

**Testimony In Support of HB 677
from the Mid-Atlantic Community Papers Association**

**Public Hearing on HB 677 and Legal Advertising Reform
Before the Pennsylvania House Judiciary Committee
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Summary: House Bill 677 updates Title 45 - Legal Notices to reflect market realities that have both evolved and dissolved in the 33 years the current language has been law. It would restore audience lost to closures, consolidation and declining paid circulation. It would restore a competitive pricing environment for those mandated to advertise. It would use the free market to remedy original flaws of construction and corresponding abuses, without new mandates. The demonstrable impacts on both reach and price of legal advertising are clearly expressed in "Exhibit - A" and "Exhibit - B".

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Title 45 inserts itself into nearly every instance of advertising mandated by state law: From the birth of a business to the death of a neighbor with an estate -- and over \$26 million in local government advertising in between.(1) Each of the numerous statutes that compel the purchase of legal advertising rely on Title 45 for the definition of the marketplace, which is a narrow subset of community publishing. As decided in 1976, only pay-to-read publications are legally qualified to publish and bill for official notice.

At the time, "people only read what they pay for," may have made sense as a premise. So should have safeguards for the compulsory consumers in a monopoly created by law. But while most states have provisions to prohibit price gouging -- like setting fixed rates as New Jersey does, or capping rates at commercial levels as Ohio does -- Pennsylvania stands alone with its legislated invitation to charge as much as a publisher can get away with. (2) It's no small wonder that some papers take the state up on the explicit offer.

1 - "Cost Savings on Mandatory Legal Advertising by Local Government Entities," Report of Local Government Commission, LORL and School of Public Affairs at PSU Harrisburg: Based on 2,608 completed surveys, annual cost calculated at \$26,259,325.

2 - Title 45: "shall not prohibit the fixing of definite prices or sums for publishing official and legal advertising...regardless of rates established, fixed, charged or received for commercial, general or other advertising. The purpose of this subsection is to enable newspapers to take into consideration, as elements, when fixing advertising rates or charges, location of the advertisement in the newspaper, the purpose to be served, the character of the advertising, and that a newspaper is entitled to compensation for its readiness at all times to render an advertising service."

That flaw in construction of Title 45 -- giving a privileged monopoly an extra helping of laissez-faire -- has compounded on the backs of rate payers as the exclusive marketplace shriveled in size and scope during the 33 years hence. Just this year, scores of Boroughs, Townships, Authorities and School Districts, along with countless business and citizen legal advertisers, watched their rates skyrocket as Journal Register pulled the plug in nearly two dozen communities. Overnight, these forced consumers had marginal competition reduced to zero competition.

While Journal Register's closings of its weeklies across five counties happened in a shockingly short span of time, the event was in reality only an exclamation point on a broad, constant market trend. Since the enactment of Title 45 in 1976, Pennsylvania has lost 22 paid daily newspapers. The combined circulation of the dailies that ceased publication was over 1.5 million, and that of the remaining has shrunk significantly. During the same span of time, no less than 153 pay-to-read weeklies have also gone away. (3)

But no new publications have been allowed to replace the 175 or more providers lost under Title 45. The standard consequence is legal advertisers paying more to notify smaller audiences than at any time in the modern history of our Commonwealth. There are also extreme consequences, where mandates, monopoly and legalized price-gouging collide. The most shocking example is happening right now in Philadelphia. Court documents and invoices reveal that The Inquirer charges the City of Philadelphia a staggering 63 times more than rates it proposed and are in effect on the other side of the Delaware River. (4) Using the \$3 million annual spending on legal advertising it reported, (5) The Inquirer could actually save the City of Philadelphia well over \$2 million a year by simply giving it the New Jersey rate deal. (6)

3 - The 1976-77 Pennsylvania Manual, Pennsylvania Media: Newspapers, Radio and Television Stations, pp. 885-898; The Pennsylvania Manual Volume 118, c. 2007, Section 9: Pennsylvania Media Listings By County, pp. 48-64; Pennsylvania Newspaper Directory 2009, Pennsylvania Newspaper Association. The actual daily circulation lost to closure at 1976-77 levels is 1,551,084, and using an average 5,000 as a basis, a 765,000 paid weekly circulation loss can be estimated.

