



PNA LEGAL UPDATE

LEGAL AND LEGISLATIVE ISSUES AFFECTING THE NEWS INDUSTRY

A supplement to Headlines & Deadlines

Friday, June 15, 2018

ANNOUNCEMENT

REGISTER FOR PNA'S 26TH ANNUAL MEDIA LAWYERS CONFERENCE TODAY!

Registration for PNA's 26th annual Media Lawyers Conference is now open! The conference will be held **Tuesday, July 10** at the Hershey Country Club from 8:30 a.m. -3:00 p.m. The conference will be interactive and cover topics affecting Pennsylvania media lawyers, including a litigation roundtable on the Right to Know Law and Sunshine Act, an update on defamation and invasion of privacy law, as well as sessions related to court access, the First Amendment and a legislative update. We are also pleased to welcome Executive Director of the Office of Open Records, Erik Arneson, who will answer questions and discuss proposed regulations and other topics that impact RTKL interpretation and practice before the OOR.

You can access a copy of the registration form [here](#) and review a copy of the tentative agenda [here](#).

EDITORIALS

[LNP Media \(Lancaster\)](#) – Tariffs on imported newsprint are a potentially crushing blow to local newspapers and their communities

[Delaware County Daily and Sunday Times \(Swarthmore\)](#) – A salute to 10 years of open records in Pennsylvania

LEGISLATIVE UPDATE

The Pennsylvania Chamber of Business and Industry hosted the General Consul of Canada, Phyllis Yaffe, this week to discuss Canada-U.S. relations, the Canada-Pennsylvania economic partnership and the status of the negotiations on NAFTA. The General Consul discussed the devastating impact of the proposed newsprint tariffs and stated that we need to find a solution.

At right: **Phyllis Yaffe**, General Counsel of Canada, left, and **Gene Barr**, President of the PA Chamber of Business and Industry.



The Senate and House were in legislative session this week and return to session next week.

SUNSHINE ACT LEGISLATION

The House Rules Committee passed [HB 1531](#) (R-Christiana) this week, requiring agencies to provide agendas in advance of meetings, so the public can attend and participate in issues that matter to them. PNA has advocated for and supports this legislation.

PUBLIC SCHOOL EXECUTIVE SESSIONS

The House passed [House Bill 2327](#), sponsored by Rep. Fee, this week. The bill amends the Public School Code exempting public school entity discussions of security and emergency preparedness from open meetings requirements. PNA is recommending an amendment.

COUNTY CODE LEGISLATION

The House Local Government Committee is holding a voting meeting on [SB 1005](#), next week, which updates and consolidates the County Code and the Second Class County Code. PNA has several concerns related to the change in public access to Coroners records and public notice provisions of the bill. The Committee Chairs will introduce an amendment to the bill, which PNA supports, to address our concerns.

PUBLIC NOTICES RELATING TO LOCAL GOVERNMENT AUDITS

The House Local Government Committee is scheduled to vote on three public notice bills next week relating to local government audits. PNA worked extensively on the language contained in Senate Bills [771](#), [772](#) and [773](#) sponsored by Senator Tom McGarrigle, and supports the bills. Representative Kate Harper has companion bills in the House.

RECORDS REGARDING VOLUNTEER EMERGENCY SERVICE ORGANIZATIONS

The House Local Government Committee voted a four-bill package this week. Senate Bills [801](#), [802](#), [803](#) and [804](#), sponsored by Senator Scott Hutchinson, permit municipal governments to purchase used equipment, vehicles, and other personal property from volunteer emergency service organizations without competitive bidding. This results in less access to the underlying deal details. Under these bills, the public would have no way to access details regarding the property because volunteer organizations are not expressly subject to the Right to Know Law. PNA is recommending an amendment. Representative Kate Harper has companion bills in the House.

PUBLIC NOTICES FOR MUNICIPAL PERSONAL PROPERTY

The House Local Government Committee will be voting a three-bill package next week, [SB 947](#), [948](#) and [949](#), which increases the dollar threshold that triggers advertisement when selling municipal personal property from \$1,000 to \$2,000. PNA is fine with these bills.

