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October 26, 2018

Renee Lauber, DCTA Planner
Dane County Towns Association
1252 Morrison Court
Madison, WI 53703

**Re: Open Meetings Laws
Recent Legislation and Interpretation
Legal Recommendations**

Dear Ms. Lauber:

In recent weeks, State laws have been changed in ways that could affect when newspaper publication is required for municipal activities. We have also seen numerous issues arise in recent months concerning use of the municipal website for notice publication. These are issues that affect municipal government every day, so it is important to be aware of these changes, and consider whether these changes affect your members' municipal practices. I am writing to provide an update and recommendations as follows:

Effective April 18, 2018, numerous changes have been made to the State laws concerning newspaper publication of municipal notices, by 2017 Wisconsin Act 282. This law gives newspapers a broader ability to argue that they publish in a municipality. This may expand the number of municipalities in the State that are required to publish notices in newspapers. For example, Villages must use newspaper publication if an eligible newspaper is published in the municipality per §985.05(1), and second-, third- and fourth- class cities are also required to use official newspapers per §985.06(1) and (2). If you receive communication from a newspaper contending that they now trigger a mandatory publication requirement, these should be closely considered.

I want to take this opportunity to also remind you of another general publication issue that has arisen frequently since 2015. In 2015, State law was changed by 2015 Wisconsin Act 79 to allow posting in one location and on a municipal website as an alternative to publication in some situations. We cautioned our clients at that time that this State law change only applied to some postings, due to the way that it was drafted. We have since encountered numerous situations where newspaper publication is required, or posting in more than one location is required or both. Let me highlight the following in that regard.

1. Alcohol beverage publications must be in a newspaper per Wisconsin Statutes §125.04(3)(g).

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2. Board of Review notices should be in a newspaper, per Wisconsin Statutes §70.47(2), in addition to posting in three locations and the municipal hall door.
3. Election notices are somewhat different per §10.05, Wis. Stats. Villages and towns may post three notices in lieu of publication when there is not a newspaper published within the village or town. Remember, though, if you have a policy that allows website use plus one posting, that is not sufficient for an election notice.
4. Budget summaries are required to be “published as a class 1 notice,” which may authorize posting at one location and on your website if you have a policy that allows it and you are not a town and no newspaper is published in your municipality. Towns must post in three locations per Wisconsin Statutes §65.90(3)(a)(1).
5. Newspaper publication is required for tax redemption sales or sales of land acquired by the county or city authorized to act under §74.87, Wis. Stats. for delinquent taxes, charges or assessments, per §985.05(1), Wis. Stats.
6. Newspaper publication is required for civil annexations, detachments, consolidations or incorporations under Wisconsin Statutes Chapters 59-66, per §985.05(1), Wis. Stats.
7. Newspaper publication is required for legal notices directed to specific individuals, per §985.05(1), Wis. Stats.

Recommendations: If your member municipality is contacted by a media outlet who contends that they publish a newspaper within your member’s municipality, pursuant to these new laws, I recommend that you carefully consider the issue, because if that publisher is correct, you may need to publish in the newspaper more frequently than you do at present. I also recommend that you bear in mind the situations where special publication is required, numerous examples of which are noted above, and proceed accordingly.

This correspondence is intended to provide an update on certain issues, and it should not be read as answering any particular questions that your members may have, which may involve additional considerations. If you should have any questions or concerns regarding this matter, please do not hesitate to contact me.

Yours very truly,
MUNICIPAL LAW & LITIGATION GROUP, S.C.

Eric J. Larson

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