

# Publication of Legal Notice



## ISSUE MEMORANDUM 2023-XX

### Introduction

An official action of the state or its political subdivisions requires notification to the affected parties. South Dakota requires state agencies, county and municipal governments, school districts, and private persons and organizations to publish certain items in designated newspapers. These items include complete reports of all official proceedings at all regular and special meetings of the board of county commissioners,<sup>1</sup> the governing body of a municipality,<sup>2</sup> and school boards;<sup>3</sup> public notice to creditors;<sup>4</sup> the sale of public property;<sup>5</sup> and the publication of judicial summons,<sup>6</sup> among others. This issue memorandum will review the requirements that a newspaper must meet before being eligible to publish legal or other official notices in South Dakota, how those requirements compare to the requirements of the states that neighbor South Dakota, and issues that the newspaper industry currently faces in the publication of legal and other official notices.

### Historical Requirements to be a Legal Newspaper in South Dakota

The first law in South Dakota on legal notices was codified as § 65.0508 of the South Dakota Code of 1939, which listed the following requirements that a newspaper must meet before being able to publish official notices:

- Daily newspapers must be published at least five days a week and have a bona fide daily circulation of at least 200 copies;
- Weekly newspapers must have a bona fide weekly circulation of at least 200 copies;
- The newspaper must be published in English;
- The newspaper must be published in the county for at least one year prior to the publication of legal notices; and
- The newspaper must be published at least in part in an office maintained at the place of publication.

Section 65.0508 also allowed for newspapers that were not published in English to continue to have legal status, provided that publication of the newspaper had begun before § 65.0508 took effect. This exemption continued until 1968.

SDCL 17-2-2 (1967) added the requirement that newspapers have second-class mailing privileges with the United States mail, which are designed for newspapers, magazines, and other periodical publications whose primary purpose is transmitting information to an established list of subscribers or requesters, for at least one year.

In 1968, the Legislature passed SB 40, which defined the word "published" to mean:

... the place of an established newspaper office located within the county where material and related procedures of writing news, preparation of advertising, and other content of a newspaper, are assembled and prepared ready for the printing process and shall be the place from which its second-class mailing permit is issued . . .<sup>7</sup>

<sup>1</sup> SDCL 7-18-3

<sup>2</sup> SDCL 9-18-1

<sup>3</sup> SDCL 13-8-35

<sup>4</sup> SDCL 5-21-8 and 29A-3-801

<sup>5</sup> SDCL 21-45-30

<sup>6</sup> SDCL 21-35-10 and 21-36-10

<sup>7</sup> SL 1968, ch. 271

For the purposes of this definition, the word "published" does not include the "printing" of the newspaper. Here, printing is defined as "the process of reproducing prepared material with the use of ink or chemical means to paper by use of press equipment designed for this purpose, and the reproduction of such material by mats or photographic means for plates required for use on presses."<sup>8</sup>

In providing the distinct definitions of "published" and "printing," SB 40 also removed the requirement that previously existed stating that a legal newspaper be "printed either in whole or in part in an office maintained at the place of publication."<sup>9</sup>

A 1985 bill repealed SDCL 17-2-2 and transferred the remaining amended requirements into SDCL 17-2-2.1 to 17-2-2.5, inclusive, simplifying the requirement for a legal newspaper to have a known office of publication, stating:

A legal newspaper shall, for at least one year prior to publication of legal and official notices, maintain a known office of publication in the community where its mailing permit of original entry is issued, for the purpose of gathering news, soliciting advertising and conducting general newspaper business.<sup>10</sup>

The bill also amended the definitions found in the former SDCL 17-2-2, conflating what it means to publish a newspaper with what it means to print a newspaper stating, "The terms 'printed' or 'published' mean that the newspaper is published where it maintains its known office of publication as described in this section, but no newspaper may have more than one place where it is published at the same time."<sup>11</sup>

### Current Requirements to be a Legal Newspaper in South Dakota

In general, the publication of legal or other official notices is addressed in SDCL 17-2. To become a legal newspaper under current South Dakota law, a publication must meet the requirements listed in SDCL 17-2-2.1 to 17-2-2.4, inclusive, for at least one year prior to the publication of legal and other official notices. The publication must:

