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Fred B.  
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SHANNON E. MARTIN

## Online Newspapers and Public Notice Laws

Shannon E. Martin is an assistant professor of journalism and mass media, in the School of Communication, Information and Library Studies at Rutgers University.

An over-arching premise found in both federal and local level governments of the United States is that information about government activities must be accessible for the electorate to make well-informed decisions. This premise is expressed in a variety of statutory regulations including the Depository Library Program, the Freedom of Information Act, and sunshine laws. More recently these regulations have been updated to include electronic and digital formats.<sup>1</sup> Congress passed the Electronic Freedom of Information Act Amendments of 1996, for example, and President Bill Clinton signed it into law on October 2.<sup>2</sup> But the earliest legislative mandate of this premise is the September 15, 1789, Acts of the First Session of the First Congress, requiring the Secretary of State to

1. See, e.g., <<http://thomas.loc.gov/>>; BRUCE MAXWELL, HOW TO ACCESS THE FEDERAL GOVERNMENT ON THE INTERNET (Washington, DC: Cong. Q. 1996).
2. Pub. L. No. 104-231.

"publish in at least three of the public newspapers printed within the United States" every bill, order, resolution, vote of the houses of congress, as well as any presidential objections to these actions so that the public might know what their government was doing.<sup>3</sup>

States have given similar attention to providing constituents with information about local government activities. Each has enacted something similar to the federal depository library program, freedom of information and sunshine laws that loosely parallel the federal concerns and solutions.<sup>4</sup> States also have directed public disclosure of government business through "newspapers of record," "legal newspapers," or "official newspapers" providing for public notice of local government activities as did the previously noted 1789 Acts of Congress.<sup>5</sup>

Newspapers as a record of the day's events and conduit for public business, in varying degrees of effectiveness, have been part of life in the United States for several hundred years. Some newspapers, like the *New York Times*, are even referred to as "newspapers of record." The expression "newspaper of record" as a specifically descriptive term is most often found in the realms of history, law, and librarianship of the twentieth century. The electronic versions of these newspapers offered today are not, however, exactly like the paper-based versions in a variety of ways. Newspapers across the country are now developing an array of online or electronic news products for subscribers.<sup>6</sup> Some newspapers are offering their own service, or are in partnership with national online services, as a way of providing the subscriber with a news service that is not of paper and ink delivery, but electronic.<sup>7</sup> These electronic products are different from the electronic "morgue" or

backfile of each day's print newspaper that may or may not also be available through one of the large commercial database vendors.

Many local and state government charters designate a "newspaper of record," "official newspaper," or "legal newspaper" for posting public notices.<sup>8</sup> The legal notices usually are treated by the state statutes as classified advertisements, and are to be paid for at either an annual rate, or a line charge which may be set by the local government or the newspaper.<sup>9</sup> The revenues from these public notices posted in the legal advertisement section of the newspapers are an especially steady source of income for small community newspapers. But even for the larger newspapers selected as the legal newspaper of record by a community, the contract for publishing the legal notices alone may be for hundreds of thousands of dollars. In 1994, for example, the *San Francisco Examiner* offered the lowest bid of \$302,000, under-bidding the newspaper of record *Independent* by nearly \$191,000, in an attempt to win the guaranteed revenue of the city's legal notices.<sup>10</sup>

While the federal government seems to be moving to electronic and digital online computer venues for public notice distribution, similar distribution models are neither uniform nor comprehensive at the state and local levels. There are, however, some agencies providing electronic and digital access among city and state governments,<sup>11</sup> but citizens may well wonder how it can be that the usually slow and lumbering federal government seems to be moving ahead of the local government in this distribution method. Do state and local statutes prohibit or impede this electronic and online public access? And how might states effectively provide for this venue or make room for it among the array already available through legislative initiatives?

