



Maneke legal column

Potential changes in store for liquor advertising laws

In putting together this month's column, I wanted to write about some legal issues that could be beneficial to newspapers.

Every newspaper staff must deal with turnover, and this creates some special issues when it is turnover in the advertising department. Those of you who deal with selling ads have a lot to remember – prices, sizes, and all the millions of rules that apply to special ads. Whether it is concerns about the content of housing ads because of HUD advertising requirements or whether it is the attribution line that is required in ballot issue advertising, there are a myriad of details to keep track of on that side of the newspaper office.

However, I can say, hands down, that the most frequent question on the hotline is whether a newspaper can run an ad for a local bar or food establishment advertising discounted drink prices.

And if you've called about that question, you know my standard answer – there are state regulations and statutes that control those who sell alcoholic beverages. If those liquor license holders break these laws or regulations, they jeopardize their rights to sell such beverages or could incur significant fines and penalties.

These are high-stake questions and it seems much more prudent that these businesses should have their own lawyer giving them the advice about what they do, instead of relying on the newspaper's attorney to tell them the answer. While it's a nice thought that you could help your advertiser in this way, both you and your attorney could end up in court being sued for giving bad advice and costing these businesses significant sums. That's why I always suggest that since there is absolutely no penalty applicable

to the newspaper in this regard, that you stay out of this situation, agree to run whatever they want and let them seek their own legal advice elsewhere.

But, because I know you are interested, let me mention two developments on that front to you. One is that earlier this year, a decision came down from the U.S. Court of Appeals for the 8th Circuit (which covers the State of Missouri, including others) that dealt with the Missouri statute and state regulations. In a case brought by the Missouri Broadcasters Association, among others, the plaintiffs argued that these laws violated their freedom of speech rights under the First Amendment. Included in the prohibited acts under these laws are advertising "two-for-one" specials, coupons for free drinks with the purchase of food or prices set below the retailer's actual cost.

The state Liquor Control office, and the Missouri Attorney General, focused on the provisions of the law that argued that laws like this are part of the state's obligation to ensure responsible drinking. The trial court considered the defendants' motion to dismiss and ultimately agreed that a dismissal was appropriate, without giving a decision explaining its ruling to the parties. The plaintiffs appealed, of course.

So the appellate court considered the pleading filed by the plaintiffs and went through a detailed analysis as to whether it stated a cause of action. Ultimately, it focused on whether the plaintiff was justified arguing that there was no substantial interest advanced by these state laws, or whether the statute and regulations were more extensive than necessary.

The court accepted that it was just common sense that an advertising

restriction will decrease consumption but pointed out there was a lack of proof at this point that decreased consumption also promoted responsible drinking. And, it said, there was no evidence that increased demand for discounted alcohol didn't necessarily mean that consumption itself was irresponsible. In short, at this point, there was no evidence that would defeat the plaintiff's claim that these prohibitions were unjustified. And, therefore, the case should not have been dismissed, the Court said.

So, this case goes back to federal court in the Western District of Missouri (Jefferson City division) for further proceedings.

Let me mention to you at the same time that a number of liquor retailers in Missouri are working at the state level to get this law and the state regulations overturned. Several bills have been introduced into the legislature dealing with advertising issues, including one bill, House Bill 433, sponsored by State Rep. Robert Cornejo, which would change the state statutes involving advertising. Rep. Cornejo's bill just this week was voted out of the House and now will go to the Senate for consideration there.

Again, you need to remember that newspapers have no liability for this type of advertising. But changing the law may INCREASE your advertising and that's always the best kind of good news!



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Other Public Notice resources, such as a searchable database and an index of Public Notice legal requirements are also available through the MPA website.