NOTICE FOR CLOSURES OF STATE CORRECTIONAL INSTITUTIONS

The House State Government Committee is holding a hearing [Senate Bill 748](#), sponsored by Sen. David Argall (R-Schuylkill) which enacts the Public Safety Facilities Act, establishing a clear process for consideration of proposed closures of state correctional institutions as well as other structures that house state law enforcement. The bill requires public notice, at least one public hearing and a written report.

REPORTING UNSAFE SCHOOL ACTIVITIES

[SB 1142](#), sponsored by Senator Pat Browne, passed the Senate this week, which establishes the Safe2Say Program providing for anonymous reporting concerning unsafe activities in schools. The confidentiality provisions of this bill go beyond general confidentiality and remove the information from the Right To Know Law generally. PNA is recommending an amendment.

OPIOID PRESCRIBING ADVISORY COUNCIL

[SB 655](#), sponsored by Senator Gene Yaw, which requires the Secretary of Health to promulgate regulations regarding opioid prescription guidelines and creates an opioid prescribing advisory council passed the Senate unanimously on third consideration this week. The bill included a PNA amendment, which added that the council is expressly covered by the Sunshine Act and Right To Know Law.

LEAN STATE GOVERNMENT ACT

[HB 2209](#), sponsored by Representative Frank Ryan, which establishes The Lean State Government Act to require performance audits of all state agencies conducted by experienced performance auditors contracted by the Auditor General, passed the House State Government Committee this week. The bill was amended to include PNA language making it clear that the reports and audits are expressly public under the bill.

EMERGENCY CODE UPDATE

[SB 1019](#), sponsored by Senator Randy Vulakovich, updates Pennsylvania's Emergency Management Code. PNA is recommending amendatory language regarding the media and public records.



LEGAL
QUESTION?

CALL
717-703-3080

The Legal Hotline is not
meant to be legal advice.

LEGAL ISSUES FROM AROUND THE COMMONWEALTH

JUDGE ORDERS CITY TO RELEASE POLICE STUDY

The Commonwealth Court has ordered the city of Wilkes-Barre to release a study of the police department as part of a civil suit filed against the city. Journalists with the Times-Leader (Wilkes-Barre) had obtained a copy of the report and published it online before the city objected to its release to opposing counsel. Read more [here](#).

OFFICE OF OPEN RECORDS ORDERS PITTSBURGH TO RELEASE AMAZON BID INFO

The Pennsylvania Office of Open Records has ordered Pittsburgh to release bid records, including incentives, offered as part of the city's H2Q bid package. The OOR ruled that the incentive proposal was neither a trade secret nor confidential proprietary information protected from release under the state's Right-to-Know Law. Read more from the [Pittsburgh Post-Gazette](#).

OFFICE OF OPEN RECORDS RULES COUNTY 911 LOGS DEFICIENT

The way Luzerne County 911 keeps dispatch call logs prevents the public from being able to evaluate the efficiency of local emergency services, an appeals officer for the state Office of Open Records has determined. The county emergency call database doesn't track addresses by block or cross street, which would be public record under the state's Emergency Services Law, in a recent ruling on a Right-to-Know case filed by The Citizens' Voice. "Without block identifier or cross street information, the public simply cannot evaluate the efficiency of emergency response times with any level of accuracy or confidence," the appeals officer wrote. Read more from [The Citizens' Voice](#) (Wilkes-Barre).

AUDITOR GENERAL BLASTS SCHOOL DISTRICT TRANSPARENCY AFTER AUDIT

Auditor General Eugene DePasquale said that the Manheim Central School District did not publicly approve or disclose an Assistant Superintendent's separation agreement that cost the district \$85,885, likely in violation of the Sunshine Act and School Code. "Manheim Central failed to be transparent with taxpayers on the cost of the separation agreement with a former assistant superintendent," DePasquale said. "The public should be outraged that it took a newspaper Right-to-Know Law request and an audit to find out \$85,885 was diverted from classroom education to a contract buyout." The 22-page audit report covers July 1, 2012, through June 30, 2016, and includes two findings and four recommendations. Read more from [LNP](#) (Lancaster).