3. Ch. 14 at 2, 1 Stat. 68 (1789).

4. See, e.g., MARGARET LANE, *STATE PUBLICATIONS AND DEPOSITORY LIBRARIES* (Westport, CT: Greenwood Press 1981); <<http://www/jou.ufla.edu/brechner/brochure.htm>> for state FOIA information. The Reporters Committee for Freedom of the Press also provides individual state guides.

5. NATIONAL NEWSPAPER ASSOCIATION PUBLIC NOTICE REPORT (Arlington, VA: National Newspaper Ass'n 1995).

6. Regularly updated lists of electronic newspaper projects can be found at either <<http://www.naa.org/hot/>> or <<http://www.mediainfo.com/edpub/e-papers.faq.html>>.

7. William Glaberson, *As On-line "Circulation" Expands, More Newspapers Are Making the Plunge into Electronic Publishing*, N.Y. TIMES, local edition, Oct. 10, 1994, at D5.

8. See, e.g., ARIZ. REV. STAT. ANN. § 41-1340, § 11-255 (West 1994); FLA. STAT. ch. 50.011 (1993); KAN. STAT. ANN. § 64-106 (1993); KY. REV. STAT. ANN. § 424, § 426.560 (Michie 1994); ME. REV. STAT. ANN. tit. 36, § 557-A (West 1993); MICH. COMP. LAWS § 320.1410 (1992); MINN. STAT. § 331.02 (1976); NEV. REV. STAT. § 238 (1975); N.D. CENT. CODE § 46-06-01 (1993); Charter of the City of Oklahoma City art. 2, § 24; art. 9, § 4 (1980); 45 PA. CONS. STAT. § 101 (1994).

9. See, e.g., Barbara Pascarell Brown, *Legal Ads Don't Bring in a Lot of Revenue, but Enough that Newspapers Still Want Them*, CAP. DIST. BUS. REV., Mar. 4, 1991, at 14.

10. M. L. Stein, *S.F. Papers Battle Over Legal Notices Contract*, EDITOR & PUBLISHER, Oct. 24, 1994, at 32.

11. JOE RYAN, GUIDE TO GOVERNMENT INFORMATION AVAILABLE ON THE INTERNET (Syracuse, NY: Ryan Information Management Press 1995).

The intention of providing public notice about government activities historically is coupled with publication as an easily accessible mode. Yet, recently there seems to have emerged some discordance among the applications of those traditional expressions found at both federal and local government levels between depository libraries, freedom of information offices, and public notice through newspapers.

The progress among depository library programs, freedom of information, and sunshine laws can be found among the materials cited above. But the movement toward electronic distribution of public notice through newspaper delivery systems has not been thoroughly explored. This advancement in online formats among traditional newspaper vendors is discussed here, and more specifically, state-level newspapers of record, or "legal newspapers" are examined. This article does not assume that the new electronic products eventually will completely replace print newspapers. It is possible, however, that the new electronic products will generate enough subscribership to become important complements to print newspapers for the designation as the legal publication for the posting of public notices.

### I. RESEARCH QUESTIONS

To answer the general types of questions about state-level public notice regulations and newspaper distribution vendors noted earlier, the following questions must be addressed first.

1. What are the individual state statutory histories of public notice, or legal notice, through newspapers?
2. Does the language and history of these state regulations on newspaper distribution of legal notice accommodate online computer distribution?

With answers to these initial questions legislators and constituents can begin a productive search for and construction of statutory language that better fits the technological environment in which information now is stored and distributed.

### II. RESEARCH METHOD

The following discussion provides a brief history and description of state-level public notice regulations, gathered from each state's annotated codes and statute compilations. A brief summary of the concept of public legal notice and the use of newspapers as the traditional venue for general distribution of these materials follows for comparative use. Then an evaluation of these observations provides the foundation of a model solution for state and local government statutory language changes to accommodate the addition of online computer public access to government material now available in paper distribution venues.

