

ASK THE LEAGUE, AUGUST-SEPTEMBER 2016

Our local newspaper is changing its publication schedule so that it will no longer be printed daily. What changes should we make?

The fact that the newspaper is changing its publication schedule should not present much of a problem for municipalities, although it may require a bit of advance planning by those responsible for publishing municipal notices.

Although there are a number of statutes that require publication of municipal notices in a newspaper “circulating” in the area, there is no general requirement that municipal notices be published in a newspaper that is printed daily. Nor is there any requirement that the municipality's “newspaper of record” is one that is printed daily.

The general law regarding notice by publication, found in 1 V.S.A. § 174, states that “[w]henever a notice of any kind is required to be given by publication in a newspaper prior to a certain date for a certain number of weeks successively, it may be given by an insertion prior to such date once a week, for the number of successive weeks required, either in a daily, semiweekly, or weekly newspaper. If such publication is in a daily or semiweekly newspaper, such notice shall be inserted on the same day of each successive week.” That statute makes it clear that municipalities may rely on “newspapers” that are printed on less than a daily basis.

For instance, notice for a land use hearing by a DRB or ZBA must be published “in a newspaper of general circulation in the municipality affected” not less than 15 days prior to the date of such hearing. 24 V.S.A. § 4464. Note that there is no requirement in that statute to post such notice “daily.” In fact, there is no place in statute that imposes an obligation to publish a municipal notice “daily.” Most statutory publishing requirements (like this one in 24 V.S.A. § 4464) merely impose a deadline by which a notice must be published.

The legislature has never addressed the issue of whether the “newspapers” referred to in statute include online news platforms. As such, we assume that online news platforms do not meet statutory requirements of “publication” by “newspaper.” We recommend therefore, that a municipality should arrange for notices to appear in a newspaper on a day in which that newspaper is printed on paper and circulated in the area, rather than a day on which that newspaper only appears online.

The above advice applies not only to notices of DRB/ZBA hearings, but also to notices regarding ordinance adoption pursuant to 24 V.S.A. § 1972; hearings on the town plan or zoning bylaws pursuant to 24 V.S.A. § 4444; hearings to lay out, reclassify, or discontinue a road pursuant to 19 V.S.A. § 709; notices of the proposed sale of municipal property pursuant to 24 V.S.A. § 1061; notice regarding nominations of justices of the peace pursuant to 17 V.S.A. § 2413; and publishing of the town meeting warning pursuant to 17 V.S.A. § 2641. Please note, however, that

some municipal charters have different requirements for posting or publishing notices and in those instances the municipal charters should be followed.

When it comes to notices for tax sales, the applicable statute requires advance advertising of the sale “three weeks successively in a newspaper circulating in the vicinity, the last publication to be at least 10 days before such sale.” 32 V.S.A. § 5252(2). As stated above, 1 V.S.A. § 174 allows that such notice “may be given by an insertion prior to such date once a week, for the number of successive weeks required, either in a daily, semiweekly, or weekly newspaper.” Our recommendation is to arrange for the notice of a tax sale to appear for three successive weeks on the same day of each week; that “day” being one which the newspaper is printed on paper and circulated in the area (rather than merely appearing online). The timing must be such that the last of these three notices is printed at least 10 days before the tax sale takes place.

Lastly, please note that Vermont's Open Meeting Law (1 V.S.A. §§ 310, 312) only requires that notices for special meetings of a municipal public body are given to the media; the Law does not require that these notices are actually published or broadcast. As such, the publication or broadcast schedule of the newspaper or media outlet does not affect a municipality's obligations under the Open Meeting Law.

If you have questions about the logistics and legalities of a statutorily-required municipal notice, please contact the Municipal Assistance Center at info@vlct.org or 800-649-7915.

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