its standing as a medium of official and legal publication until the newspaper again becomes qualified pursuant to subdivision 1.

Subd. 4. Declaratory judgment of legality. Any person interested in the standing as a medium of official and legal publication of a newspaper, may petition the district court in the county in which the newspaper has its known office of issue for a declaratory judgment whether the newspaper is qualified as a medium of official and legal publication. Unless filed by the publisher, the petition and summons shall be served on the publisher as in other civil actions. Service in other cases shall be made by publication of the petition and summons once each week for three successive weeks in the newspaper or newspapers the court may order and upon the persons as the court may direct. Publica-

SB

170

Alaska State Senate

SENATOR STEVE RIEGER
District 1

Senate Finance Committee
Chair, Senate Health, Education
and Social Services Committee
Vice Chair, Senate Rules Committee
Vice Chair, Senate Labor and
Commerce Committee



State Capitol
Room 516
Juneau, Alaska 99801
(907) 465-3879

SENATE BILL 170

- AN ACT RELATING TO THE INCOME OF THE PERMANENT FUND -

Senate Bill 170 places into statute the concept of "real earnings" and applies that concept to the provisions for the uses of Permanent Fund earnings.

CONCEPT OF REAL EARNINGS:

There are several ways in which income of a fund can be calculated. When all cash receipts are counted without regard to the effects of inflation, the earnings are often referred to as "*nominal earnings*." In contrast, "*real earnings*" are the amount by which nominal earnings exceed inflation.

For any long-term preservation of a fund, and particularly in times of any significant inflation, the concept of real earnings is extremely important to the management of an endowment fund. Any endowment which is designed to last for a sustained period of time must be concerned about its purchasing power and earning power. Inflation tends to erode a fund; to offset this a fund must grow (in nominal terms) at the same rate as inflation just to preserve its purchasing or earning power. In this context, a fund can afford only to pay out earnings which are in excess of the rate of inflation -- real earnings.

APPROPRIATENESS FOR THE PERMANENT FUND:

I believe that the voters, in establishing the Permanent Fund, intended for the Fund to be truly permanent in the sense that its purchasing power and earning power should not be eroded over time. In this context, a real earnings approach is most appropriate for the Permanent Fund. The only earnings which should be put on the table for use each year are the real earnings.

In contrast, under present statutes all of the *nominal* earnings are put on the table for appropriation each year. The Legislature then allocates the earnings to dividends, inflation-proofing, and the earnings reserve account. With SB170 the inflation-proofing would be automatic and the Legislature would provide for the allocation of real earnings between the dividends and the earnings reserve account.

EFFECT ON PERMANENT FUND EARNINGS RESERVE:

Since there would be no further need to reserve earnings for inflation-proofing, the required size of the Permanent Fund Earnings Reserve (PFER) is not as great. There would, however, be a reason to retain some amount in the PFER to cover 5-year averaging provisions, such as the payout rule on dividends, regardless of whether the real earnings concept is used. SB 170 is silent on the issue of the PFER and does not require any change from present PFER policy.

EFFECT ON DIVIDENDS:

The bill leaves untouched the underlying formula for calculation of dividends. However, since the earnings on which dividends are based are real earnings rather than nominal earnings, there will be a slower rate of long-term growth in dividends, and there could be a temporary drop in the amount transferred to the dividend fund, depending on the Permanent Fund's actual performance in the next few years. These transfers are shown under a variety of earnings assumptions in the attached financial forecasts.

OTHER CHANGES:

One additional change, although minor, is that the effect of inflation on the fund will be calculated using the average annual balance of the Fund, rather than the Permanent Fund's present practice of using the balance as of the end of the year.

SUMMARY:

The overall effect of SB 170 will be that the Permanent Fund will be made more permanent, as the question of inflation-proofing will be removed from the annual process of allocating earnings. Earnings will be more realistic, as they are reflective of the actual economic earnings of the Fund. However, the effect of converting to a real earnings basis for the annual allocation process will also lower the amount put on the table for appropriation each year. The result will be better protection for the Fund, and a better representation to the State of the maximum amount which properly could be used each year.

JK

Alaska Permanent Fund Corporation

P.O. Box 25500 Juneau, Alaska 99802-5500

(907) 465-2047

MEMORANDUM

DATE: March 22, 1993

TO: Senator Steve Reiger

FROM: Jim Kelly *JK*
Research & Liaison Officer

SUBJECT: Analysis of Senate Bill No. 170

Attached are four financial projections prepared by the Alaska Permanent Fund Corporation at your request. Also enclosed is a copy of the population projections used to calculate per capita dividends. **Note:** The model takes the July 1 population numbers (with a one-year lag to allow for the one-year residency requirement), then multiplies by 90% (based on 1992 actual experience) to arrive at an approximation of future eligible Permanent Fund dividend applicants.

Financial Projection #1: This is the status quo case as of February 28, 1993. It provides the benchmark against which to compare and contrast any changes to current law.

Financial Projection #2: As proposed in SB 170, this projection makes the following changes to the status quo: (1) inflation-proofing is treated as a return of capital to the principal of the Fund and is given first priority over any other use of what has historically been called net income; (2) a new accounting treatment for Fund income is established: "real income", which equals net income minus inflation-proofing; and (3) real income is used to compute each year's dividend distribution - except during a transitional period in fiscal years 93-96 in which net income is used instead of real income for the years in which real income was not calculated.

