



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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PUBLIC INFORMATION:
Meaning of "Notice" in Ill.
Rev. Stat. 1975, ch. 100,
par. 8.2

Honorable Douglas Marti
State's Attorney of Bond County
Court House
Greenville, Illinois 62246

Dear Mr. Marti:

I have your letter in which you ask the
following question:

"Does the word 'notice' found in Section 8.2
of Chapter 100, Illinois Revised Statutes,
include all publication requirements covering
information about the actions governmental bodies
have taken, or is it to be construed narrowly to
mean only notice of a proceeding in which a given
judicial or legislative action is taken?"

The statute about which you have inquired, section
10 of "AN ACT to revise the law in relation to notices" (Ill.

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Rev. Stat. 1975, ch. 100, par. 8.2), provides:

"§ 10. Laws which require notice to be published or posted by a municipality or a county or an officer of a municipality or county shall apply to municipalities and counties which are home rule units as well as municipalities and counties which are not home rule units. Any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public."

As your letter points out, the word "notice" can be used in the narrow sense to mean only notice of a proceeding in which a given judicial or legislative action is taken or it can be used in a broader sense to include information about the actions governmental bodies have taken. If used in the latter sense, "notice" would apply to all items and documents required by statute to be published. It would include financial reports and ordinances as well as notices in the narrow sense of notice of meetings and hearings. Thus, an ambiguity exists in the statute and resort to construction may be had to determine the true meaning. Dept. of Public Works & Buildings v. Schon, 42 Ill. 2d 537.

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The word "notice" is used in several other sections of "AN ACT to revise the law in relation to notices" (Ill. Rev. Stat. 1975, ch. 100, pars. 1 et seq.) Section 5 of the Act (Ill. Rev. Stat. 1975, ch. 100, par. 5) provides in pertinent part that "when any notice is required by law or contract to be published in a newspaper" (emphasis added) the newspaper must meet certain standards to fulfill the requirement. In People ex rel. Toman v. 110 S. Dearborn St. Building Corp., 372 Ill. 459, the court applied section 5 to determine whether a forest preserve district complied with another statute requiring publication of an ordinance making an appropriation. Similarly, in People v. Snow, 279 Ill. 289, section 5 was applied to determine whether a paper used to publish an appropriation ordinance of a city or village required under another statute was one of general circulation. It appears from these cases that publication of an ordinance is a "notice" within the meaning of section 5.

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A like result has been reached in dicta construing section 1 of the Act. Section 1 (Ill. Rev. Stat. 1975, ch. 100, par. 1) provides what proof of publication will be sufficient:

"When any notice shall be required by law, or the order of court, or by any contract, to be published in any newspaper, and no other mode of providing the same is provided * * *."
(emphasis added.)

In City of Centralia v. Basha, 206 Ill. App. 333, the court indicated that had no other method of proof of publication been provided, section 1, which then contained the above quoted portion, would have been applied to determine whether proof of publication of an ordinance was sufficient. The import of that dicta is that publication of an ordinance is a "notice" under section 1.

Thus, the word "notice" in both section 1 and section 5 of the Act has been applied to include publication of ordinances, which is a "notice" in the broader sense. The Illinois Supreme Court in Lawton v. Sweitzer, 354 Ill. 620, set forth the following rule of construction at page 625:

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"* * * The law is that where the same word is used in different sections of the same legislative act the presumption is that it is employed with the same definite meaning unless there is something in the act to show clearly that a different meaning was intended."

See, also, Bd. of Education v. Morgan, 316 Ill. 143.

Applying this rule of construction and finding nothing in the Act to show that a different meaning was intended in section 10, I am of the opinion that the term "notice" in section 10 must be construed to mean all requirements for publication of information regarding actions of governmental bodies. The fact that the legislature did not adopt section 10 of the Act until almost one hundred years after the original act was adopted is not material because when an act is amended, words used in the amendment which were also used in the unamended sections are considered to be used in the same sense in the amendment as they were used in the unamended sections. (1A Sutherland, Statutes and Statutory Construction sec. 22.35.) Applying this reasoning to the present case, the word "notice" as used in section 10 is considered to be used in the same sense as it was used in

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the other sections of the Act to which section 10 was added by the legislature. Furthermore, the fact that the definite meaning of "notice" in sections 1 and 5 was provided by judicial construction is no bar to using that meaning of "notice" in section 10. Sutherland states in 1A Statutes and Statutory Construction section 22.35 at page 197:

"* * * The legislature is presumed to know the prior construction of the original act or code and if previously construed terms in the unamended sections are used in the amendment, it is indicated that the legislature intended to adopt the prior construction as to the terms used in the amendment."

See, also, Village of Glencoe v. Hurford, 317 Ill. 203.

Thus, since the courts had applied the word "notice" to include certain publication requirements in section 1 and 5 before section 10 was adopted, the legislature is presumed to have used the word "notice" in section 10 in the way the courts had previously applied it in sections 1 and 5.

The construction of the word "notice" in other sections of the Act is not, however, the only indication that "notice" in section 10 should be read in the broader sense. In the debates in the General Assembly on the bill which became section 10,

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Representative Duff, one of its sponsors, made it clear that "notice" includes publication of information concerning actions taken by governmental bodies as well as notice of meetings and hearings. He stated on June 5, 1973 (Transcript of debates, House of Representatives, June 5, 1975) that:

"House Bill 1313 responds to a serious doubt that home rule units, which include many cities and villages in the State, as well as the County of Cook, could legally avoid publication requirements, by simply requesting an ordinance to delete, alter or water down such publications, thereby denying citizens within those units of their right to know. * * * Real estate assessment lists, personal property lists, changes in real estate assessments, delinquent real estate taxes, delinquent special assessment lists, notices of zoning hearings, bid notices, local election notices, referenda, bond issues, condemnation, eminent domain privileges, etc. are just too important to tamper with. * * * A citizen in a home rule village, city or county, should not be a second class citizen. His right to know should be equal to that of any citizen in the state." (emphasis added.)

Representative Duff spoke of avoidance of "publication requirements" not avoidance of notice requirements as the evil which the bill is designed to remedy. The use of the broader term "publication requirements" indicates that "notice" was intended

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to include all publication requirements and not just notices in the narrow sense. In addition, his enumeration of types of "notices" which he said were covered by the bill includes lists to be published as well as notices in the narrow sense. Finally, his references to the right to "know" as opposed to the right to "notice" indicate an intent that the citizens of home rule units should have all the information which publication is designed to supply and not just notice of proceedings about to happen.

In summary, it is my opinion that the construction of the word "notice" by the courts in considering other sections of the Act and the debates in the General Assembly establish that the word "notice" in section 10 of "AN ACT to revise the law in relation to notices" applies to and includes all publication requirements, including information about the actions governmental bodies have taken, and not just notices of proceedings in which a given judicial or legislative action is taken.

Very truly yours,

A T T O R N E Y G E N E R A L