4 - In the Spring of 2007, The Philadelphia Inquirer responded to a published Bid Notice and an RFP from Camden County, NJ, and actually underbid rates already set, quite low, by state law. This sparked a legal challenge by the incumbent legal provider, Gannett's Courier-Post, and both papers reported superficially on the "Turf War" aspects, neglecting mention of actual rates on either side of the Delaware: "Cherry Hill, N.J. Courier-Post sues 3 government entities that obtained Phila. Inquirer discounts," The Philadelphia Inquirer, June 28, 2007, Troy Graham, Inquirer Staff Writer. Looking at the NJ Statutes on Legal Advertising, noting that if the scant facts were true, based on the incumbents circulation The Inquirer would have had to underbid \$0.44 per line. Since their published Open Rate is \$17.79 per line, the implausible scenario was mindboggling so I had to reconcile fact v. fiction, tracking down case filings and obtaining actual invoices billed to Philadelphia. Records obtained from Camden County Superior Court in the matter between Courier-Post, Camden Government and The Inquirer explicitly show, by both exhibit and admission, that The Inquirer offered NJ Government \$0.24 zoned and \$0.75 full run for Legal Advertising. And as a cherry on top, it threw in "value added" special sections - two 8 page pull-out tabs free of charge. Then perhaps they weren't billing the City of Philadelphia anything close to their their published Open Rate for Legal Advertising? Incredibly, they're getting full price: Invoices obtained from City of Philadelphia Office of Procurement show, in black and white, that they are billed \$17.79 per line! But they do receive a small discount, having jumped through hoops to set up as an ad agency, they now get the 15% agency courtesy. That brings the rate down to \$15.12, which is still 63 Times the NJ \$0.24, and also 20 Times the \$0.75 full run Jersey Deal.

5 - "Pa. newspapers fight Senate bill on legal ads," The Philadelphia Inquirer, Apr. 30, 2008, Mario F. Cattabiani, Inquirer Staff Writer: "The City of Philadelphia spent more than \$3 million on legal ads in newspapers in 2007, records show. But it's unclear exactly how much is at stake statewide."

6 - Using a very conservative approach, capping total Citywide legal advertising expenditures at \$3 Million, estimating from monthly statements that The Inquirer accounts for over 75% of those costs, that's \$2,250,000. At the 1/63 NJ rate, that would only be billed \$35,714.29...a savings of \$2,214,285. Even at the 1/20 full run Jersey Deal, the bill would only be \$112,500.

We hope the defenders of the status quo, in particular the monopoly incumbents who pride themselves in their watchdog abilities, take an honest look at the bottom line here. These are serious numbers, and in an era of universal budget shortfalls they could translate into lost jobs, libraries and fire stations. More than just money, absolute credibility is on the line if institutions with a financial interest at stake, report on government's waste, fraud and abuse in whole numbers -- but continue to remove dollar signs and hide their own profiteering in the context of mere fractions of budgets. (7)

Legal advertising reform is needed now more than ever. The plight of Philadelphia may be extreme, but scenarios across the state,(8) however modest in comparison, add up collectively to the \$26 million burden to local government, and the uncalculated over charges to all other legal advertisers. We believe the best, and swiftest solution is allowing bona fide competition under Title 45, which is exactly what HB 677 does. Competition obviously worked for Camden, NJ, and it saved the Allegheny County Sheriff \$Millions as well.(9) The majority of legal advertisers are not as fortunate, as robust competition for their business has long since disappeared. Meanwhile, the trends in pay-to-read publishing are irreversible. HB 677 recognizes this simple fact and provides remedy for mandated consumers under Title 45. If enacted, those forced to purchase legal advertising would no longer be hostage to legal advertising markets dissolving at their expense.

7 - Recently, there was a well coordinated barrage of articles and editorials opposing SB 419, Internet-based Legal Advertising, which ran in at least 9 dailies, notably those owned by MediaNews Group, Advance-Newhouse, Community Newspaper Holdings, Times-Shamrock Communications, Gatehouse Media and Journal Register. Every "editorial" I read withheld the well known \$26 Million annual price tag for local government legal advertising -- but each did declare to readers that the costs are miniscule, as rendered in fractions of overall budgets and operations. Most offered horrors of "The Pay Raise" as potential outcomes of modernizing notice -- irony being not one of thousands of stories on that topic ever minimized the "scandal" by framing it in an overall budgetary context.

While it was surely not their intention, the lopsided and frankly deceptive editorials make an even stronger case for free community papers. The noble concerns about costs and access for poor, rural and elderly citizens -- when taken at face value -- amplify the arguments for adding community papers to the shrinking list of current options. What could cost less than free? And what's more accessible than universal home delivery? As for their concerns about "pitting government against private enterprise," the need for an independent third-party publisher and the tangible nature of print -- that's exactly what we do, and note that private enterprise operates best in open, competitive markets.

8 - However petty these might seem, they add in real dollars to real consumers forced to pay the bills. Take the Daily Local News, which is now in a pure monopoly position with the closings of numerous surrounding paid weeklies: They've actually turned proof of publication into a profit center, charging \$19.28 for each Affidavit, 3 Times the high-end state-wide range of \$3-\$6 for this compulsory service. A personal favorite comes from Philadelphia Daily News, which like many daily newspapers has a plethora of separate rate classifications for the same ink, in the same space on the same pulp. They even have a distinct rate for "Adult Phone Lines" which is set at \$6.11 per line. And the corresponding rate for Legal Advertising? \$11.01.

