

Utah battles public notice legislation

By Joel Campbell

SALT LAKE CITY—Call it the tale of two bills in Utah’s 2011 Legislature. One restored public notices to all newspapers and a newspaper-controlled website while a second severely curtailed access under the state’s open records law.

During its 45-day session, which ended the second week of March, the Utah Legislature reviewed and passed a bill, SB85, which rolled back a public notice law enacted two years earlier. The earlier bill, which surprised newspaper publishers during the 2009 session, had removed mandatory public notice from newspapers in Utah’s urban counties after 2012 and allowed notices to be posted on a centralized website. Government entities in smaller counties would have been required to continue to print legal notices in local newspapers and the statewide website.

Combined with elements of the earlier legislation, the results of SB85 are the following:

I Requires all public notices to be placed in newspapers and on a website created by the joint efforts of Utah newspapers. In practice, newspapers upload the legal notices to the website.

I Requires that all newspapers charge an “average rate” of all advertising calculated on an annual basis to protect against gouging.

I Enshrines as Utah policy a “two-track system” of public notice recognizing that audiences of both newspapers and the Web want and need public notice. Most lawmakers now support the idea that public notice should not be an either/or proposition. If they truly want the best public notice, they will tap all available avenues for public notice.

I Codifies the idea that a centralized public notice site is far preferable to posting on disparate websites operated by state, county and local agencies.

I Establishes the preference for a third-party legal notices website operated independently by Utah’s newspapers. The public opinion poll showed that Utahans continue to support third-part legal notice.

I Lawmakers also appeared to support continued expenditures for public notices, despite complaints about cost. The survey helped show that a high percentage of the public supports spending tax dollars for legal notices.

The story of how Utah newspapers turned the 2009 bill around is an interesting one. After the contentious 2009 legislative session, the Utah Press Association invited the legal notice bill’s sponsor, Sen. Steve Urquhart, R-St. George, to speak at the association’s convention. There, he said, he started to better understand the needs of Utah’s newspaper readers. He later agreed that the state was not ready for Web-only newspaper notice.

Bolstered by a UPA-funded public opinion poll, which showed residents were split on their preferences for public notice in newspapers and on the Internet, Urquhart agreed to sponsor SB85. The creation of the successful utahlegals.com by the press association during 2009-10 also helped convince Urquhart

to sponsor the bill. The bill was not without its critics, but strong lobbying efforts by publishers across the state helped ensure majority votes in the both Utah House and Senate.

Although SB85 passed quietly in the waning hours of the legislative session, another bill HB477 has erupted into a loud debate about Utah's public records law. To say the voters are angry with HB477 is an understatement.

At press time, signatures for a citizen referendum to repeal the law were under way. Newspapers across the state had running full-page ads against the measure. At least three daily newspapers ran rare front-page editorials asking for Utah Gov. Gary Herbert to repeal the law, which he refused to do. Lawmakers were ready to convene a special session to "repeal and replace" the law, while legislative leaders convened a 22-member working group to study the issue. Citizens still remain suspicious of the governor's and lawmakers' handling and subsequent reaction to the law.

HB477 was heard in the last possible House Committee hearing, with only 24-hour notice to the UPA and open government advocates. Even then, public comment was limited as it initially passed both the House and Senate with veto-proof margins. Support has been steadily unraveling as lawmakers jump ship and pledge to repeal the law.

The bill, among other things, makes all legislator text messages and other electronic communications off limits to the public. It also allows government to charge overhead costs to respond to records requests. The legislation strips the records law of its intent language, which weakens 20 years of case law. Lawmakers continue to make outrageous claims including a claim that constituents' e-mails will show up on the front page of newspapers. Lawmakers also say that the new law would help curtail journalistic "fishing expeditions," which waste taxpayer resources.

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