### III. STATE REVIEWS

The following review of state-level public or legal notice through newspaper publication and distribution histories and court dicta provides the foundation for an evaluation and development of a state-level model for electronic distribution of government proposals and actions. Some summary material about these state regulations, however, may provide a broader perspective for looking at individual states' activities.

#### A. State Statutory Histories

The states have been divided into three chronological periods to help sort their statutory contents. These periods include early (nineteenth century) initiation of statutory regulations on public notice through newspaper publication, middle years which includes twentieth century initiation through World War II, and most recent twentieth century initiation by states. Each state notation includes the date of initial statutory enforcement, and lists the date of statehood in brackets [ ]. As is evident from the review, some states formally addressed the need for public notice through newspaper distribution even before they became states, by acting through territorial regulation. Additionally, some state services providing statutory annotation and histories did not include complete information.

**1. Early Years States**

Michigan [1837] 1846	Louisiana [1812] 1877
Wisconsin [1848] 1849	New Jersey [1787] 1884
Georgia [1788] 1850	Minnesota [1858] 1889
Missouri [1821] 1855	North Dakota [1889] 1890
Florida [1845] 1861	Arkansas [1836] 1891
Kansas [1861] 1862	New York [1788] 1892
Iowa [1846] 1866	New Hampshire [1788] 1892
South Carolina [1788] 1870	Oklahoma [1907] 1897
Illinois [1818] 1874	Wyoming [1890] 1897
Alabama [1819] 1876	Delaware [1787] 1897
South Dakota [1889] 1877	Colorado [1876] 1898

**2. Middle Years States**

Arizona [1912] 1901	Washington [1889] 1921
Vermont [1791] 1902	Oregon [1859] 1924
Connecticut [1788] 1902	Nevada [1864] 1925
California [1850] 1905	Indiana [1816] 1927
Massachusetts [1788] 1912	Pennsylvania [1787] 1929
Nebraska [1867] 1915	Utah [1896] 1929
Idaho [1890] 1919	Texas [1845] 1933
Montana [1889] 1921	New Mexico [1912] 1937
	North Carolina [1789] 1939

**3. Most Recent States**

Virginia [1788] 1950	Hawaii [1959] 1972
Ohio [1803] 1953	District of Columbia (1973)
Maine [1820] 1954	Mississippi [1817] 1976
Kentucky [1792] 1958	Rhode Island [1790] 1981
West Virginia [1863] 1967	Maryland [1788] 1984 amended
Tennessee [1796] 1972	Alaska [1959] 1993 amended

The specific descriptors for individual states defining and requiring public notice through newspaper publication and distribution are not uniform across the states. Some states refer to the publishing agent for public notice or legal notice as the "newspaper of record," for example, while others call it the "official newspaper" or "legal newspaper."<sup>12</sup> Generally states choose to indicate some or all of the following category items: location of publication, paid subscriptions, publication frequency, nature of publication, second class U.S. mailing permit, duration of publication, format of publication, and other sorts of parameters like language or publication interruptions. Some of these categories obviously conflict with the inherent characteristics of the online computer editions of newspapers. Format descriptors, for example, that include page size and paper-based distribution can not be