- Be printed in the English language;<sup>12</sup>
- Contain at least four pages per issue;<sup>13</sup>
- Have at least one hundred twenty square inches of printed matter per page;<sup>14</sup>
- Maintain a definite price that is not less than fifty percent of its published price;<sup>15</sup>
- Be paid for by at least fifty percent of those to whom it is distributed;<sup>16</sup>
- Have a paid circulation of at least two hundred;<sup>17</sup>
- Be intended for the general public;<sup>18</sup>
- Include articles on a range of subjects, such as political, social, moral, and religious subjects or miscellaneous reading matter;<sup>19</sup> and

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<sup>8</sup> SL 1968, ch. 271

<sup>9</sup> South Dakota Compiled Laws of 1967 § 17-2-2

<sup>10</sup> SL 1985, ch. 165, § 5

<sup>11</sup> SL 1985, ch. 165 § 5

<sup>12</sup> SDCL 17-2-2.1

<sup>13</sup> SDCL 17-2-2.1

<sup>14</sup> SDCL 17-2-2.1

<sup>15</sup> SDCL 17-2-2.2

<sup>16</sup> SDCL 17-2-2.2

<sup>17</sup> SDCL 17-2-2.2

<sup>18</sup> SDCL 17-2-2.2

<sup>19</sup> SDCL 17-2-2.3



- Use at least a quarter of its space in half of its issues to publish nonpaid news content, but the publication may not use more than eighty percent of this space for content that is duplicated from other publications unless the duplicated material is from a "recognized general news service."<sup>20</sup>

A daily publication must be distributed at least five days per week, or four days in a week with a legal holiday. A publication that is not a daily publication must be distributed at least once per week for fifty weeks per year.<sup>21</sup>

The publication must maintain a known office for at least eight normal business hours per week in the community where its mailing permit is issued, and for at least one year prior to the publication of legal and official notices, publish the newspaper at the location where it maintains the known office of publication.<sup>22</sup>

The newspaper must submit to the secretary of state a sworn statement before the first day of January each year attesting to the ownership and circulation of the publication.<sup>23</sup> The newspaper publishing the notice is also required to post the notice on a statewide website. The newspaper is required to place a link to the statewide website in a prominent place on the newspaper's own website if the newspaper maintains a website.<sup>24</sup> This link must be accessible by and free to the public.<sup>25</sup>

A board of county commissioners must designate three legal newspapers to publish full and complete reports of all regular or special meetings at its regular January meeting. If there are not three legal newspapers in the county, the board is allowed to designate as many newspapers as meet the requirements of a legal newspaper.<sup>26</sup> A county is required to publish a "full and complete report of all its official proceedings at all regular and special meetings"<sup>27</sup> but may not publish the name of any person who is the recipient of poor relief as part of the minutes.<sup>28</sup>

Every municipality must designate an official newspaper for the following year at a meeting of the municipality's governing board. The official newspaper should be published in the municipality, but if there is no newspaper published in the municipality, the municipality may select another newspaper so long as that newspaper serves the municipality.<sup>29</sup> A municipality is required to publish the minutes of each meeting of the municipality's governing body within the twelve days after the meeting.<sup>30</sup>

School districts are likewise required to designate a legal newspaper<sup>31</sup> and must publish "a full account of the unapproved proceedings" of the meeting, "giving a detailed statement of all expenditures of money, with the names of the persons to whom payment is made, showing the service rendered or goods furnished, a detailed statement of receipts, and the balance on hand."<sup>32</sup>

The Bureau of Administration sets the maximum fees that may be charged for the publication of legal notices in cases where no fee is prescribed for that publication by law.<sup>33</sup> The current fees can be found in ARSD 10:02:02:01 and 10:02:02:02. The fees are charged per line or by column inch.

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<sup>20</sup> SDCL 17-2-2.3

<sup>21</sup> SDCL 17-2-2.1

<sup>22</sup> SDCL 17-2-2.4

<sup>23</sup> SDCL 17-2-2.5

<sup>24</sup> SDCL 17-2-1

<sup>25</sup> SDCL 17-2-1

<sup>26</sup> SDCL 7-18-3

<sup>27</sup> SDCL 17-8-3

<sup>28</sup> SDCL 7-18-3.1

<sup>29</sup> SDCL 9-12-6

<sup>30</sup> SDCL 9-18-1

<sup>31</sup> SDCL 13-8-10

<sup>32</sup> SDCL 13-8-35

<sup>33</sup> SDCL 17-2-19



## Qualifications for a legal newspaper in neighboring states

**Iowa:** In general, a legal newspaper in Iowa must:

- Be printed in the English language and published in newspapers that are published primarily in English;<sup>34</sup>
- Be published in the area for at least once a week for at least fifty weeks per year;<sup>35</sup>
- Be regularly mailed through the post office of entry for at least two years;<sup>36</sup>
- Have a list of subscribers who have paid, or who promise to pay, at more than a nominal rate, for copies to be received during a stated period;<sup>37</sup>
- Devote at least twenty-five percent of its total column space in more than one-half of the issues in a twelve-month period to information of a public character that is not advertising;<sup>38</sup>
- Be paid for by at least fifty percent of the persons to whom it is distributed.<sup>39</sup>

Legal newspapers must print legal or official notices in a type that is not smaller than six-point.