LOCAL GOVERNMENTS RELUCTANT TO RELEASE EMPLOYEE INFORMATION

In the newspaper's quest for basic employee information, some towns said they had no records showing how much employees earned in 2017. Others released the information within hours. The wages of government workers are the single, largest local taxpayer expense. Last year, nearly \$500 million went to pay administrators and attorneys, police and public works, park rangers and prison guards in local boroughs and towns, county agencies and public utilities. Yet, it's not easy obtaining records that show who those public employees are, what they did, or exactly how much they received in total compensation. Read more from [The Bucks County Courier Times](#) (Levittown).

BEYOND PA

REQUEST FOR NUMBERS SURROUNDING OPIOID DISTRIBUTION DENIED

The U.S. Justice Department, Drug Enforcement Administration and the nation's largest drug distributors are objecting to a West Virginia newspaper chain's request for federal records that show prescription opioid shipments to every pharmacy in the state. Read more [here](#).

FEDERAL JUDGE ALLOWS JOURNALIST TO CHALLENGE CLAIMED INCLUSION ON U.S. DRONE "KILL LIST"

The ruling clears the way for Bilal Abdul Kareem, a freelance journalist who grew up in New York, to

seek answers and try to clear his name after what he claims were five near-misses by U.S. airstrikes in Syria after he said he was mistaken for a militant because of his frequent contact with al-Qaeda-linked militants. Read more [here](#).

BACKLASH CONTINUES OVER FACEBOOK DECISION TO LUMP NEWS WITH ADS

Publishers are up in arms over the fact that the social network plans to treat certain promoted news stories as though they are political ads, and they've made their feelings known in a number of ways. Read more from [Columbia Journalism Review](#).

MEET THE GUYS WHO TAPE TRUMP'S PAPERS BACK TOGETHER

The president's unofficial 'filing system' involves tearing up documents into pieces, even when they're supposed to be preserved. Read more [here](#).

OTHER RESOURCES

REUTERS RELEASES REPORT ON DIGITAL NEWS CONSUMPTION

The Reuters Institute's Digital News Report for 2018 surveyed more than 74,000 people in 37 countries about their digital news consumption. Read the report [here](#).

FROM THE HOTLINE

FIREWOOD AD REQUIREMENTS

Q: Does Pennsylvania law govern ads selling firewood? Does the law require firewood to be sold in cords or can it be sold by "racks" or "truck loads?"

A: Pennsylvania and federal law govern the sale of firewood, and these laws prohibit terms like "racks" or "truck loads" to describe the amount being offered for sale.

[70 Pa. Code § 23.107](#) requires wood used for fuel to be sold in cords or a fraction thereof. The PA Standard Weights and Measures Act of 1996 amended the PA Agriculture Code (Title 3) to adopt the national weights and measures standards issued by the National Institute of Standards and Technology. Specifically, the standards found in NIST Handbook 130 address the sale of firewood.

[NIST Handbook 130](#) requires firewood to be sold by the cord or fraction thereof. See page 111. A cord is defined as 128 cubic feet or a stack 4 feet wide, 4 feet high by 8 feet in length. The federal regulations also prohibit the terms "face cord," "rack," "pile," "truckload," or terms of similar import when advertising, offering for sale, or selling wood for use as fuel, because these terms are imprecise and can be misleading.

Ads selling firewood should describe the amount sold as a cord or fraction thereof.

Publishers are not generally liable for non-compliance with these state and federal regulations, but these regulations exist as a consumer protection mechanism. As such, advertising staff should be aware of these laws and their application in order to promote reader protection.

As always, this is not intended to be, nor should it be construed as, legal advice. Please consult your newspaper's attorney or the Legal Hotline at (717) 730-3080 with questions.



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