

January 20, 2017

Mr. Jordan Hedberg
Wet Mountain Tribune
404 Main Street
Westcliffe, Colorado 81252

Dear Mr. Hedberg:

The Board of County Commissioners has asked me to respond to your e-mail dated January 17 wherein you posed some questions concerning the process followed to determine which Custer County newspaper would be designated as the newspaper to publish legal notices for the County.

As you know, for many years there was only one newspaper in Custer County: the *Wet Mountain Tribune*. The *Sangre de Cristo Sentinel* began publishing a weekly newspaper in July of 2013, and after publishing continuously for a period of 52 weeks the *Sentinel* satisfied all the requisites of a legal newspaper as set forth in §24-70-103 of the Colorado Revised Statutes. Until then, the Board of County Commissioners did not solicit bids for publication of legal notices because the *Tribune* had the only game in town and regularly charged the County the maximum amount allowed by law.

Once the County began soliciting bids in November of 2014, the process has been the same each year. The sealed bids from the two County newspapers have been opened and read during a regularly scheduled public meeting in December, and the matter has then been expressly continued as “old business” to the first meeting of the Board of County Commissioners in January of the following year. The bids solicited by the Board by a letter dated November 15, 2016, were opened and read on December 6, 2016. At that time it was clearly stated that the newspaper of record would be chosen during the January 10, 2017, BOCC meeting. This appears in the minutes of the December 6 meeting.

Consequently, selection of the newspaper of record for Custer County for 2017 did not appear as a specific agenda item for the January 10 meeting because it was not “new business”. But the matter was nevertheless properly before the Board for discussion and action on that date under “old business.”

The statement by Commissioner Hood that awarding the contract to the *Sentinel* would save the County approximately \$3200 per year was based on rough calculations using the number of lines of print the County paid for in 2016 when the *Tribune* had the contract. It was a matter of simple arithmetic: Multiplying that number by 25¢ per line (the *Tribune*'s bid for 2017) and by 16¢ per line (the *Sentinel*'s bid) and then subtracting the lower number from the higher number. Incidentally, these calculations did not take into account the *Sentinel*'s bid to publish subsequent insertions of the same notice for 14¢ per line, which would obviously result in an even greater savings to the County.

If the *Tribune* has some formula whereby the County would save money by paying 25¢ per line rather than 16¢ per line the Commissioners would be delighted for you to share it with them.

You challenge Commissioner's Kattnig's assertion that circulation has no impact on the award. This is not statutory; rather it is the policy adopted by the Board of County Commissioners in January of 2015 when the contract for that year was awarded to the *Sentinel*. The Board agrees there is no law requiring acceptance of the lowest bid. There is no law requiring that bids be solicited at all for the contract to publish legal notices. Bids were requested pursuant to the Custer County Purchasing Policy, which states in its Introduction that the policy is intended to provide procedures and guidelines designed to ensure that the County is getting the "best overall value" for taxpayer dollars. Some of the factors to be considered when determining "best overall value" are: Price; Warranty; Service; Availability; Past Performance; References; and Location. The Board of County Commissioners has determined that, with respect to selecting a newspaper to publish required public and private notices, price is by far the most important factor.

An argument can be made—and has been made strenuously by the *Tribune*—that circulation trumps all other factors. That position has been considered by the Board but, given the economic situation of Custer County, is not sufficiently persuasive to win out over the savings to the taxpayers by going with the lowest bid.

Just as an aside, I practiced law in Pueblo County for over 40 years before retiring to Custer County, and circulation is certainly not a factor there when it comes to publishing legal notices for the County. The *Pueblo Chieftain* has a current circulation of 31,000, but for years all legal notices have been published by a weekly newspaper located in Pueblo County known as the *Colorado Tribune*—circulation about 400 when I talked to the editor two years ago. The *Colorado Tribune* exists primarily for the purpose of publishing the legal publications, but it runs a few news articles and sells some advertising in order to qualify as a legal newspaper.

I trust this satisfies your request for a “well thought out explanation” to your questions. You asked that “legal laws” be cited (as opposed to illegal laws?), so I will simply make reference to C.R.S. §24-70-101, *et seq.* in its entirety. I would call your attention to §24-70-106 in particular, specifically that part which reads “daily, weekly, semiweekly and triweekly newspapers *shall all be equally competent* as the media for the publication of all legal notices and advertisements.” (emphasis added). There is no language in this statutory provision which suggests preference should be given to a newspaper based on circulation.

I believe this answers the three questions you posed, but I also want to address your claim that Commissioners Printz and Hood “would have to prove how their actions as private citizens did not influence public policy”. You cite §24-6-401 of the Colorado Open Meetings Law. I do not understand your reasoning. Assuming for purposes of discussion that the two of them talked about this particular issue—choosing a newspaper—before taking office, I would point out that the Open Meetings Law clearly does not apply to private individuals, and until the moment the two commissioners-elect took their oaths of office that is what they were. The Open Meetings Law is irrelevant as to what they may have discussed with one another prior to January 10, 2017, and they have no obligation to prove anything to the *Wet Mountain Tribune*.

Respectfully,

Clint Smith
County Attorney