



West Virginia Legal Advertising Check list

(May 1, 2010 - West Virginia Press Association)

Background

Every state and the federal government requires that federal, state and local governmental agencies, as well as private sector businesses and even individuals in certain circumstances publish Legal Advertisements. In West Virginia the law setting forth the basic principles and requirements of Legal Advertising begins with Section 59-3-1 and continues for several sections thereafter. There are more than 400 other statutes which require the publication of specific Legal Advertisements. In addition, there are numerous situations in which the federal government requires the publication of Legal Advertisements for “Public Notices”).

Rates

Rates which qualified newspapers may charge for Legal Advertisements are set by the state Legislature. These rates are based on the paid circulation of the qualified newspapers. Rates in effect now, May 1, 2010:

<u>Paid Circulation</u>	<u>Per Word Rate</u>
Less than 1,000 circulation	7 cents per word
1,001-5,000	11.5 cents per word
5,001-10,000	12 cents per word
10,001-29,999	13 cents per word
30,000 and over	14 cents per word

The 75% rule

The rates cited above apply to the First publication of a particular Legal Advertisement. If the Legal Advertisement is a Class II (meaning it must be published once each week for two successive weeks), for the second publication the newspaper may charge no more than 75% of the cost of the first publication cost. Thus, if the first week’s publication cost was \$10, the second publication would be billed at \$7.50, or a total of \$17.50 for both weeks.

This 75% Rule applies also to all subsequent publications of the same Legal Advertisement, as in a Class 111 (once each week for three successive weeks).

Federal Legals

There are no limitations set for the publication of legal notices required by the federal government.

How to publish Legal Advertisements

The law requires that Legal Advertisements be published “in continuous columns” and on successive pages - whenever practical. In other words, keep all legal ads together - if you can. If the press configuration requirements of a particular issue won’t let you keep all legals together, (when the positioning of ads with process color or the page position of full page ads, for example, makes you split up the legals), then you don’t have to run them all together.

However, the West Virginia Press Association recommends that the location of legal ads be listed in Page One indexes - just like the locations of other high readership items are listed.

Charging by the Inch:

Here are some points to remember:

- The law (Section 59-3-1, et seq.) says legals are to be charged by the word, with the stipulation that legal ads “not set solid” may be charged “as if set solid.” On the basis of 84 words to the single column inch in 6 pt type and 54 words to the single column inch in 8 point type and any other size type in proportion.

- Several years ago a select WVPA committee of senior publishers looked into the situation and recommended the following process:

1. Set a policy that all legal ads are to be set in a particular typeface, size, leading, setwidth etc. (For example: helvetica, 8 point on 9 point leading, with 100% setwidth, minimum/maximum word spacing of 100% and 150%, and minimum/maximum letter spacing of 0% and 25%. Also, the standard width of one-column would be specified. (If any of these specs change, the word count must be recalculated.)

2. Measure samples of legals set by these specifications and establish a reliable, accurate number of words per inch yielded there from.

3. Multiply the number of words your method gets per inch by the current rate for your circulation bracket. (Example: 50 words per inch for 4,000 - circulation paper would yield [50 times 11.5 cents]= \$5.75 per inch for first insertion; \$4.11 per inch or the second and subsequent insertions.)

4. Thereafter, merely measure all legal ads and bill accordingly, applying your per inch rate.

5. However, keep in mind that invoices for legal ads should be stated in terms of words per inch. Merely use your word county formula (50 per inch, as per above) and convert your total inches back into words. (For a 10 inch legal ad, the bill for our mythical paper above would specify “500 words @ 11.5 cents per inch = total cost of \$57.50.”)

This means that if the first (May) delinquent tax list for the county in which the newspaper cited in No. 5 is published required three full pages of space and the newspaper had a 21.5- inch page depth and ran legals in six columns, the total first publication cost would be: \$2,225.25 (that's 21.5 inches times 6 columns = 129 inches per page; times 3 pages = 387 total inches; times \$5.75 per inch = \$2,225.25 for the 19,350 words @ 11.5 cents per word = \$2,225.25.

Affidavits of Publication

Newspapers are required to provide notarized Affidavits of Publication to prove the publication of certain legal advertisements.

Posting of Legal Ads

In certain circumstances, it is required that Legal Divertissements be “posted” (usually in the **2**

county courthouse), in addition to being published.

Annual Affidavit of Circulation

State law requires that all “qualified newspapers” file with the Secretary of State’s Office, “on or before November 1” of each year an “Affidavit of Circulation.” This form is available from the Secretary of State’s Office (and, usually, from WV Press). The average (for the past 12 months) paid circulation sworn to in this affidavit controls the legal ad rate a newspaper may charge for the fiscal year beginning on the subsequent July 1. Failure to file this form means that the newspaper can charge no more than the rate charged by a newspaper with less than 1,000 paid circulation, regardless of the newspaper’s actual paid circulation.

At the same time each year, publishers are required to notify their local governing bodies (county commission, city recorder [if in an incorporated municipality] and school board) of the legal advertising rate their newspaper(s) will be charging for the next fiscal year (beginning July 1 of the following year).

Some Definitions

Class: The number of times (successive weeks) that a Legal Advertisement must be published. Thus, a Class 1 legal ad must be published one time; a class II twice (once a week for two successive weeks), and so on. Whenever a “-O” appears, as in a “Class II-O legal advertisement,” this means the legal ad must be published in “newspapers of opposing politics” in the publication area, if the publication area has two or more newspapers of opposing politics.

Publication Area: Each statute requiring the publication of a legal advertisement typically specifies the “publication area.” Often the Publication Area is the county in which the governmental agency is located, or the county in which a particular public project will be developed. Sometimes the Publication area is a particular municipality, or a group of counties or the entire state.

Qualified Newspaper: State law sets forth certain requirements that a newspaper must meet to be “qualified” to publish Legal Advertisements. These include, but are not limited to:

- Be published in West Virginia. (The law says a newspaper is “published” where it is first “placed in circulation” - not where it is physically printed.)
- Be published at least weekly frequency, for at least 50 weeks each year, at a frequency as stated in the newspaper’s mailing permit. (This means the newspaper must hold a Periodicals Mailing Permit from the U.S. Postal Service.)
- Have bona fide paid circulation.
- Include news of interest to the general public.
- Have been in publication at least one year prior to publishing Legal Advertisements.
- Have a name or title and consist of at least four pages.
- Have an actual circulation throughout the publication area “large enough to give basis for a reasonable belief that publication of a legal advertisement in the newspaper will give effective notice to the residents of the publication area.”