

# **Public Notice**

## *Resource Center*

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### **Public Notice Resource Center Urges Affirmation of Newspapers for Public Notice; Criticizes Tennessee Open Meetings Notice Requirements**

Tennessee newspapers are the most viable medium for public notices in the state, but the citizens cannot be fully informed if the notice requirements for public meetings do not mandate sufficient information to be meaningful, the Public Notice Resource Center (PNRC) told the Tennessee Court of Appeals for the Middle District of Tennessee in February.

PNRC filed an amicus brief in *Fisher v. Rutherford County Planning Commission*, a review of an appeal by a citizens group, who protested the building of an Islamic Center in a rural area near Murfreesboro, TN. The notice of the Planning Commission's meeting to review the center's proposed site plan was published in the *Murfreesboro Post*, but did not provide an agenda, nor give any indication that the Commission planned to act on the center's proposal.

A trial judge found that the public notice was insufficient, but his focus was on the use of the newspaper. In a lengthy opinion, the Chancery Court said the county should have used its own website and its public television channel to announce the meeting.

PNRC took no position on the challenge to the mosque or on the choice of newspapers used. Rather, it directed the court's attention to the propriety of using the newspaper and the importance of mandating a notice with meaningful information. It provided the court with a list of other states' statutes involving public notice of land use matters.

"The use of local newspapers is widely practiced in other states where the public interest is served by inviting citizen participation in land use policies," the brief stated. It criticized the Chancery Court's finding that when controversial matters come before a public body, the newspaper as a medium is inadequate. The problem was in the notice itself, PNRC said.

"Broader dissemination of the information published in the *Murfreesboro Post* would have achieved little to inform the public if the content of the notice was uninformative....(i)t would be useful for the Court to point out this large gap in the public notice statute to encourage the legislature to repair it."

PNRC pointed out the values of using newspaper public notice: the accessibility and trustworthiness of a medium that 72 percent of the public rely upon for local news; the medium's independence from the political body; and the availability of authentication and archiving.

The principal authors of the brief were Douglas R. Pierce, King & Ballou of Nashville, TN; and Tonda Rush, counsel to PNRC. Assisting in the brief was David Placher, a Maryland attorney and former executive director of PNRC.

PNRC President Bradley Thompson II, publisher of the Detroit Legal News, Detroit, MI, said the amicus brief was an unusual undertaking for the small non-profit.

"We were very disturbed by the Chancery Court's implication that if a matter is controversial, you should trust government-owned media to disseminate the public notice. That finding turns the whole idea of public notice upside down. The fact that the Planning Commission usually posted its agenda on its website, but did not do so before the controversial meeting in question should be sufficient evidence that the right way to inform the citizens is through an independent medium. The newspaper has been the trusted vehicle for public notice since the nation's founding. There is no reason to depart from the wisdom of using a newspaper. The problem in this case was that after you read the public notice, you still didn't know enough to decide whether you wanted to get involved.

So the lesson for us was twofold: pick the right vehicle for your notice, and then make the notice worthwhile. The county followed its own tradition in choosing a newspaper, and we think the newspaper is the right vehicle. But it did no more than the law required in forming the content of its notice. That was where the citizens of Tennessee were ill-served. We are urging the court to uphold the county's action and to make a strong suggestion to the legislature that better open meetings notices are needed in the state."