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Why Legal Advertising?

By **ROY O. SAMSON***

Just why do we have statutes requiring "legal advertising," or "public notices"? I sometimes wonder if the lawyer who drafts a public notice and the editor who publishes it have any better appreciation of the essential function of legal advertising than the unthinking reader who can't understand why the back pages of his newspaper are cluttered with such stuff. I will endeavor to outline for you the indispensable part played by legal advertising in the operation of our government and the administration of our laws.

The statutes of the State of Colorado require newspaper publication of certain notices incident to private litigation or the administration of public office.

Legal advertisements fall into two general classes in accordance with the purposes which they serve. One is the PUBLIC ACCOUNTING NOTICE, and the other is the WARNING NOTICE.

The public accounting notice is the published report of the fiscal transactions or legislative work of governmental bodies, or individuals who are discharging a public trust. This type of notice is the best protection which the taxpayer has against incompetent or unscrupulous public officials. It is also the best protection a public official has against any possible charge of concealment. It is his report of his stewardship.

The warning notice, or notice to persons interested, tells those persons that some action is about to be taken or proceeding instituted which will affect their interests. Such notices constitute the best guaranty which the individual citizen has of the security of his property and his constitutional rights.

The value of the public accounting type of legal advertising is usually readily apparent to anyone whose attention is directed to it. Such notices as city council proceedings, county commissioners' proceedings, school board reports, bank statements, treasurers' reports, etc., are included in the public accounting group.

No public official will spend money like a drunken sailor if a list of his expenditures is going to be published at the end of the month for all of his constituents to look over, and no dealer "on the inside track" is

*Of the Denver bar. (Courtesy of Henry L. Woodfender, Jr., of the Michigan bar.)

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going to sell the county, municipality, or school district a bill of goods at an exorbitant price when every competitor he has will go over the list of expenditures with a fine tooth comb the minute it is published.

I do not mean to say that the published proceedings required by law, relating to public affairs, have completely stamped out incompetency and malfeasance in public office, but I do say that such legal advertising is the cheapest and most effective insurance the taxpayers can buy on the ability and integrity of their elected officials.

If there is any fault to be found with legal advertisements of this type it is that there are too few of them. Many offices of a public nature which are not now required to publish reports of their activities, might very well be required to do so. Some of the reports now required might well be required in more detail, with additional benefit to taxpayers.

Condensing reports of public proceedings into a form shorter than required under the statutes satisfies neither the law nor the public. When, or if, such unnecessary condensations are made there is always the grave danger that suspicion might be aroused. The public wants itemized reports more than it does lump sum reports.

Some may think that the sole reason for legal advertising is to provide revenue for the newspaper and that no useful purpose is served. But you and I know that the legislature doesn't pass laws just for the sake of playing Santa Claus for Colorado newspaper editors.

Into the second general class, the warning notices, fall many different kinds of advertisements legally provided for in many different kinds of proceedings. Public Trustee's Sale, Sheriff's Sale, Estate Matters, Quieting Titles, Divorce Summons, and many others are included in this type of proceedings. I will not attempt to discuss each of the notices in this category here.

However, there is in general a two-fold purpose behind them. First, to safeguard the defendant in any litigation by requiring the plaintiff to give him notice of the institution of suit; personally if possible, if not, then by publishing a notice in a newspaper of general circulation in the community, provided such newspaper is a legal newspaper under the laws of Colorado. Second, to provide for the plaintiff a means of exercising his legal rights against the defendant when the latter cannot possibly be served personally.

As a safeguard to the defendant the legal advertisement is indispensable in our law. The individual citizen's inherent right to security in his person and property is universally recognized in civilized society. It is guaranteed in the fifth and fourteenth amendments to our Federal Constitution and in our own State Constitution in the following language: "No person shall be * * * deprived of life, liberty, or property,

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without due process of law." That is unquestionably the most sacred guaranty in our fundamental law. In present-day complex society the statutory "legal notice" is most important in effectively preserving that guarantee.

"Due process of law" normally requires the plaintiff personally to serve the defendant with notice of his claim so that the defendant may be given his day in court.

But today it is frequently a practical impossibility to find the defendant to give him a personal notice and in such cases the statute requires the plaintiff to do the next best thing, which is to publish the notice as widely as possible in the community where the defendant may hear of it. Surely this next best thing, publication, is vastly better than to permit the plaintiff to take the property without any notice whatever to anyone. If the statutes did permit such a taking they would clearly violate the "due process" clause in our fundamental law.

The person who usually "kicks" about the necessity for the "legal advertisement" and its cost is the plaintiff.

