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Fort Smith council emails violate FOIA

The Fort Smith city directors have been found guilty of violating the state's Freedom of Information Act by meeting via emails.

Circuit Judge **J. Michael Fitzhugh** handed down the court order last Thursday finding that email exchanges among Fort Smith city directors in May and August, 2017, violating the FOIA.

Fort Smith Attorney **Joey McCutcheon** had filed the lawsuit leading to the ruling on behalf of **Bruce Wade**. In making the ruling, Judge Fitzhugh denied the city's motion for summary judgment in the civil action.

"Under the facts of this case, the Court concludes that informal meetings subject to the FOIA were held by way of emails," Fitzhugh's order states. "The purpose of which were to either opine or survey the members as to the demise of the CSC and/or acceptance/rejection of a settlement. These are clearly matters that should have occurred in a public setting. The plaintiff's motion for summary

judgment is granted and the defendant's motion for summary judgment is denied. Further, the defendants are permanently enjoined from conducting public business in this matter without notice."

The judge also granted the plaintiff reimbursement for his legal fees.

Regarding the fees, McCutcheon has sent the City of Fort Smith a letter on behalf of his client agreeing to waive legal fees if the defendants, and "each one of them" agree to waive any right to appeal or to file any post-trial motions.

The "one-time offer" was set to expire on Jan. 10, but allowed the city until Jan. 23 if more time was needed to consider the offer.

In his letter to the city, McCutcheon said the city has already spent thousands of dollars defending themselves against the suit they ultimately lost. He contends that agreeing to their offer would save the city additional thousands of dollars.

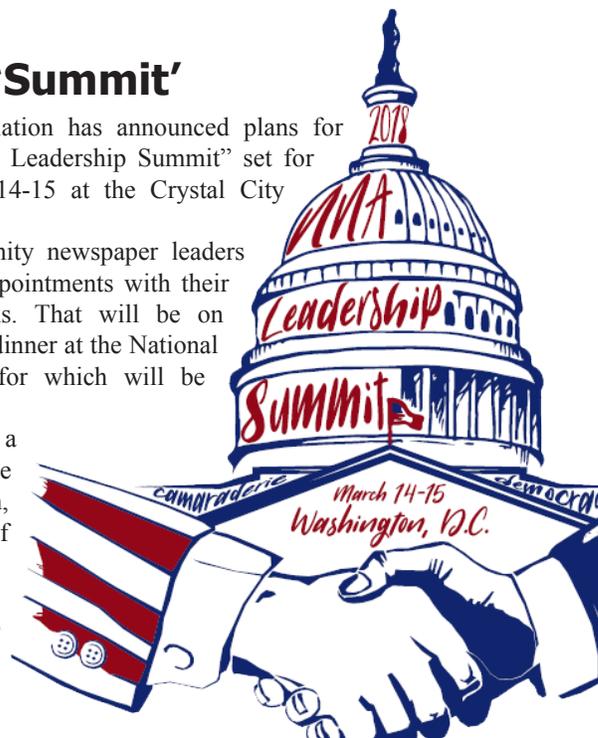
NNA plans annual Washington, D.C. 'Summit'

The National Newspaper Association has announced plans for its annual "Community Newspaper Leadership Summit" set for Wednesday and Thursday, March 14-15 at the Crystal City Marriott.

This gathering provides community newspaper leaders from across the country to book appointments with their respective congressional delegations. That will be on Thursday and will be followed by a dinner at the National Press Club, the keynote speaker for which will be announced in the near future.

The summit will also include a legislative and postal briefing on the latest information available on both, including an update on the status of the proposed newsprint tariff.

For more information the summit, including hotel information, go to <https://tinyurl.com/yb7tqr3w>.



Commerce moves to increase newsprint tariff

The U.S. Commerce Department late Tuesday announced it has decided to impose initial duties of up to 9.93 percent against Canadian newsprint sold south of the border. In making the announcement, the Commerce Department said that Canadian producers of uncoated groundwood paper such as newsprint are receiving subsidies.

