

English, Carroll & Boe, P.C.

Attorneys at Law

64 Court Street, Middlebury, Vermont 05753

(802) 388-6711 • Fax (802) 388-2111

Attorneys

James F. Carroll
jcarroll@64court.com
Kathleen M. Boe
kboe@64court.com
Constance Tryon Pell
cpell@64court.com
Paul A. Donaldson
pdonaldson@64court.com

Paralegals

Michele M. Cyr
mcyr@64court.com
Wanda M. Murray
wmurray@64court.com
Kristy L. Boise
kboise@64court.com

March 14, 2016

SENT VIA E-MAIL

Mr. David Pisha
Town Manager
Town of Chester
P.O. Box 370
Chester, VT 05143-0370

Re: Statutory Requirements for Newspaper of Record

Dear Mr. Pisha:

At your request, I have researched the question of whether a municipality can fulfill its statutory notice requirements by designating a "newspaper of record" that publishes solely over the Internet using electronic or digital communications.

A. The Applicable Law

Municipalities are statutorily charged with designating a newspaper of record for publishing the notice and warning for its annual meeting as follows:

... The legislative body annually shall designate the *paper* in which such a warning may be published. The warning shall also be posted on the municipality's website, if the municipality actively updates its website on a regular basis.

17 V.S.A. §2641(b) (emphasis added) (amended in 2013).

Municipalities as "public bodies" are also obligated to "[p]ublicly announce[]" their meetings pursuant to Vermont's Open Meetings Law under Chapter 5, Subchapter 12 of Title 1.

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“Publically announced” means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the State in which the public body has jurisdiction, and to any person who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

1 V.S.A. §310(4).

It should be noted that both of the above-referenced statutes were amended in 2013 and that both retained the terms “paper” and “newspaper”. Neither amendment revised or altered the use of the term “newspaper or radio station” as being the two operative mechanisms by which a public announcement can be made.

Also relevant, is the definition of “notice by publication” found in 1 V.S.A. §174 which states as follows:

When a notice is required to be given by publication in a newspaper, it shall mean a newspaper published in the county where the subject matter is situated, pending or to be heard, or a newspaper published within the State which has a general circulation. In any case, in its discretion, the court may cause such notice to be further published in a newspaper which circulates in the neighborhood of the persons interested. Whenever 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.

1 V.S.A. §174.

It is apparent from the above that, notwithstanding the advent of mass communication by electronic or digital means, the Legislature, as late as 2013, has continued to incorporate the use of the terms “newspaper or radio station” as being the operative mechanisms by which a notice is publicly announced. The term “newspaper” continues to be uniformly used in defining the appropriate mechanism for publication of warnings and notices for the taking of official action in all kinds of public settings at the state, judicial or

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municipal levels. See, e.g., 17 V.S.A. §2641(b) (annual meeting warning shall be published in a newspaper of general circulation in the municipality at least five days before warned meeting); 24 V.S.A. §1972(a)(1) (“[T]he legislative body shall arrange for one formal publication of the ordinance or rule or concise summary thereof in any newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed revision is so adopted.”); 24 V.S.A. §4444(a)(1) (“any public notice required for public hearing under this subchapter shall be given not less than 15 days prior to the date of the public hearing by . . . the publication of the date, place and purpose of the hearing in a newspaper of general circulation in the municipality affected.”); 24 V.S.A. §4464(a)(1)(A) (“A warned public hearing shall be required for conditional use review, variances, administrative office or appeals and the final plat review for subdivision” by publication of the date, place and purpose of the hearing in a newspaper of general circulation in the municipality affected); and 32 V.S.A. §5252(2) (municipality to advertise land for sale at public auction “3 weeks successively in a newspaper for circulating in the vicinity, . . .”).

While there is no formal definition of “newspaper” within the Vermont Statutes, there are indications that the Legislature is aware of, and has recognized, the distinction between a “newspaper” or “paper” and “mass electronic or digital communication.” See, e.g., 17 V.S.A. §2901(11) (defining “mass media activity” under campaign finance laws as including both “newspaper or periodical advertisement” and “mass electronic or digital communication.”)

I am not aware of any specific case in the State of Vermont which has considered whether the statutory term “newspaper” can include exclusively on-line news publications or services for the purposes of satisfying statutory notice requirements. It is, however, clear that written paper publications will satisfy the statutory requirements. See, *In re Appeal of MDY Taxes*, 2015 VT 65, ¶11.

Common usage of the term “newspaper” continues to reflect a “paper that is printed and distributed usually daily or weekly and that contains news, articles of opinion, features and advertising. See Merriam-Webster definition of newspaper at <http://www.merriam-webster.com/dictionary/newspaper>. Until the Legislature specifically articulates the policy choice of recognizing on-line news publications as being “newspapers”, it is my opinion that the Town of Chester should continue to designate a “paper of record” which is circulated in printed form and which is within the “area of the State in which the public body has jurisdiction.” This may well include a publication which has, in addition to paper circulation, an on-line presence. Indeed, such a dual publication could serve the purpose of increasing notice to the public. It is, however, the Legislature which will need to decide when the public’s access to electronic information is sufficiently widespread to allow public announcements to be exclusively electronic.

Mr. David Pisha

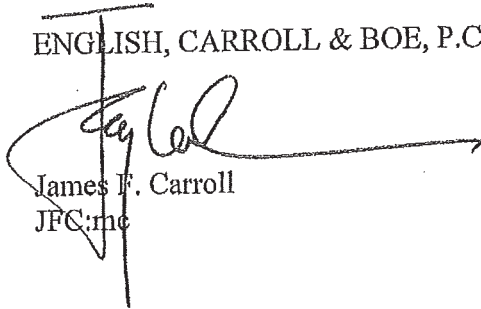
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In short, until such time as the Legislature has specifically indicated an intent to change the historical practice of issuing public notices within the State of Vermont, it is my recommendation that the Town of Chester continue to publish its official notices through a newspaper with a printed circulation in the Chester area.

Sincerely,

ENGLISH, CARROLL & BOE, P.C.

A handwritten signature in black ink, appearing to read "James F. Carroll", with a long horizontal flourish extending to the right. The signature is written over a vertical line that also serves as a separator between the signature and the typed name below it.

James F. Carroll
JFC:mc