Senator Reiger
March 22, 1993
Page 2

Financial Projection #3: This is the same as the status quo case except this projection assumes for all years after fiscal 1993 that the rate of return is eight percent, and the rate of inflation is four percent.

Financial Projection #4: This is the same as Financial Projection #2, except this projection assumes for all years after fiscal 1993 that the rate of return is eight percent, and the rate of inflation is four percent.

For Your Information: These projections are based on a certain set of basic assumptions; the numbers shown on these sheets would change if different assumptions were used. The assumptions used in the preparation of each projection are listed at the bottom of each projection sheet, and explained herein.

It is the Corporation's policy to use conservative assumptions wherever possible. Thus, the Fund's long-term rate of return is projected to average three percent per year after inflation; long-term inflation is projected to average six -percent per year; and the assumptions for future dedicated State oil revenues are taken from the Department of Revenue's most recent "low case" forecast. The population assumptions used in the computation of future per capita dividend payments are derived from the Middle Series of the Department of Labor's "Population Projections" dated November 1991.

PLEASE NOTE THAT THE CORPORATION NEITHER SUPPORTS NOR OPPOSES ANY PROPOSED CHANGES TO THE CURRENT USE OF FUND EARNINGS, EXCEPT AS THEY MAY RELATE TO THE PROPER EXERCISE OF THE TRUSTEES' FIDUCIARY RESPONSIBILITIES AS REQUIRED UNDER THE PRUDENT INVESTOR RULE.

1



Alaska Permanent Fund Corporation

FINANCIAL PROJECTIONS
(in millions)

as of February 28, 1993

GROWTH OF FUND PRINCIPAL						
FY	FY Begin Balance	Appropriations	Dedicated State Revenues*	Inflation-Proofing	FY End Balance	Inflation-Proofing Shortfall
78	0		54		54	
79	54		84		139	
80	139		344		483	
81	483	900	385		1,769	
82	1,769	800	400		2,969	
83	2,969	400	421	231	4,021	
84	4,021	300	366	151	4,838	
85	4,838	300	338	235	5,741	
86	5,741		323	216	6,281	
87	6,281	1,264 **	170	148	7,864	
	7,864		418	303	8,585	
	8,585		228	360	9,173	
90	9,173		267	454	9,894	
91	9,894		435	559	10,888	
92	10,888		338	477	11,703	
93	11,703		300	361	12,365	
94	12,365		252	568	13,184	
95	13,184		257	605	14,046	
96	14,046		272	644	14,963	
97	14,963		260	685	15,908	
98	15,908		250	970	17,128	
99	17,128		237	1,042	18,407	
0	18,407		219	1,118	19,744	
1	19,744		203	1,197	21,144	
2	21,144		192	1,280	22,616	
3	22,616		178	1,368	24,161	
4	24,161		165	1,401	25,727	58
5	25,727		149	1,287	27,163	268
6	27,163		132	1,355	28,649	283
7	28,649		117	1,427	30,193	300
8	30,193		107	1,501	31,801	317
9	31,801		97	1,578	33,476	338
10	33,476		89	1,659	35,224	355
Cumulative Totals Projected For FY 1993 - 2010:			3,477	20,044		1,914

USE OF FUND INCOME						
Net Income	Distributions			Reserves		FY
	Dividends	Inflation-Proofing	General Fund	Add (Delete)	FY End Balance	
2			1			78
8			7			79
32	12		12			80
150	28		28	59	59	81
368	71		71	185	244	82
471	108	231	110	110	354	83
530	175	151		203	557	84
658	217	235		206	763	85
1,021	303	216		501	1,264 **	86
1,069	391	148		529	529	87
789	424	303		62	591	88
868	460	360	4	44	635	89
916	487	454	4	(30)	605	90
1,030	489	559	4	(24)	581	91
1,036	488	477	5	64	645	92
1,129	523	361	5	240	885	93
1,129	550	568		11	896	94
1,200	580	605		15	910	95
1,274	606	644		24	935	96
1,353	639	685		29	964	97
1,602	689	970		(56)	908	98
1,711	750	1,042		(81)	827	99
1,823	815	1,118		(110)	717	0
1,938	885	1,197		(144)	573	1
2,058	959	1,280		(183)	390	2
2,177	1,019	1,368		(210)	180	3
2,302	1,081	1,401		(180)		4
2,432	1,145	1,287				5
2,566	1,211	1,355				6
2,706	1,279	1,427				7
2,851	1,350	1,501				8
3,002	1,423	1,578				9
3,159	1,500	1,659				10
36,406	17,001	20,044	5			

REALIZED RATE OF RETURN ASSUMPTIONS:

	Nominal	Inflation	Real
FY 93:	8.79%	3.01%	5.78%
FY 94 - 97: ***	8.10%	4.50%	3.60%
FY 98 - 2010:	0.00%	6.00%	3.00%

* Department of Revenue Spring 1993 Low-Case Revenue Forecast.

** Earnings reserve appropriated to Fund principal by the Legislature July 1, 1987.

*** Based on capital market assumptions adopted by the Trustees in March 1992.

STATUS QUO