9 - The first hand account of Sgt. Fersch is eye opening: Fed up with being treated like a piggy bank by the dominant daily, which wrote its own Pay Raises at will by way of exorbitant rate hikes, the Allegheny County Sheriff's Office opened a bidding war between the Post-Gazette and the lesser circulated Tribune-Review. They were able to achieve \$1.5 Million in cost savings in the first 6 months of enactment in 2005, and continue to save millions forcing qualified publications to compete for their business. Most communities don't have the bona fide competition they enjoy.

EXHIBIT - A

Legal Notice Cost and Coverage Analysis for Sample Boroughs

PUBLIC NOTICE

Dear Readers, important Legal Advertising Reform Legislation has been introduced in the State House which our paper strongly supports. The measure will finally allow our paper to compete for this mandated advertising, local government to shop around for best possible coverage and price, and also allow citizens to receive this public notice at no additional cost to them. Currently, legal advertising can only be placed in a publication that is purchased.

Recently, the cost of legal advertising was finally tallied in a comprehensive report issued by the Local Government Commission. The study revealed that Local Government entities spend in excess of \$26 Million each year on this advertising. The staggering figure does not even include the cost burdens to sheriffs and their clients, state-level government spending or even the expense to businesses and private citizens. The main reason for the \$26 Million price tag is the Legislated Monopoly currently granted to paid newspapers for legal advertising.

House Bill 677 would break the Legals Monopoly, allowing widely distributed free community papers, with independently audited circulation, to finally compete. On behalf of your fellow readers, local government and our paper, we urge you to call Your Representative at 717-783-0000, and tell them you support Legal Advertising Reform.

Borough of Camp Hill, PA 17011

17011 - Camp Hill	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Camp Hill Shopper	14,153	\$60.40
Patriot-News	5,822	\$287.50

Borough of Annville, PA 17003

17003 - Annville	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Lebanon Area Merchandiser	3,939	\$60.00
Patriot-News	835	\$287.50
Lebanon Daily News	1,265	\$89.70

Borough of Parkesburg, PA 19365

19365 - Parkesburg	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Gap Community Courier	3,014	\$43.60
Philadelphia Inquirer	111	\$818.34
Daily Local News	655	\$108.56

A - 2

Legal Notice Cost and Coverage Analysis for Sample Boroughs

Borough of Coatesville, PA 19320

19320 - Coatesville	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Downingtown/Exton Courier	11,436	\$80.80
Daily Local News	2,501	\$108.56

Borough of Elizabethtown, PA 17022

17022 - Elizabethtown	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Elizabethtown Merchandiser	9,835	\$37.60
Patriot-News	884	\$287.50
Lancaster Sunday News	4,297	\$131.10

Borough of Hummelstown PA 17036

17036 - Hummelstown	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Hershey Area Merchandiser	6,218	\$36.60
Patriot-News	3,169	\$287.50
Lebanon Daily News	26	\$89.70

City of Hanover PA 17331

17331 - Hanover	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Hanover Area Merchandiser	20,893	\$43.80
Evening Sun	9,895	\$299.00
York Newspapers Comb.	2,889	\$112.70

Borough of Middletown, PA 17057

17057 - Middletown	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Middletown Shopper	10,241	\$38.00
Patriot-News	3,267	\$287.50
Lancaster Sunday News	44	\$131.10

Legal Notice Cost and Coverage Analysis for Sample Boroughs

Borough of Bernville, PA 19506

19506 - Bernville	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Myerstown Merchandiser	2,535	\$42.60
Reading Eagle	965	\$98.90

City of Williamsport, PA 17701

17701 - Williamsport	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Webb Weekly	18,949	\$38.00
Sun-Gazette	8,310	\$162.38

Borough of Tobyhanna, PA 18466

18466 - Tobyhanna	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Journal of Pocono Plateau	1,596	\$52.00
Pocono Record	580	\$73.60
Scranton Times/Trib Comb.	114	\$125.58

Borough of Quakertown, PA 18951

18951 - Quakertown	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Penny Power	13,924	\$42.32
Daily Intelligencer	2,271	\$85.10
Morning Call	2,100	\$275.54
Reporter	66	\$75.90

Borough of Quarryville, PA 17566

17566 - Quarryville	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Quarryville Advertiser	4,307	\$33.20
Lancaster Sunday News	2,090	\$131.10

EXHIBIT - B

Legal Notice Cost and Coverage Analysis for Sample Counties

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	Audited Circulation	Legal Notice Cost 4 col. in./46 lines
Adams County, PA		
Gettysburg Merchandiser	19,666	\$31.60
Gettysburg Times	8,640	\$57.50
Erie County, PA		
Erie Pennysaver	79,053	\$215.00
Erie Times-News	51,778	\$291.64
Franklin County, PA		
Franklin Shopper	38,758	\$57.24
Public Opinion	13,863	\$61.00
Lebanon County, PA		
Lebanon Merchandiser	36,909	\$60.00
Lebanon Daily News	18,096	\$89.70
Lycoming County, PA		
Webb Weekly	50,109	\$38.00
Sun-Gazette	20,244	\$162.38