Too infrequently does he realize that if it were not for the substituted service of notice which is made available to him by statute, the legal advertisement, his hands would be tied when he came to prosecute his right of action against a defendant unless he could find the defendant and serve him personally. In many cases this would be impossible—in others very slow and very expensive.

The plaintiff should be most thankful for the statutory provision for service by publication.

I have attempted to show, in a general way, that newspaper advertising performs a very important function in our legal system.

It safeguards the pocketbooks of our taxpayers with an effectiveness that could be accomplished in no other way; it furnishes the only means of fulfilling in a practical way the constitutional guaranty of security to every citizen.

I am sincerely of the opinion that so-called "legal news" is just as important in the effective preservation of our constitutional guaranties of security as the work of the fire department in the preservation of our homes.

I think you have a great opportunity for service to your respective communities by obtaining more adequate protection for our citizens through more widespread use of legal advertising.

There is just one more thing I wish to add—and perhaps it is the most important of all. The whole purpose of legal advertising is prosti-

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tuted unless it is placed in a legitimate newspaper with a bona fide general circulation in the community where it is published. The proper use of legal advertising is peculiarly a joint responsibility of the editors who publish such advertising and the lawyers who draft and place it for publication.

Fortunately for Colorado, there are some farseeing regulations and definitions relative to what constitutes a legal newspaper in which legal advertisements can be published. These regulations are a safeguard for all those who may be interested in such legal publications because they make it impossible to hide or bury legals. The public is protected.

JOURNAL OF THE AMERICAN JUDICATURE SOCIETY STARTS NEW CIRCULATION POLICY

Announcement to All Readers of This Journal

For nearly three years every member of the American Bar Association has received this *Journal*. To all of these members it has been sent without charge to the recipients. This increased circulation became possible through the allocation of bar members dues to the extent of ten cents per year as a subscription price, and the fund so created amounted to about forty per cent of the cost of publishing and mailing six numbers annually. The remainder of the cost was borne by the Society, which is mainly financed through its membership dues.

The arrangement has been very highly appreciated by the officers and the members of the Judicature Society. This appreciation was evidenced by an increase in pages and cost of publishing. At least forty-five per cent more pages of text have been printed.

This number is the last under the cooperative arrangement. There has been disappointment from the fact that the American Bar Association membership has not increased as much as was expected. The association's duties, or obligations, increase inevitably. It must look to membership dues for its existence. Its rules for admission would not interfere with reception of more members than have been enrolled at any time. The slow growth is of course attributable in part to a general reduction in the demand for lawyers' services, but some share must be allotted to the fact

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that too many practitioners have not learned to appreciate the value of the services rendered by the association. Not to have a national bar association so organized as to register authentic bar opinion and to represent constituent state and local associations would be unthinkable. This representation has considerably increased the cost of operation without having adequately produced new revenue. The board of governors has struggled with an obdurate problem and has been obliged to reduce expenditures wherever possible.

Until three years ago the *Judicature Society Journal* had been sent free for twenty years to every lawyer who wished to receive it. The Society now reverts to that primary policy. On the last page of this issue readers who are not members of the Society (paying dues of five dollars annually) will please sign their names to a coupon and mail it to the Society's office.¹

There is nothing novel about a free circulation of this *Journal*. Nearly forty years ago the Short Ballot Organization made its great contribution to government by free circulation of information concerning ideas and progress in municipal government. Professor Woodrow Wilson was the honorary chairman of that organization, and Richard S. Childs, the father of the city-manager form of government, was the active worker. To Childs, more than to any other one person, may be attributed the values that have flowed from efficient government in hundreds of cities. It was his innovation and success that led to the creation of the *Judicature Society*, and it was to Charles F. Ruggles that credit belongs for financing the Society during its first twelve years.²

In 1930 this *Journal* reached a top circulation of over 10,000 copies, being for some time assisted by certain state and local bar associations that paid the full cost of copies for their members. The time came when no bar association could afford this assistance, but never has there been a time when any person has been refused a place on our mailing list, and never a time when the circulation has fallen below five thousand copies.

The return to the earlier basis of distribution has the advantage of extending *Journal* circulation to many bar association executives and faithful members who have not belonged to the national association. It is earnestly hoped that the change will not reduce the number of ABA members who have been reading the *Journal*.

¹During the past three years there has been a subscription price of twenty cents per year, as required for the second class postal rate. Those who have paid in advance will have their money refunded on request.

²For a brief history of the Society, and description of its policies and methods, see article in vol. 20, p. 9, June, 1936.