A second decision is scheduled by March 7 when the Commerce Department will rule on whether to slap anti-dumping tariffs on Canadian shipments into the U.S.

U.S. newspaper publishers have been saying that a combination of countervailing and anti-dumping duties will have a devastating impact on the industry by dramatically increasing the cost of newsprint, the paper on which newspapers are printed.

National newspapers organizations in the U.S., like the News Media Alliance and the National Newspaper Association have been speaking out against this move by the Commerce Department.

(EDITOR'S NOTE: For more on this issue and the concerns expressed by the newspaper industry, see the stories from NNA and NMA on Page 3 and 4 of this Arkansas Publisher Weekly.)





Tom Larimer's *Potpourri*

Newspapers across the country just can't seem to catch a break.

Sometimes it feels like were that beleaguered rabbit running about in the shooting gallery with seemingly everyone taking turns taking their shot.

These are tough times for the newspaper business. Actually it's tough all over in a lot of business segments, but the one we know, the one we care most about, is the newspaper business. Right now we're just not feeling the love as the saying goes.

Take the recent news about a proposed import duties on newsprint, mainly that newsprint being imported from our neighbors to the north, Canada. The proposal is that the increased duty be as much as 50 percent.

You don't have to be an economist or even much of a mathematician to figure that such a duty increase would lead to a return to outrageous newsprint prices, this at a time when many newspapers can't take on many more expenses and remain viable.

It's almost as if this is part of the plan...to price newsprint out of the market for many newspapers who may just decide to give up the ghost and pack it in.

So who came up this grand scheme? You likely wouldn't be surprised to learn that it was driven by money, or the desire to make more money. Or you could call it greed.

The petition for the increased duty on newsprint imports came from the North Pacific Paper Company of Longview, Wash. That company is presently owned by a hedge fund and someone in that ownership group was smart enough to figure that they could reduce competition, namely the Canadian newsprint industry, by getting the U.S. to levy a heavy import duty on the Canadian-produced newsprint coming into this country.

One could imagine that the sales and the profits of the Washington newsprint company would increase if their competition were saddled with heavy tariffs on imported newsprint. And of course the profits of the hedge fund that owns the newsprint company in Washington would grow, and that's of course the goal.

Hedge funds exist to make money for their investors. Fund managers could care less what such a tariff would mean for hundreds of newspapers across the country. Their bottom line is their bottom line and how much they can return to investors. These things happen in a free market economy. In fact, they happen every day. It's just not every day that one of these business proposals would so negatively impact the newspaper industry. That tends to get our attention.

Reports of this proposal began circulating in the fourth quarter of 2017. Newspaper Association Managers, myself included, were given a thorough update on the situation at our annual legislative conference held each year in Washington, D.C. in early December.

I sat there listening to the story unfold and couldn't help thinking that how many more of these sort of hits can newspapers absorb.

So what's being done? In early December over 1,100 newspapers in small and medium-sized communities across the U.S. had signed a letter calling on Commerce Secretary **Wilbur Ross** to heavily scrutinize the import duty petition. Then the holidays came and little or nothing takes place as Washington, D.C. takes a holiday.

It is likely we'll be hearing more about this in the days, weeks and

months ahead. Newspapers will be watching because newsprint is one of our biggest expense items. It's not inexpensive to produce a newspaper and a big part of the expense is what we pay for the paper on which we print our products.

Stay tuned on this one.

I noted with encouragement, I guess, that some schools are developing curriculum to train students on how to separate the real news from the growing number of "fake news" outlet.

Encouraged, yes, but at the same time discouraged that a move like this is even necessary.

The same story in a newspaper I read over the holidays indicated that few schools any more teach civics in the classrooms. Really? What happened with that?

Civics class is where students have traditionally learned about their government at all levels. It is important for American citizens to understand how their government works because not to have even the basest of understandings of government can lead to all manner of issues.