12. The following statutes designate specific descriptions of newspapers for the purposes of public or legal notice: ALA. CODE 6-8-60 (1995); ALASKA STAT. § 9.35.140 (Michie 1995); ARIZ. REV. STAT. ANN. § 11-255, 39-201 (West 1995); ARK CODE ANN. § 1-3-106, 16-3-105 (Michie 1995); CAL. GOV'T CODE § 6000-6010 (Deering 1995); COLO. REV. STAT. ANN. § 24-70-102, 103 (West 1995); CONN. GEN. STAT. § 1-2, 7-157 (1995); DEL. CODE ANN. tit. 9, § 2652 (1995); D.C. CODE ANN. § 1-202 (1995); FLA. STAT. ch. 50.011, 50.031, ch. 163.3164, ch. 165.031, ch. 403.5115 (1995); GA. CODE ANN. § 9-13-142 (1995); HAW. REV. STAT. § 92-41 (1995); IDAHO CODE § 50-213, § 60-106 (1995); ILL. COMP. STAT. ch. 100, § 5 (1995); IND. CODE ANN. § 5-3-1-4 (Michie 1995); IOWA CODE IX, § 349.2, § 618-1, § 618-3 (1995); KAN. STAT. ANN. § 64-101 (1995); KY. REV. STAT. ANN. § 424.120 (Banks-Baldwin 1995); LA. REV. STAT. ANN. § 43-142, § 43-200 (West 1995); ME. REV. STAT. ANN. tit. 1, § 601 (West 1995); (example) MD. CODE ANN., RULES OF INTERPRETATION art. 1, 28 (1995); MASS. ANN. LAWS ch. 4, § 6, cl. 8 (Law. Co-op. 1995); MICH. COMP. LAWS § 600.1461, § 691.1051 (1995); MINN. STAT. § 331A.02 (1995); MISS CODE ANN. § 13-3-31 (1995); MO. REV. STAT. § 493.050, § 493.070 (1995); MONT. CODE ANN. § 18-7-201, § 25-3-502 (1995); NEB. REV. STAT. § 25-523, § 25-2228 (1995); NEV. REV. STAT. § 238.030, § 238.240 (1995); N.H. REV. STAT. ANN. § 21:32 (1995); N.J. REV. STAT. § 35:1-1, § 35:2-1 (1995); N.M. STAT. ANN. § 14-11-2 (Michie 1995); N.Y. GEN. CONSTR. LAW § 60 (1995); N.Y. PUB. OFF. LAW § 70-a art. 4, art. 5, 214 (1995); N.C. GEN. STAT. § 1-597 (1995); N.D. CENT. CODE § 46-05-01 (1995); OHIO REV. CODE ANN. tit. 1, § 7.12 (Banks-Baldwin 1995); OKLA. STAT. tit. 25, § 103, § 106 (1995); OR. REV. STAT. § 193.010 (1995); 45 PA. CONS. STAT. § 101 (1995); R.I. GEN. LAWS § 45-24.4-5 (1995); S.C. CODE ANN. § 15-29 (Law. Co-op. 1995); S.D. CODIFIED LAWS § 17-2-2, § 17-2-13, § 17-2-17 (1995); TENN. CODE ANN. § 2-1-104 (1995); TEX. GOV'T CODE, tit. 10, § 2051.043 (West 1995); UTAH CODE ANN. § 45-1-1, § 59-2-919 (1995); VT. STAT. ANN. tit. 1, § 174, tit. 3, § 839 (1995); VA. CODE ANN. § 8.01-324, § 11-37, 9-6.14:7.1 (Michie 1995); WASH. REV. CODE § 65.16.020 (1995); W. VA. CODE § 59-3-1 (1995); WIS. STAT. § 985.03 (1995); WYO. STAT. ANN. § 18-3-519 (Michie 1995).

met solely by the online publication of a newspaper. Additionally, place of publication can be problematic not for lack of specificity but because online distribution by its very nature encourages wide publication areas irrespective of geographical boundaries. Described below are some general groupings of the category characteristics that may prove problematic, across states' statutory regulations for public notice by newspaper publication and distribution.

### B. Frequency of Publication

At least three-quarters of the states' codes mention that the newspaper designated as "official" or "of record" for public notice purposes must publish regularly, on a maintained and predictable schedule.<sup>13</sup> Arizona, Georgia, Iowa, Louisiana, Montana, New Jersey, North Dakota, and Utah do not specify the publication interval, but many of the states require a minimum of weekly publication. Also, nearly all of the states require that the publisher seeking designation as the official or legal newspaper have been established and publishing regularly for some minimum period of time, usually more than six months. Alabama, Arizona, Connecticut, Hawaii, Maine, Massachusetts, New Hampshire, South Carolina, and Vermont, however, are less specific about the publishing minimum.

