



PNA LEGAL UPDATE

LEGAL AND LEGISLATIVE ISSUES AFFECTING THE NEWS INDUSTRY

A supplement to Headlines & Deadlines

Friday, May 25, 2018

EDITORIALS

PennLive/The Patriot-News (Harrisburg)

Newly published Wolf admin medical marijuana rules keep public needlessly in the dark

Press And Journal (Middletown)

Council votes to hire law firms taken in private raise concerns

Citizens' Voice (Wilkes-Barre)

Lost but loved series and [editor's note](#)

LEGISLATIVE UPDATE



The Senate and House were in legislative session this week and return to session June 4. Senate President Pro Tempore Joseph Scarnati spoke at this week's Press Club luncheon.

Right to Know Law Informational Meeting

The House Local Government Committee held an informational hearing this week on [HR 50](#), requiring a study in the costs associated with implementing the Right to Know Law. View the [Legislative Budget and Finance Committee](#)

[report](#) and [presentation](#).

Public notice requirements for emergencies

This week, the Senate Appropriations Committee passed [House Bill 99](#), sponsored by Rep. David Zimmerman, out of Committee. The bill expands a borough's ability to bypass current bidding and public notice requirements "for emergencies." PNA is working with the Senate on an amendment.

Public notices relating to local government audits

The Senate Appropriations Committee voted three bills this week regarding public notices relating to local government audits. PNA worked extensively on the language contained 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 Senate Appropriations Committee voted a four-bill package this week, Senate Bills [801](#), [802](#), [803](#) and [804](#), sponsored by Senator Scott Hutchinson, which 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 Senate Appropriations Committee voted a three-bill package this 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.

County Code Legislation

The Senate Appropriations Committee passed **SB 1005**, this 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. We plan to have an amendment introduced in the House.

Reporting unsafe school activities

SB 1142, sponsored by Senator Pat Browne, passed the Senate Appropriations Committee 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.



LEGAL ISSUES FROM AROUND THE COMMONWEALTH

District Attorneys release guidelines on police body camera use

The Pennsylvania District Attorneys Association announced their seven basic recommendations Wednesday, stating that they will help law enforcement agencies “with practices and procedures that ensure the reliability of recordings in accordance with the law, the specific needs of prosecutors to preserve recordings for discovery and trial, and compliance with ethical rules on the public release of recordings.” Read more from [The Morning Call \(Allentown\)](#).

PNA note: the General Assembly approved, and Governor Wolf enacted, changes to Pennsylvania's Wiretap Act in 2017 to enable police body camera recordings in private places. However, Act 22 also removed all law enforcement audio and video from the Right to Know Law, requiring the public to navigate a complicated process where law enforcement has nearly complete discretion to withhold audio and video, with no opportunity to appeal outside formal litigation. These changes have made accessing police audio and video difficult and, in many cases, impossible. You can read Act 22 [here](#).

Auditor General finds charter school law and Aspira lack transparency

Pennsylvania's auditor general on Wednesday blasted Aspira Inc. of Pennsylvania's management of four Philadelphia charter schools and a cyber charter, likening the organization to a “fox guarding the henhouse” as he called for changes in the state law governing charter schools. He also noted Pennsylvania's charter-school law should be amended, saying the law should require charter management companies to be subject to the state's Right-to-Know and ethics laws. Read more from [Philly.com](#).

Wolf administration: Marijuana public records change 'reflects a commitment to the law'

A change that effectively blocks public access to the panel that scored medical marijuana permit applications was designed to clarify state law, according to spokespeople for Gov. Tom Wolf's administration. The move also reverses a ruling of the Office of Open Records, and will be analyzed by the Commonwealth Court addressing the Commonwealth's challenge to that ruling. Read more from [PennLive/The Patriot-News \(Harrisburg\)](#).

Cosby juror names released three weeks after trial ends

A judge last Friday publicly identified members of the jury that convicted Bill Cosby of sexual assault last month, but warned that reporters could face criminal charges if they hound jurors who don't want to be bothered. Judge Steven O'Neill released the names after what he described as a 21-day “cooling-off period” to allow jurors to return to their personal lives after three weeks sequestered at a hotel for the trial. The Associated Press and other media organizations went to court for access to the names and O'Neill said he was bound to release them under a state Supreme Court ruling making them public under the First Amendment. Read more from [The Associated Press](#).

