

DNJ.com, Public notice battle has far-reaching implications; Non-jury trial begins today in latest case against mosque, county, (4.25.12)

MURFREESBORO — A legal battle over public notice in Rutherford County’s approval of a mosque site could affect Tennessee’s definition of a newspaper as well as guidelines for how and where governments can advertise their meetings.

In a two-day trial that starts today, plaintiffs will argue that the county government failed to provide adequate public notice of its May 2010 Rutherford County Regional Planning Commission meeting, where officials were to vote on a site plan for a new mosque for the Islamic Center of Murfreesboro.

“In this case, the issue should be whether the published notice should have included more information about the agenda, not which publication,” Frank Gibson, public policy for the Tennessee Press Association, told The DNJ this week.

“The law on ‘adequate notice’ as it now stands requires agenda information for unscheduled, special meetings. The law does not require that much detail for regular meetings except when it is announcing a required public hearing,” he explained. “Newspapers cannot dictate or change the content of an official public notice.”

No hard and fast definition is set in Tennessee for adequate public notice, other than through court rulings dealing with the Sunshine Law, Gibson added.

County commissions must give five days notice for public meetings, but city councils and school boards don’t face that same requirement, he said.

Through court decisions, four criteria have been set: the “totality of circumstances,” which includes giving notice in a variety of places for short notice, and a three-pronged test requiring notices to be posted where any person interested in the subject could see it in time for people to make plans to attend, and describing the matters to be discussed.

The public notice published in the Murfreesboro Post did not state that mosque site approval was on the agenda because Rutherford County’s zoning laws allow places of worship to be treated the same as residential developments. No rezoning was required; therefore, no public hearing was needed before the planning commission reviewed the site plan and voted.

A short story about the mosque site plan was published in The Daily News Journal the morning of the planning commission meeting, and before that The DNJ ran a photo of the ICM’s sign at the building site when it was vandalized.

Efforts by plaintiffs in the case to paint the mosque as a compound for terrorist activity have been unfounded and dismissed by the court, leaving the plaintiffs' only remaining course to challenge it through the public notice process.

Chancellor Robert Corlew III has ruled already that Islam is a religion and that the ICM holds First Amendments rights to build the mosque. Work on the first phase of the building next to Grace Baptist Church on Veals Road off Bradyville Pike, just outside Murfreesboro, started in September 2011 and is nearing completion.

TPA reviewing issue

The Tennessee Press Association is in the midst of reviewing the definition of a "bona fide" newspaper of general circulation with a 10-member task force of newspaper executives. The decision is needed, in part, because of legislative moves to change requirements for publishing public notices and legal ads.

State legislators have been pushing the last few years to change the Sunshine Law and allow public notices to be published on government websites rather than in newspapers.

Republican state Rep. Rick Womick and Sen. Jim Tracy, who both represent Rutherford County, sponsored legislation that would have authorized the secretary of state to determine whether a publication is a newspaper of general circulation for publishing public notices. The House bill was deferred to a summer study committee.

The TPA review "is designed to make sure there is a mechanism for the broadest possible dissemination of public notices," said Gibson, who is serving as a task force advisor.

Government websites are unreliable for public notice, and the mosque case is a prime example, Gibson said, because the meeting announcement was inadvertently left off the county's website.

The Post, which is a party to the lawsuit, contends that under the Open Meetings Act of 1974 it is a proper newspaper for legal notices in Rutherford County and points to an attorney general's decision to prove it.

"The plaintiffs in this case are really trying to rewrite the Tennessee law to meet their ends," said Tim Choate, director and chairman of the Murfreesboro Post. "They really don't want the mosque to be built and they'll take down any small business that gets in their way."

Choate noted the Post's content is created locally and made available to all residents of Rutherford County. The free publication, which started in September 2006, qualifies as a paper of general circulation by distributing to 12,000 homes in Murfreesboro and circulating more than 20,000 copies overall, including to more than 300 newsstands, he said.

Rutherford County started running legal ads in the Post in December 2006, according to the county Finance and Budget Department.

County Mayor Ernest Burgess said Tuesday it was “substantially cheaper” and several other government entities were using it when the county decided to make the switch from The Daily News Journal. The county had “reasonable belief” in the attorney general’s ruling that the Post was a newspaper of general circulation, “so we opted to do it,” Burgess said.

Burgess said he couldn’t determine what direction the county would take with legal ads and public notices if Chancellor Robert Corlew rules against the county.

“I can’t answer that question until I see the total context of what ruling he makes,” Burgess said.

#### Plaintiffs' argument

Plaintiffs’ attorney Joe Brandon Jr. disagrees that the Post can be characterized as a paper of general circulation and will make that argument in court

“A distinction between The Murfreesboro Post and a paper of general circulation relates to subscribers. The Murfreesboro Post has zero subscribers. It is a free paper that litters driveways on Sundays. It’s only delivered in Murfreesboro, and it doesn’t even reach every home in Murfreesboro,” Brandon said.

He added that the paper doesn’t have a wide enough reach to qualify as a tool for informing residents about public meetings.

“They have racks beside the free apartment magazines in various locations,” Brandon previously told The DNJ. “Why is it incumbent upon the citizens and residents and taxpayers of Rutherford County to go sift through free publications to find out what our local government is up to?”

The definition of a newspaper comes from a 1972-73 study by a TPA committee and is part of the organization’s constitution as well as Tennessee election laws, according to a TPA article.

A seven-part definition of a newspaper of general circulation states that it must have a name or title, be published at least weekly for a paid price, be available by second-class mail, circulated in the political subdivision in which it is published, have at least four pages and be published continuously for a year.

That seven-part definition was reduced to three parts, however, as the result of a lawsuit involving the Nashville Record, which is owned by the same company, Gannett, that owns The Tennessean and The Daily News Journal, according to Gibson.

Consequently, some newspapers such as the Post and City Paper in Nashville hold attorney general's rulings qualifying them as newspapers of general circulation and allowing them to publish government notices and ads.

If the Post doesn't qualify as a newspaper of general circulation, Choate said he's not sure what would. A ruling against the county, and the Post, would require an immediate appeal, he said.

"We feel like we're collateral damage in the fight between the mosque and the plaintiffs," Choate said. "We're innocent bystanders, in a way."

According to Gibson, if the chancellor rules against the county, a conflict will be created between the trial judge's opinion and the attorney general's ruling. If the Court of Appeals were to agree with the chancellor, it would create case law against an AG's opinion, he said.