### C. Paid Subscribers and Distribution

The newspaper seeking designation also must be supported to some extent by subscription, that is, not entirely given away at no cost, as an indication of its value to a particular community as a source of information. At least two-thirds of the states require a bona fide subscription

13. Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

list,<sup>14</sup> and some of these set either the actual number or the percentage of total paid subscriptions. Indiana, for example, requires that at least 50% of the total circulation must be comprised of paid subscriptions. Some states, like North Dakota, require that there be at least 150 paid subscribers, while South Dakota requires more than 200 paid subscribers for a paper to be named the record newspaper for the purposes of public notice or legal notice publication.

A few states, like Florida and Minnesota, require that the newspaper simply be available for sale to the general public. This would include newspapers, therefore, more dependent for circulation and distribution through coin box sales and the postal service. Additionally, some states dictate that the newspaper already have met the requirements of the United States Postal Service and have been awarded a second-class mailing permit.<sup>15</sup>

Some states also require that the newspaper be published specifically in, or carry news specifically relevant to, the physical community that the newspaper seeks to represent as its official newspaper. These include Alabama, Arkansas, California, Colorado, Georgia, Idaho, Iowa, Kentucky, Maine, Massachusetts, Michigan, Ohio, Minnesota, Missouri, Oklahoma, Tennessee, and West Virginia. Alabama, however, simply says that every jurisdiction must have an official newspaper.

### D. Format

A few states go so far as to describe the actual format for an official newspaper that publishes public notices or legal notices. These states

14. Arizona, Arkansas, California, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

15. Alabama, Arizona, Arkansas, Colorado, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, and Wisconsin.

require either a minimum number of pages<sup>16</sup> or the actual format size.<sup>17</sup> Some states, like Illinois, also require that conventional and "generally recognized" printing processes must be used, or like Mississippi, that "printed sheets" be the means of distribution.

### E. Content

At least ten states require that the newspaper must contain primarily news, not advertising, or some percentage of news generally.<sup>18</sup> Some states specify the language of publication that will be acceptable in a newspaper seeking official or legal or record designation.<sup>19</sup> For instance, Florida requires that at least 25% of a newspaper applying for "official" or "legal" designation be published in English.

An individual description of each state's guidelines, however, helps draw more clear distinctions between the states. These are listed, again, in chronological order of statutory initiation of "newspaper of record" or "public notice/legal notice" regulations. The specific statute number is indicated in parentheses.

## IV. INDIVIDUAL STATE HISTORIES AND DESCRIPTIONS

### A. Early Years States

- ◆ Alabama (6-8-60) at least weekly publication, 2nd class U.S. Mail permit required;
- ◆ Arkansas (16-3-105) paid subscriptions, at least weekly publication, one year production minimum, 2nd class U.S. Mail permit required, format requirements include at least four pages of five columns each;

16. Alaska, Arkansas, Idaho, Illinois, Kentucky, Maryland, Minnesota, Ohio, Oregon, Pennsylvania, Tennessee, Washington, and West Virginia say the newspaper can not be fewer than four pages.

17. Wyoming stipulates that the page may not be smaller than 10 inches by 14 inches.

18. Alaska, California, Delaware, Illinois, Kentucky, Louisiana, Michigan, Minnesota, Pennsylvania, and Wyoming.

19. Alabama, Arizona, Florida, Indiana, Iowa, Maine, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, North Dakota, South Dakota, and Washington.