County approves new collective bargaining agreement, releases no details

Despite ongoing complaints that the process violates public disclosure laws, Luzerne County council on Tuesday approved a collective bargaining agreement with more than 100 unionized county employees before details of the agreement were revealed to the public. Councilman Stephen A. Urban complained about the perceived lack of transparency when council considered other labor agreements earlier this year. Read more from [The Citizens' Voice \(Wilkes-Barre\)](#).

Authorities' unadvertised meeting raises Sunshine Act issues

Williamsport Municipal Water and Sanitary authorities may have a problem regarding the state Sunshine Law. It failed to advertise a work session at 11:30 a.m. Wednesday, a meeting called for by Mayor Gabriel J. Campana and city administration ahead of the regular board meeting. The focus of the meeting was to hear the city administration's request of a \$650,000 reimbursement it is asking for from the authorities, but authority members discussed agency business during the meeting. Read more from [Williamsport Sun-Gazette](#).

BEYOND PA

Mueller fights media access to secret court filings

Special counsel Robert Mueller is fighting a drive by media organizations to unseal secret court filings relating to searches and surveillance efforts undertaken as part of the investigation into possible coordination between the Trump campaign and Russia in the 2016 election. [Read more here](#).

D.C. Appeals court expands public access to oral arguments with live audio streaming

In a move to increase public access and transparency in the court system, a federal appeals court in Washington announced Tuesday that it will live-stream audio of any oral argument upon request. The announcement from Merrick Garland, chief judge of the U.S. Court of Appeals for the District of Columbia Circuit, follows the court's decision in October to allow live audio of arguments only after a vote of the individual judges presiding over a hearing. The announcement Tuesday will allow for live-streaming without such a vote. [Read more here](#).

Ad group announces recommendations for transparency in political advertising

As mid-term elections get underway and lawmakers in Washington contemplate new rules to regulate political advertising online, the digital advertising industry is attempting to beat them to the punch. The Digital Advertising Alliance, an organization that establishes and enforces guidelines across social media companies, consumer brands, advertising organizations and publishing outlets, on Tuesday announced a series of new rules aimed at making digital political ads more transparent. [Read more here](#).

This tool transforms print pages into social and mobile-ready stories

The update to the Issuu platform, Issuu Stories, "automatically enables every publisher to be able to turn their content into automated articles that can become stories that are shareable anywhere," says Joe Hyrkin, Issuu CEO. This includes popular venues like Facebook, Instagram, Twitter, Snapchat and Pinterest. Read more from [Poynter](#).

FROM THE HOTLINE

FERPA honor roll

Q: A school has begun withholding honor roll and student of the month information from the newspaper. When contacted, the school said FERPA doesn't allow them to release this information. Is that correct?

A: No. [FERPA](#), the Family Educational Rights and Privacy Act, is the federal law that prohibits release of student-specific academic and discipline records without permission from parents. However, FERPA allows schools to release "directory information" about students without permission from parents, unless parents have opted out of directory information. Directory information is information that is generally not considered harmful or an invasion of privacy if released. Some examples included in FERPA regulations are:

- Student's name, address, date and place of birth*

- Telephone listing
- Electronic mail address
- Photograph
- Major field of study
- Dates of attendance
- Grade level
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended
- A playbill, showing a student's role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs.

*Note: Section 708(b)(30) of the Right to Know Law allows, but does not require, agencies to redact minors' (age 17 and under) name, address and date of birth from public records. FERPA regulations allow schools to disclose "**directory information**" to third parties without consent if the school has given public notice of:

1. the types of information which it has designated as "directory information,"
2. the right to restrict the disclosure of such information, and
3. the period of time within which a parent has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information."

The means of notification could include publication in a local newspaper, a school newsletter, or in the student handbook. Schools could also include the "directory information" notification as part of the general notification of rights under FERPA, which typically takes place at the beginning of each school year. FERPA does not require schools to notify parents or eligible students individually or obtain permission from parents each time directory information is released.

If parents opt out, the school can't share directory information about that specific student. If parents do not opt out, the school can provide directory information. Journalists should determine a school's "directory information" policy, and work with schools to promote public access to information that highlights student achievements and honors.

As always, this is not intended to be, nor should it be construed as, legal advice. Please consult your organization's attorney or the PNA Legal Hotline at (717) 703-3080 with questions.

OTHER NEWS AND TRAINING

- [Registration for PNA's 26th annual Media Lawyers Conference now open](#)



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1-2**

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