

**LETTER OPINION**  
**2021-L-01**

July 8, 2021

Mr. Lukas W Croaker  
Horace City Attorney  
P.O. Box 458  
West Fargo, ND 58078-0458

Dear Mr. Croaker:

Thank you for requesting my opinion regarding whether a newspaper satisfies the requirement of an official newspaper under North Dakota law if that newspaper publishes its paper exclusively online and whether online publications of legal notices satisfy legal notice requirements for political subdivision notices. In my opinion, an online only publication does not meet the requirements of an official newspaper under North Dakota law.

ANALYSIS

North Dakota law requires that every four years the qualified electors in each county select one newspaper in the county to be the county's official newspaper.<sup>1</sup> The county's official newspaper chosen by the electors shall be the official newspaper of the municipality in which it is published, and such official notices and legal publications as the municipality is required to publish by law shall be published therein.<sup>2</sup> If the county's official newspaper is not published in the municipality, the governing body must annually designate a newspaper published in the municipality as the official newspaper.<sup>3</sup> If there is not a newspaper published in the municipality, the governing body must designate a newspaper which is circulated in the municipality as the official newspaper of the municipality.<sup>4</sup> In order for a newspaper to be qualified to publish any legal notice it must:

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<sup>1</sup> N.D.C.C. § 46-06-01.

<sup>2</sup> N.D.C.C. § 40-01-09.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

1. Have been established in a regular and continuous circulation of at least one year, with a bona fide subscription list of at least one hundred fifty regular subscribers;
2. Be nonsectarian and printed in English; and
3. Have been admitted to the United States mails and have complied with the requirements of the federal laws governing periodicals mailing privileges for at least one year.<sup>5</sup>

You explained that the official newspaper for the city of Horace has recently switched from traditional publication to online publication.

The primary objective of statutory interpretation is to ascertain legislative intent.<sup>6</sup> This is initially done by looking to the language of the statute and interpreting its words in their plain, ordinary, and commonly understood meanings.<sup>7</sup> If a statute is susceptible to different but reasonable meanings, other methods of interpretation are allowed to ascertain its meaning.<sup>8</sup>

An online only newspaper does not meet the plain language requirements of N.D.C.C. § 46-05-01. It is clear from the plain language of the statute in subsection 3 that an online only publication would not be admitted to the United States mails and meet the federal requirements for mailing privileges.<sup>9</sup> Therefore, an online only newspaper does not meet the requirements to qualify as an official newspaper under N.D.C.C. § 46-05-01.

In regard to your second question of whether online publication of legal notices satisfies legal notice requirements for political subdivisions, it is necessary to determine what “publish” and “publication” mean within the context of N.D.C.C. ch. 46. “Publication” and “publish” are not defined within the Century Code and have not been previously analyzed or addressed in prior opinions. Black’s Law Dictionary defines “publish” as “[t]o distribute copies (of a work) to the public.”<sup>10</sup> Based on that definition, it is

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<sup>5</sup> N.D.C.C. § 46-05-01.

<sup>6</sup> *Zueger v. Workers Comp. Bureau*, 584 N.W.2d 530, 533 (N.D. 1998).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> N.D.C.C. § 46-05-01(3).

LETTER OPINION 2021-L-01

July 8, 2021

Page 3

reasonable to interpret “publish” to include printed newspapers, online newspapers, or both. “A statute is ambiguous if it is susceptible to differing but rational meanings.”<sup>11</sup> “If the language of a statute is ambiguous or of doubtful meaning, a court may resort to extrinsic aids to determine the intention of the legislation, including the object sought to be obtained, the circumstances under which the statute was enacted and the legislative history.”<sup>12</sup> Therefore, we must consult the legislative history and other statutes to ascertain whether online publication of official newspapers was contemplated.

Section 46-05-01, N.D.C.C., is a single statute in the larger chapter of printing laws. In 2019, the Legislature passed H.B. 1117, which created and enacted N.D.C.C. § 46-05-09. Section 46-05-09, N.D.C.C., states in relevant part:

When a legal notice is required by law to be published in a newspaper, the newspaper also shall publish the notice on a statewide legal notices website maintained by the North Dakota newspaper association and on the newspaper's website in a location open and free to the public, if the newspaper maintains a website, at no additional cost to the entity placing the notice.

The legislative history of this bill indicates that the intent of the Legislature in this law is to have a physical newspaper serve as the official newspaper and provide proper legal notice.<sup>13</sup> During the hearing in the House Judiciary Committee, Chairman Kim Koppelman stated:

The discussion has been that the long standing requirement be sent in a local newspaper. Some say they are a thing of the past. We have not changed the law in ND, but we are aware that the younger generation may read them on line so this is a response to that situation.<sup>14</sup>

It is clear from this language that online-only newspapers were not considered to be the publications required by N.D.C.C. § 46-05-01, because N.D.C.C. § 46-05-09 would be unnecessary and rendered moot if that was the case. Statutes are construed as a whole

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<sup>11</sup> *Indus. Contractors, Inc. v. Taylor*, 899 N.W.2d 680, 684 (N.D. 2017) (quoting *Western Gas Res., Inc. v. Heitkamp*, 489 N.W.2d 869, 872 (N.D. 1992)).

<sup>12</sup> *Indus. Contractors, Inc. v. Taylor*, 899 N.W.2d 680, 684 (N.D. 2017).

<sup>13</sup> See Hearing on H.B. 1117 Before the House Comm. on the Judiciary, 2019 N.D. Leg.

<sup>14</sup> Hearing on H.B. 1117 Before the House Comm. On the Judiciary, 2019 N.D. Leg. (Jan 15) (Statement of Rep. Koppelman).

LETTER OPINION 2021-L-01

July 8, 2021

Page 4

and are harmonized to give meaning to related provisions.<sup>15</sup> We construe statutes to give effect to all of their provisions so that no part of the statute is rendered inoperative or superfluous.<sup>16</sup> It is reasonably clear from the related statutes and legislative history that the Legislature did not intend for official newspapers to be entirely online and unavailable in print, nor did it intend for legal notices to be provided entirely online. Legal notices for political subdivisions are required to be printed in the official newspaper of the political subdivision.<sup>17</sup> It follows that if official newspapers cannot be entirely online, neither can legal notices.

It is therefore my opinion that an official newspaper of a political subdivision must be printed to qualify under the statute.

Sincerely,

Wayne Stenehjem  
Attorney General

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>18</sup>

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<sup>15</sup> N.D.C.C. § 01-02-07.

<sup>16</sup> N.D.C.C. § 01-02-38(2), (4).

<sup>17</sup> See generally N.D.C.C. §§ 40-01-09, 46-06-09, 46-06-10.

<sup>18</sup> See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).