- ◆ Colorado (*Board of Com. v. Price*<sup>20</sup> (1898) & 24-70-102) at least weekly publication, one year production minimum, 2nd class U.S. Mail permit required;
- ◆ Delaware (9 sec. 2652) paid subscriptions, at least weekly publication;
- ◆ Florida (50.001) paid subscriptions, at least weekly publication, one year minimum production, 2nd class U.S. Mail permit required;
- ◆ Georgia (9-13-142) paid subscriptions, at least weekly publication, two years minimum production;
- ◆ Illinois (715 5/1) at least weekly publication, one year minimum production, 25% news product content, format requirements include at least 130 square inches printed matter per page, and at least four pages long;
- ◆ Iowa (349) paid subscriptions, regularly published, 2 years minimum production;
- ◆ Kansas (64-101) paid subscriptions, at least weekly publication, five years minimum production, 2nd class U.S. Mail permit required;
- ◆ Louisiana (43:201 & 43:140) five years minimum production, 2nd class U.S. Mail permit required;
- ◆ Michigan (600.1461) paid subscriptions, at least weekly publication, two years minimum production, 25% news product minimum;
- ◆ Minnesota (331A.02) paid subscriptions, at least weekly publication, one year minimum production, 25% news product content, 2nd class U.S. Mail permit required, format requirements include at least 1,000 square inches in column and sheet form;
- ◆ Missouri (493.050) paid subscriptions, at least weekly publication, three years minimum production, 2nd class U.S. Mail permit required;
- ◆ New Hampshire (*McTye v. McTye* (1892) & N.H. Rev. Stat. Ann. § 21:32) weekly publication<sup>21</sup>;
- ◆ New Jersey (35:1) paid subscriptions, two years minimum production, average 35% news product content, 2nd class U.S. Mail permit required;
- ◆ New York (Art. 5, sec. 214) paid subscriptions, at least weekly publication, one year production minimum, 2nd class U.S. Mail permit required;

20. 51 P. 1011 (Colo. Ct. App. 1898).

21. 36 A. 605 (1892).

- ◆ North Dakota (46-05-01) paid subscriptions, regularly published, one year production minimum, 2nd class U.S. Mail permit required;
- ◆ Oklahoma (1897/25-103) paid subscriptions, at least weekly publication, two years production minimum, 2nd class U.S. Mail permit required;
- ◆ South Carolina (15-29) refers to the general descriptions of record newspapers found in 85 ALR 4th 581;
- ◆ South Dakota (17-2-2.1) paid subscriptions, at least weekly publication, one year minimum production, 25% news product content, 2nd class U.S. Mail permit required;
- ◆ Wisconsin (985.12) paid subscriptions, at least weekly publication, two years minimum production, 2nd class U.S. Mail permit required;
- ◆ Wyoming (1897/18-3-519) paid subscriptions, at least weekly publication, one year production minimum, format requirements include a minimum size of 10 by 14 inches.

**B. Subtotal Summary of Early States**

- ◆ subscriptions required by 16 of 22 states
- ◆ weekly or regularly publication required by 20 of 22 states
- ◆ 2nd class U.S. Mail permit required by 14 of 22 states
- ◆ production minimum number years required by 18 of 22 states
- ◆ publication format minimums required by 4 of 22 states

**C. Middle Years States**

- ◆ Arizona (39-201) paid subscriptions, regularly published, 2nd class U.S. Mail permit required, format requirements, that do not affect online publication, include an issue date and consecutive numbering of issues;
- ◆ California (6000-6010) paid subscriptions, at least weekly publication, one year production minimum, 25% news content minimum;
- ◆ Connecticut (1:2) at least weekly publication;
- ◆ Idaho (60-106) paid subscriptions, regularly published, one and one-half years production minimum, 2nd class U.S. Mail permit required, format requirements include a publication that is at least four pages, five columns each;