**Minnesota:** In general, a legal newspaper in Minnesota must:

- Be printed in English and have a minimum amount of printed space per page;<sup>40</sup>
- Publish and distribute an edition at least five days per week, or four days if the week has a legal holiday to be considered a daily newspaper;<sup>41</sup>
- Have a minimum amount of printed space devoted to content that is not advertising;<sup>42</sup>
- Have a minimum amount of printed space devoted to original and local content;<sup>43</sup>
- Have a known office either in the county that the newspaper serves<sup>44</sup> or in an adjacent county;<sup>45</sup>
- Have met all requirements for at least one year immediately prior to publishing legal or other official notices;<sup>46</sup>
- Publish a U.S. Postal Service statement of ownership and circulation for periodical class mailing;<sup>47</sup> and
- Submit to the secretary of state a filing containing the newspaper's name, address of its known office of issue, telephone number, and a statement that it has complied with all of the requirements.<sup>48</sup>

If a newspaper is not a daily publication that meets the requirements above, the newspaper only needs to be published and distributed twice a month for the purposes of publishing government public notices.<sup>49</sup> Publishers in Minnesota are required to file a copy of each issue promptly with the state historical society.<sup>50</sup>

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<sup>34</sup> Iowa Code 2023 § 618.1

<sup>35</sup> Iowa Code 2023 § 618.3(1)

<sup>36</sup> Iowa Code 2023 § 618.3(1)

<sup>37</sup> Iowa Code 2023 § 618.3(2)

<sup>38</sup> Iowa Code 2023 § 618.3(3)

<sup>39</sup> Iowa Code 2023 § 618.3(4)

<sup>40</sup> MINN. STAT. 331A.02(a) (2022)

<sup>41</sup> MINN. STAT. 331A.02, sub. 1(b) (2022)

<sup>42</sup> MINN. STAT. 331A.02, sub. 1(c) (2022)

<sup>43</sup> MINN. STAT. 331A.02, sub. 1(c) (2022)

<sup>44</sup> MINN. STAT. 331A.02, sub. 1(e)(1) (2022)

<sup>45</sup> MINN. STAT. 331A.02, sub. 1(e)(2) (2022)

<sup>46</sup> MINN. STAT. 331A.02, sub. 1(h) (2022)

<sup>47</sup> MINN. STAT. 331A.02, sub. 1(i) (2022)

<sup>48</sup> MINN. STAT. 331A.02, sub. 1(j) (2022)

<sup>49</sup> MINN. STAT. 331A.02, sub. 1(b) (2022)

<sup>50</sup> MINN. STAT. 331A.02, sub. 1(f) (2022)



While the newspaper is required to be in general circulation in an area where there is "reasonable likelihood that the person to whom it is directed will become aware of the notice"<sup>51</sup> and to be made available to any person or organization that requests the newspaper,<sup>52</sup> there is not a minimum number of subscribers required. Also, while a newspaper may make the publication available at a single or subscription price and require payment before making the publication available to the person or organization requesting it, publishers may distribute newspaper to local residents without charge.<sup>53</sup>

If a newspaper maintains a website, the newspaper must post all legal or other official notices to its own website and to the Minnesota Newspaper Association's statewide public website at no additional charge to the advertiser. The newspaper's website must include a link to the online public notices page, and the online public notices page must be made available at no cost to the public.<sup>54</sup>

**Nebraska:** Nebraska Revised Statute 25-523 requires a newspaper to have a bona fide circulation of at least three hundred paid subscriptions weekly, be printed within the county for fifty-two successive weeks prior to the publication of legal notices, and be printed, either in whole or in part, at the office that is maintained at the place of publication.<sup>55</sup>

**North Dakota:** In North Dakota, the publication must have a regular and continuous circulation of at least one year, have at least one hundred fifty regular subscribers, have complied with all requirements for a periodical class mailing permit, be nonsectarian, and be printed in English.<sup>56</sup> As in Minnesota, an owner or publisher of a legal newspaper must send a copy of each edition to the state historical society.<sup>57</sup>

