

Public notices more likely to be read in ink

BY STEVE KEY

Public notice advertising is the often-neglected piece of the three Indiana statutes that protect the public's right to know what its government representatives are doing or contemplating.

The Open Door Law requires governing bodies in Indiana to meet in plain view. The burden is on a government agency to find a statute allowing it to close the doors on the public.

The Access to Public Records Act presumes that records of governments can be inspected and copied by anyone. Again, the burden is on the government agency to find a statute that would allow or require it to keep a record secret.

The Public Notice Advertising Law requires state and local government agencies to publish in local newspapers information about actions taken or about to be taken, so that the public has an opportunity to voice its opinion with those elected decision-makers.

By early September, townships, school districts, cities, towns, counties and various other entities published their proposed budgets for 2012 and the date of the public hearing when the public can ask questions about the proposed spending by these government units.

Later in the year, school districts will publish their annual performance reports, which chart the academic measurements prescribed by the Indiana legislature for each school building in the state.

That's only a sampling of the notices local and state government units are required to publish.

To control publication costs, the Indiana General Assembly since 1927 has limited the amount newspapers are compensated for publishing these notices.

The larger the circulation of the newspaper, the more disparate the rate for government is compared to the market rate a newspaper can charge its other advertising customers.

Despite this state-mandated discount, lobbyists for local governments yearly decry the cost of public notice advertising.

Rather than embrace the concept of transparency, they call public notice advertising an unfunded state mandate.

They argue the notices should be posted on government websites rather than published in local newspapers.

They argue that provides greater transparency. But their arguments run counter to the desires of citizens. When last surveyed in 2004, 73 percent of Hoosiers said local and state governments should be required to publish public notice ads regularly in newspapers.

Told in a follow-up question that government units must

pay for such notices with tax dollars, there was no drop off in the percentage (73 percent) who continued to say publication was the proper way to give notice.

These figures haven't necessarily changed in the past few years despite the proliferation of wireless access, mobile apps and tablet computers, according to recent surveys in other Midwest states.

Last year, the Wisconsin Newspaper Association found through a survey that 78 percent of Wisconsinites believe state and local government should

be required to publish public notices in the newspaper on a regular basis.

Forty-one percent said they were "not likely at all" to go to a government website to find public notices.

Also last year, the Michigan Press Association found that 61 percent of Michigan voters opposed a plan to allow government agencies to post public notices on a government website rather than publishing them in newspapers.

The Michigan survey showed that nearly 70 percent of voters rarely visit a government website.

When asked what impact moving public notices from newspapers to the Internet

would have, 62 percent of Hoosiers in the 2004 study said they would see them "much less often" or "less often."

While the Internet is a valuable tool for finding certain types of information, there are some key deficiencies when it comes to government websites as the primary location for public notices.

They're not an independent entity with a vested interest in seeing that the notices are posted properly or at all.

Currently, the state Board of Accounts reports that dozens of government units fail to file required forms listing what public employees are paid.

Why would we expect the compliance level on public notice posting to be any better? There isn't an easy way for the public to verify at a later date whether a posting on the Internet was done when required.

Likewise, the Internet can't be archived in the same way as the printed page.

In any community, I expect one could visit the local library and access newspapers spanning several decades of publication.

You can see what was published in that county for any given week, whether it's a public notice, an obituary or a news story.

Newspapers continue to be the best forum for government entities to reach citizens with public notices and other information—by a long shot.

STEVE KEY is executive director and general counsel for the Hoosier State Press Association. This editorial first appeared in the HSPA's bulletin. Reprinted with permission.