- ◆ Indiana (5-3-1-4) paid subscriptions, at least weekly publication, three years production minimum, 2nd class U.S. Mail permit required;
- ◆ Massachusetts (4 sec. 6, cl. 8th);
- ◆ Montana (18-7-201) paid subscriptions, one year production minimum, 2nd class U.S. Mail permit required;
- ◆ Nebraska (25-523) paid subscriptions, at least weekly publication, one year production minimum;
- ◆ Nevada (238.020) at least weekly publication, two years production minimum, 2nd class U.S. Mail permit required;
- ◆ New Mexico (14-11-2) paid subscriptions, at least weekly publication, one year production minimum, 2nd class U.S. Mail permit required;
- ◆ North Carolina (1-597) paid subscriptions, at least weekly publication, six months production minimum, 2nd class U.S. Mail permit required;
- ◆ Oregon (193.010) paid subscriptions, at least weekly publication, one year production minimum, format requirements include five columns carrying at least 14 inches of type, and at least four pages per issue;
- ◆ Pennsylvania (45:101) paid subscriptions, at least weekly publication, 6 months production minimum, 2nd class U.S. Mail permit required, format requirements include a minimum of four pages bearing the title and name of the publication;
- ◆ Texas (10 sec. 2051.041) at least weekly publication, one year production minimum, 25% news product content, 2nd class U.S. Mail permit required;
- ◆ Utah (1929/45-1-1) paid subscriptions, one and one-half years production minimum, 2nd class U.S. Mail permit required;
- ◆ Vermont (1:174) at least weekly publication;
- ◆ Washington (65.16.020) at least weekly publication, six months production minimum, 2nd class U.S. Mail permit required.

**D. Subtotal for Middle Years States**

- ◆ paid subscriptions required by 14 of 17 states
- ◆ weekly or regularly publication required by 14 of 17 states
- ◆ 2nd class U.S. Mail permit required by 11 of 17 states

- ◆ minimum production period required by 13 of 17 states
- ◆ format requirements by 3 of 17 states

### E. Most Recent States

- ◆ Alaska (09.35.140) paid subscriptions, at least weekly publication, one year production minimum, 2nd class U.S. Mail permit required, format requirements include that it be in newspaper format;
- ◆ District of Columbia (1-202);
- ◆ Hawaii (92-41) at least semi-weekly publication;
- ◆ Kentucky (424-120) paid subscriptions, at least weekly publication, two years production minimum, 25% news product content, 2nd class U.S. Mail permit required, format requirements include there be at least four pages excluding a cover;
- ◆ Maine (1 sec. 601) 2nd class U.S. Mail permit required;
- ◆ Maryland (1 sec. 28) at least weekly publication, six months production minimum, 2nd class U.S. Mail permit required, format requirements include that it be at least four pages;
- ◆ Mississippi (13-3-31) paid subscriptions, at least weekly publication, one year production minimum, 25% news product content, format requirements include that the publication be printed sheets;
- ◆ Ohio (1 sec. 7.12) paid subscriptions, at least weekly publication, one year production minimum, 2nd class U.S. Mail permit required, format requirements include at least four pages bearing the name or title of the publication;
- ◆ Rhode Island (45-24.4-5) at least weekly publication;
- ◆ Tennessee (2-1-104) at least weekly publication, one year production minimum, 2nd class U.S. Mail permit required, format requirements include that it be at least four pages;
- ◆ Virginia (8.01-324) paid subscriptions, at least weekly publication, six months production minimum, 2nd class U.S. Mail permit required;
- ◆ West Virginia (59-3-1) paid subscriptions, at least weekly publication, one year production minimum, format requirements include that there be at least four pages excluding a cover.

### F. Subtotal for Recent Years States

- ◆ paid subscriptions required by 6 of 12 states
- ◆ weekly or regular publication required by 10 of 12
- ◆ 2nd class U.S. Mail permit required by 7 of 12 states
- ◆ production minimum period required by 8 of 12 states
- ◆ format requirements by 7 of 12 states

### V. OVERALL TOTALS FOR STATE REQUIREMENTS

At least 44 of the 51 jurisdictions required at least weekly or regular publication to qualify for public notice or legal notice publication designation. Additionally, at least 39 of the jurisdictions required a minimum period of time that the newspaper seeking designation have been published, or produced a newspaper suitable on the other criteria for public or legal notice publication.