The newspaper publishing the notice is also required to post the notice on a statewide website maintained by the North Dakota newspaper association.<sup>58</sup> If the newspaper maintains its own website, the newspaper must also post the notice to that website in a place that is free and open to the public.<sup>59</sup> The official newspaper of each county is selected every four years by the qualified voters of the county at the general election, starting in 1978.<sup>60</sup>

**Wyoming:** Wyoming statute 18-3-519(a) requires a newspaper to have regularly published at least one issue each week for a period of at least fifty-two consecutive weeks prior to the first publication of a legal or other notice, have a paid circulation of at least five hundred, and that the newspaper is at least ten inches by twelve and one-half inches in size.<sup>61</sup>

Section 18-3-519(b) states that the requirements under § 18-3-519(a) do not apply in counties where no newspaper has been regularly published for fifty-two consecutive weeks, where there is only one newspaper in the county, or where no newspaper meets the requirements listed in § 18-3-519(a).

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<sup>51</sup> MINN. STAT. 331A.02, sub. 1(d) (2022)

<sup>52</sup> MINN. STAT. 331A.02, sub. 1(g) (2022)

<sup>53</sup> MINN. STAT. 331A.02, sub. 1(g) (2022)

<sup>54</sup> MINN. STAT. 331A.02, sub. 5

<sup>55</sup> Nebraska Revised Statute 25-523

<sup>56</sup> North Dakota Century Code 46-05-01

<sup>57</sup> North Dakota Century Code 46-05-01

<sup>58</sup> North Dakota Century Code 46-05-09

<sup>59</sup> North Dakota Century Code 46-05-09

<sup>60</sup> North Dakota Century Code 46-06-01

<sup>61</sup> WY Stat § 18-3-519 (2022)



## Current Issues

One contemporary issue for legal notice is the role of the internet in the publication process. In South Dakota, if a legal notice is required to be published in a legal newspaper, the newspaper must post the notice on a statewide website that is maintained as a repository for legal notices. The newspaper must also post a link to the statewide website on the newspaper's website homepage if the newspaper maintains a website. This link must be free to the public.<sup>62</sup>

In the 2023 Legislative Session, SB 80 attempted to amend the circulation requirements found in SDCL 17-2-2.2 to allow newspapers that do not meet the minimum paid circulation to meet the requirements for designation as a legal newspaper if that newspaper "maintains a minimum of two hundred paid online subscribers" and distributes "an associated print edition at least fifty weeks a year with a circulation of at least five hundred copies regardless of whether the print edition is made available to the public for a paid subscription or for free."<sup>63</sup>

Newspapers and online platforms each have their own advantages and drawbacks. Newspapers, much like a brick-and-mortar shopping establishment, are more conducive to idle browsing. Reading through the legal notices section of any legal newspaper provides information that a person might not have been previously aware of. However, the formatting limitations imposed by the space allowed by a physical newspaper can make casually browsing through the legal notices section of any paper difficult.

A website is different. The digital format of the internet provides a space for the notices that is not constrained by physical limitations. At the same time, because all the information is sequestered behind a series of website links, this format is less conducive for browsing, and requires the person to have some previous knowledge of what they are searching for.

## Conclusion

Each form of providing notification seems to be necessary, at least for now. For all its ubiquity, the internet is not readily accessible at all times or in all places. There are places where high-speed internet is not available. There are also generations of Americans who do not regularly access the internet, even if it is available, but still regularly read newspapers. At the same time, there are also generations of Americans who do not read newspapers and receive all of their information from the internet. Social media is able to disseminate information quickly, but a permanent, reliable, and official depository of information may still be necessary to ensure that the information being disseminated remains accurate. As technology continues to develop, the question of how to most effectively notify those persons who need notification will continue to evolve along with it.

The publication of legal and other official notices is vital to the functioning of a free society. A review of the requirements of states that border South Dakota shows that there are similar requirements that apply to the publication of legal notices. As the newspaper industry evolves to meet contemporary and future economic circumstances, knowing what is required for a newspaper to publish legal or other official notices facilitates the discussion for future legal notices that considers the needs of the people of the state of South Dakota.

This issue memorandum was written by Jacob Carlson, Research Analyst, on November 14 2023, for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.

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<sup>62</sup> SDCL 17-2-1

<sup>63</sup> SB 80, § 1(2)