The same story reported that a large number of young people couldn't identify the three divisions of federal government. Some polled didn't even know there were divisions, and even fewer could name them.

So why is this even important? Rampant ignorance when it comes to citizens unaware of how they're being governed has never been a good formula for long-term success of a country. History informs us of that time after time. Keeping the citizenry ignorant opens the door to those who would wrest power from the people and house it in their own domicile.

In order to question government you sort of need a working knowledge of how government works. A big part of government by the people is active participation by the people. Absent that, the scoundrels are empowered.

I have long criticized the public schools for not teaching Arkansas history. I'm not talking about one semester or one year of Arkansas history, but a solid curriculum that would expose students to all aspect of Arkansas' colorful history.

A big part of that history is to develop an understanding of things that have transpired in the past, how they came about and what were the long-term effects. Without that knowledge, as the saying goes, we're destined to repeat the calamities of the past.

It's the same with understanding how our government operates; to understand the checks and balances that keep those in power doing the things needed to improve the lot of all citizens. If we're not teaching even the basics of government, how can we expect young people to have any clue about their government, how it works, and how important are those checks and balances?

Possessing a thorough background and training in government would certainly help people be able to immediately spot the difference between real and fake news.

It really isn't that complicated.

Have a great week.

Tom

Sublett to publish Gatehouse newspapers

Kelly Sublett, has been named publisher of the *Log Cabin Democrat* in Conway, and will also have publishing responsibilities for the *Van Buren County Democrat* in Clinton and the *Sun-Times* in Heber Springs.

All three newspapers are owned by Gatehouse Media. The *Log Cabin Democrat* is the latest acquisition by Gatehouse, having taken it over in August of last year from the previous owner, Morris Communication.

Sublett's first day on the job was Monday. She had previously been the editor of the *Log Cabin Democrat*.

Meek returns as *Hot Springs Village Voice* Editor

Jeff Meek, former managing editor of the *Hot Springs Village Voice*, returned to that position earlier this month, according to the newspaper.

Meek started out in 2007 writing an occasional column for the newspaper before becoming a staff writer and senior reporter before being named managing editor, a post he held from 2015 to 2017 when he retired.

*Mark Your
Calendar!*

January 31:

Ad Contest Entry Deadline

March 15-16:

Ad Conference,

Winthrop Rockefeller Institute,
Petit Jean Mountain

**NEW ADDITION?
LET US KNOW!**

We want to know about your new hires, retirees and promotions!

Send your staffing changes to info@arkansaspress.org to be updated online and included in our weekly bulletin and monthly newsletter.

State Archives outlines process for preserving newspapers

After spending hours researching, editing, and printing, your publications are released to the world. Those publications are delivered primarily to homes and businesses to be consumed by the public, but what happens to the issues sent to the Arkansas State Archives?

With over 60 years of microfilming experience, the State Archives has developed a smooth and efficient process to dutifully preserve the 140+ publications that we collect. When a publication arrives in the mail, it is immediately sorted by title by our microfilm staff.

Once a month for dailies, and once a quarter for weeklies, that title is pulled out to be checked for missing issues, catalogued, and prepared for filming. This preparation includes ironing the paper to remove any creases, removing mailing labels, and repairing any tears that may have occurred during mailing.

When those papers are ready, they are moved to the holding shelves where they are again sorted by title. These publications will stay on these shelves until there are enough issues to fill a 100' roll of microfilm, which is

a minimum of two months.

When it is ready, a microfilm technician will perform a "step test," taking photographs of the publications at different light settings to determine that best exposure for that particular paper, and then use a Recordak micro-file machine to photograph the newspapers. Each 100' roll of film can hold an average of 800 frames, which takes the microfilmer 1 to 3 days to complete.

That negative is sent to the Archives on-site lab to be processed, and then returned for quality control.

As many of the newspapers are recycled after filming, it is essential that every single frame is checked for potential problems before it is approved and the microfilm technician goes to the next newspaper. That negative then returns to the lab to have a positive duplication made for general public use, and the negative is stored in an archival quality box in our temperature and humidity controlled vault. The silver halide film that we use has a projected shelf life of 500 years.