At least 36 of the 51 jurisdictions required paid subscriptions for a newspaper to qualify for public notice or legal notice publication. And at least 32 of the 51 jurisdictions required a 2nd class U.S. Mail permit of newspapers seeking designation for public notice or legal notice publication.

But only 14 of the 51 jurisdictions describe what the format of a suitable newspaper includes.

Publication regularity is the most often required characteristic, and format is the least often required characteristic. Longevity of the publication's production is only slightly more often designated than the requirements of paid subscriptions and 2nd class U.S. Mail permits.

### VI. CONCLUSIONS

Date of origin appears to be somewhat predictive for format requirements, but not for the other characteristic requirements described in the state-level codes for newspapers seeking designation to publish public notices and legal notices. Half of these jurisdictions, that is seven of the fourteen with format requirements, were developed since 1950 when a wider range of technologies like radio and television provided news



products to communities. The other characteristics described in the state regulations are more evenly distributed among the chronological clusters.

The legal descriptions for "newspapers of record," "legal newspapers" or "official newspapers" most common among the 51 jurisdictions described here include paid subscriptions, regular publication, 2nd class mailing status, period of publication, and format requirements. For those newspapers seeking this special status and providing online news products, the most difficult descriptions to confront will be the 2nd class mailing requirements and certain format requirements. Format requirements, however, should be the easiest to overcome because they are the most recent and least pervasive.

Format parameters for "newspaper of record" designation are something of a barrier now for electronic products. The speed and ease of electronic distribution and delivery of extended news content, over the paper-based edition of a particular newspaper, however, could be the reasons cited for including electronic or digital online computer formats, rather than excluding them. If the legal concern rests most heavily with including multiple distribution systems—as with allowing motor route, postal, and coin box—and frequency, then online computer format could ultimately be folded into the rubric of official, legal "newspaper of record" designation for the purposes of public or legal notice publication.

For those states that require that the "newspaper of record" be established and published regularly for some period of time, the electronic news product will fall short until some time in the future. This is, obviously, a temporary problem that can be addressed quite easily by publishers of electronic products. And most of the online news products refresh their publication at least once a day, so frequency of publication need not be a stumbling block.

States that require the "newspaper of record" to be supported by subscription may have some problem with those online products that develop as advertiser-supported services available through "free" platforms such as the World Wide Web on the Internet. While many online news products are now available through subscription-based vendors, several futurists have argued that this form of pricing is outmoded and likely not to survive the onslaught of Internet-based

publication.<sup>22</sup> Also, states that require 2nd class mailing permits for the newspaper of record designation would seem automatically unable to consider publications that are available exclusively online.

Existing content requirements can easily be met by most electronic products. However, there is an advantage that electronic products offer over print newspaper content. Electronic product publishers have the luxury of creating extensive files of information that can be selectively viewed and downloaded by subscribers. Content that would never be published in the paper-and-ink newspaper can be made available electronically with virtually no additional cost to the publisher. Online products can and do store much "official" information that the print newspaper would not: for example, verbatim speech transcripts, minutes and agendas of public meetings, and even relatively obscure legal notices, public filings, and letters in response to issues under debate. This gives the electronic or online product a content advantage that is not addressed in current "newspaper of record" requirements.

If the intention of public notice or legal notice is to provide the widest possible distribution of official documents and government reports then online distribution as an additional means of publication would seem to meet the over-arching premise of U.S. federal and local governments. But clearly the current characteristics described by most state regulations for such designations as "newspaper of record," "official newspaper" or "legal newspaper" for such purposes do not reach online publication and would need comprehensive revision before such a need was met.

22. Reid Goldsborough, *News Paperless*, INTERNET WORLD, Sept. 1995, at 40; Kim Cleland, *Online soon to snare 100-plus newspapers*, ADVERTISING AGE, Apr. 24, 1995, at S-6, S-13.