WEST VIRGINIA CODE CHAPTER 59 ARTICLE 3

WV Legislature

§59-3-1. Definitions and general provisions.

(a) As used in this article, elsewhere in this code or in any other provision of law:

(1) "Legal advertisement" means any notice, advertisement, statement, information or other matter required by law or court to be published.

(2) "Publication area" means the area or areas for which a legal advertisement is required by law or court to be made.

(3) "Once a week for two successive weeks" means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication.

(4) "Once a week for three successive weeks" means three publications of a legal advertisement in a qualified newspaper occurring within a period of twenty-one consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication and with at least an interval of six full days within the period between the date of the second publication and the date of the third publication.

(5) "Publication date" means the date on which a qualified newspaper is first placed in circulation.

(6) "General circulation" means not only a newspaper meeting the other qualifications specified in subsection (b) of this section and circulated among and of interest to the general public in the area in which it circulates, but also a newspaper meeting said other qualifications, the actual circulation of which throughout the publication area is 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.

(b) Wherever the term "qualified newspaper" or "qualified newspapers" is used in this article, or the term "newspaper" or "newspapers" is used elsewhere in this code or in any other provision of law in connection with a legal advertisement as herein defined in this section, the terms shall be taken to mean only a newspaper or newspapers, as the case may be, published (unless otherwise expressly provided) in the State of West Virginia and which meet the following qualifications:

(1) Any newspaper shall be of regular issue and must have a bona fide, general circulation in the publication area. A newspaper is considered to be of regular issue if it is published regularly, as frequently as once a week, for at least fifty weeks during the calendar year as prescribed by its mailing permit; and has been published for at least one year immediately preceding the date on which the legal advertisement is delivered to the newspaper for publication. A newspaper is considered to be of bona fide, general circulation in the

WV Legislature

publication area if it meets the definition of "general circulation" as defined in this section and is circulated to the general public at a definite price or consideration.

(2) Any newspaper shall bear a title or name, consist of not less than four pages without a cover, and be a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

(c) Notwithstanding any other provision of this code or law to the contrary, a qualified newspaper shall for all purposes be considered to be published where it is first placed in circulation.

WV Legislature

§59-3-2. Classification of legal advertisements; designation of newspapers; frequency of publication; posting; manner of publishing; publication of notices for the state and its agencies.

(a) A Class I legal advertisement shall be published one time, a Class II legal advertisement shall be published once a week for two successive weeks, and a Class III legal advertisement shall be published once a week for three successive weeks in a qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be published in a qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door of the county courthouse, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(b) A Class I-0 legal advertisement shall be published one time, a Class II-0 legal advertisement shall be published once a week for two successive weeks, and a Class III-0 legal advertisement shall be published once a week for three successive weeks, in two qualified newspapers of opposite politics published in the publication area; or if two qualified newspapers of opposite politics are not published in the publication area or if two qualified newspapers of opposite politics published in the publication area will not publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be published in one qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be published in one qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in §59-3-3 of this code, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door thereof, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(c) A legal advertisement may be published in a qualified newspaper published on any day of the week except Sunday.

(d) All legal advertisements shall be published together in continuous columns on one page of the newspaper publishing them under a general heading styled “Legal Advertisements”,

unless the number or size of the legal advertisements requires the use of more than one page, in which event the legal advertisements shall be published as near as practicable in continuous columns on as many pages as necessary under the same heading as above required.

(e) Beginning July 1, 2022, any and all legal notices, advertisements, publications, statements, or whatever kind or character required to be published by the State of West Virginia, or its agencies, shall be made at the frequency and in the manner prescribed by subsection (a) or (b) of this section, and shall also be published on a public notice database to be created and maintained by the State Auditor.

(f) Pursuant to subsection (e) of this section, the State Auditor shall propose rules and emergency rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code relating to the creation and maintenance of a public notice database available on the State Auditor's website, the establishment of forms and procedures for submission of information to the State Auditor by the State of West Virginia and its agencies, providing a method of verifying publication of the notice, and for other procedures and policies consistent with this section.

(g) The State Auditor shall report annually to the Joint Committee on Government and Finance regarding the public notice database established by this section, which report shall include information on the extent of the use of the public notice database on the State Auditor's website, the financial impact resulting from the use of the public notice database, and any recommendations for additional enabling legislation relating to the public notice database.

WV Legislature

§59-3-3. Rates for legal advertisements; computation; filing affidavits with Secretary of State.

(a) The rates which a publisher or proprietor of a qualified newspaper in West Virginia may charge and receive for a single or first publication of any legal advertisement set solid depends on the bona fide circulation of the newspaper, as follows:

(1) Four cents per word if the qualified newspaper has a bona fide circulation of less than one thousand, except as provided in subdivision (1), subsection (a) of this section;

(2) Eight and one-half cents per word if the qualified newspaper has a bona fide circulation of one thousand to five thousand;

(3) Nine cents per word if the qualified newspaper has a bona fide circulation of more than five thousand but less than ten thousand;

(4) Ten cents per word if the qualified newspaper has a bona fide circulation of more than ten thousand and less than thirty thousand; or

(5) Eleven cents per word if the qualified newspaper has a bona fide circulation of thirty thousand or more: Provided, That on July 1, 2003 and on July 1, 2004 and on July 1, 2005 the allowable rate per word in each of the classifications of qualified newspapers with reference to circulation as set forth in this subsection shall, for each classification, increase 1¢ per word over the prior year's rate.

(b) In computing the number of words in a legal advertisement, not set solid, the basis is the size of type in which legal advertising is set by the qualified newspaper making the publication and shall be computed at the legal rate as though the matter were solid type, that is to say, on the basis of eighty-four words to the single column inch in six point type and fifty-four words to the single column inch in eight point type and any other size type in proportion.

(c) In determining the cost of a legal advertisement which is to appear more than once in the same qualified newspaper, the cost for the first publication shall be computed as specified in subsections (a) and (b) of this section and the cost of the second and each subsequent publication shall be seventy-five percent of the cost of the first publication computed as specified in subsections (a) and (b) of this section.

(d) The average bona fide circulation stated by each qualified newspaper in the statement filed by the newspaper with the United States post office department in October of each year shall control the rate of circulation classification of the qualified newspaper for the period commencing July 1, of each year until the last day of June of the following year. On or before November 1, of each year, the publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing one year time period commencing July 1, shall file with the Secretary of State an affidavit stating the average bona fide circulation of the

WV Legislature

newspaper during the preceding twelve month time period ending September 30, of each year and shall set forth sufficient facts in the affidavit to show whether the newspaper is a qualified newspaper. The average bona fide circulation stated in the affidavit by each qualified newspaper shall control the rate circulation classification for the ensuing twelve-month period commencing July 1, . Any qualified newspaper for which the required affidavit is not filed on or before March 1 of any calendar year shall be conclusively presumed to have for the ensuing twelve-month period commencing July 1, of such year a bona fide circulation of less than one thousand. At the time a publisher or proprietor of a qualified newspaper files an affidavit with the Secretary of State, as required by this subsection, the publisher or proprietor shall notify the clerk of the county commission and the board of Education of the county in which the qualified newspaper is published of the circulation classification of the qualified newspaper and of the applicable rate for publishing legal advertisements in the qualified newspaper during the ensuing twelve-month period commencing July 1, . If the qualified newspaper is published in a municipality, the publisher or proprietor shall at the same time also furnish the same notification to the clerk or recorder of the municipality.

(e) The rate charged for political advertising appearing in a newspaper at any time or times during the time period commencing thirty days prior to any primary or general election and ending the day following the election may not exceed one hundred five percent of the lowest commercial rate charged by the newspaper in which the political advertising appears.

(f) Nothing contained in this section prohibits qualified newspapers from charging less than the specified rates for any legal advertisement or from charging usual and customary rates for notarizing and producing additional copies of the affidavits and statements required in section four of this article.

WV Legislature

§59-3-4. Proof of publication and posting.

(a) Any qualified newspaper publishing a legal advertisement incident to any type of judicial proceeding or any provision in a deed of trust or contract, or incident to any other case if required by the responsible party placing the legal advertisement for publication, shall make and furnish under oath an affidavit of publication of each legal advertisement published, showing the number of times it was published in the qualified newspaper, the dates of the publications and the cost of the publications. When posting of any legal advertisement is required in addition to publication of the legal advertisement in a qualified newspaper, the posting shall be done by the party responsible for causing the legal advertisement to be published. In any case where any legal advertisement is not required to be published in a qualified newspaper but is required to be posted, an affidavit of the type provided for in this section with respect to posting shall be made by the party who would have been responsible for causing the legal advertisement to be published in a qualified newspaper had it been required.

(b) The affidavit of the publisher or proprietor of a qualified newspaper required by this section, together with a copy of the legal advertisement as published, constitutes prima facie evidence that the legal advertisement was published or published and posted as stated in the affidavit.

WV Legislature

§59-3-5. Mandamus to compel publication.

Any citizen, taxpayer, or the publisher or proprietor of any qualified newspaper entitled by law to have any legal advertisement published in his qualified newspaper, which any county court or tribunal created in lieu thereof, Board of Education, governing body of any municipal corporation, or public officer, shall fail or refuse to make, may have a writ of mandamus to compel such publication, if a qualified newspaper is willing to accept the legal advertisement for publication at the rates prescribed in section three of this article.

WV Legislature

§59-3-6. Political advertisements.

In no case involving the publication of paid advertisements for candidates for political office shall the rate charged by any publisher or proprietor of any newspaper be more than the average rate received by him from private patrons for similar advertising composed of reading matter or photographs and requiring the same amount of space.

WV Legislature

§59-3-7. Criminal and civil penalties.

(a) Any person who publishes a legal advertisement and who knowingly refused to file with the Secretary of State the affidavit for the fiscal year in which the legal advertisement was published, as required by the provisions of section three of this article, or to make and furnish the affidavit required by the provisions of section four of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $1,000.

(b) Any person who shall knowingly file a false affidavit required by the provisions of this article shall be guilty of false swearing, and, upon conviction thereof, shall be punished as provided for that offense.

(c) Any qualified newspaper which shall knowingly charge any rates in excess of those specified in section three of this article, and any newspaper which shall knowingly charge any rates in excess of those specified in section six of this article, as the case may be, shall be liable to the person damaged thereby for treble damages.

WV Legislature

§59-3-8. Construction of article; repeal; subsequent legislation.

This article is intended to standardize and make uniform certain areas of the law relating to newspapers, qualified newspapers, legal advertisements and publication of a newspaper or qualified newspaper, and to this end all other provisions in this code or elsewhere in law pertaining to such subjects shall be construed so as to conform to and be consistent with the pertinent provisions of this article. As to those provisions in this code or elsewhere in law which are so inconsistent with the provisions of this article as to preclude such construction, such other provisions, whether general or specific in character, are hereby repealed to the extent of such inconsistency. No subsequent legislation shall be held to supersede or modify the provisions of this article except to the extent that such legislation shall do so specifically and expressly. The provisions of this act shall not affect the publication and/or posting of any legal advertisements commenced, in process or completed prior to the effective date of this act.

WV Legislature

§59-3-9. Severability.

If any provision of this act or the application thereof to any person or circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the act, and to this end, the provisions of this act are declared to be severable.

WV Legislature