NNA adds voice to newsprint tariff opposition

By Tonda F. Rush

Strong opposition by the National Newspaper Association and industry printing partners was registered with the Department of Commerce in December as an investigation into alleged unfair trade practices from Canadian newsprint suppliers looms as a growing threat to community newspapers.

Findings by the Commerce Department could lead to imposition of duties on Canadian newsprint as high as 50 percent, causing dramatically higher paper prices for U.S. newspapers.

The petition to investigate possible dumping of uncoated groundwood paper by Canadian suppliers into the U.S. market was initiated earlier this year by North Pacific Paper Co., Longview, WA. NORPAC is owned by One Rock Capital Partners, a New York-based hedge fund. The petition argues that the Canadian government impermissibly subsidizes the production of newsprint by, among other things, permitting the harvesting of logs on government land.

This fall, NNA assisted News Media Alliance and PAGE Cooperative, a joint purchasing organization supported by many NNA members, in gathering purchasing data to supply to the Commerce Department. In December, NNA followed up by asking

industry printers to join in a letter to DOC, arguing that newsprint prices are driven more by the buyers' ability to pay than by any action by foreign governments. Nearly 50 printers from 27 states responded with signatures opposing the tariff.

Newsprint consumption has fallen continuously over recent years as newspapers have printed fewer copies with fewer pages. The paper industry has responded by shrinking production capacity. The U.S. purchasing market is now served by approximately 75 percent of Canadian paper and 25 percent of U.S. paper, following the closure of a newsprint mill this year in Calhoun, TN.

NNA President Susan Rowell, publisher of The Lancaster (SC) News, said the imposition of any tariff upon Canadian paper would be destructive for small newspapers and would not help U.S. producers.

The Commerce Department voted Tuesday, Jan. 8, to impose a temporary duty on newsprint. An investigation by the International Trade Commission would then proceed through the spring before a final decision is reached. If the investigation proceeds, NNA members will take their case to Capitol Hill.

(Tonda Rush is NNA's Public Policy Director and General Counsel. Email Tonda at tonda@nna.org.)

NMA expresses disappointment in tariff decision

By David Chavern

We are stunned that a single U.S. mill in Longview, WA (NORPAC) has been able to manipulate the trade laws to their gain, while potentially wreaking financial havoc on newspapers and other commercial publishers across the country.

Today, (Tuesday) in response to NORPAC's petition, the Department of Commerce issued a "preliminary" decision to impose countervailing duties on Canadian imports of uncoated groundwood paper. This decision and its associated duties likely will lead to job losses in U.S. publishing, commercial printing and paper industries.

NORPAC petitions do not reflect the views of the domestic paper industry and demonstrate a lack of understanding of the market. The well-documented decline in the U.S. newsprint market is not due to unfair trade, but to a decade-long shift from print to digital distribution of news and information.

Now, we will all literally pay for one manufacturer's manipulation of our country's trade laws. These tariffs will saddle publishers with additional costs that will hasten the newspaper industry's shift to digital and, consequentially, accelerate the decline in both the printed newspaper and newsprint industries. There will be no winners.

We oppose the NORPAC petitions and these tariffs, and we will take every possible measure to fight this misguided case as it moves through the investigation process at the Department of Commerce and International Trade Commission.

(David Chavern is president and CEO of the News Media Alliance.)

Send to APA your updates

APA member newspapers are reminded that if you have job openings or if you're looking to sell a piece of equipment or anything else, you can post it on the APA's "Jobs Bulletin."

The deadline is the close of business on Mondays and released on Wednesdays. APA members and associates receive an email when the Jobs Bulletin is ready for viewing, and it can be found on the APA web site under the Publications heading at www.arkansaspress.org.

There is no fee for posting job openings or items for sale in the Jobs Bulletin. Items may be sent to info@arkansaspress.org.

Advertising Marijuana Sales Remains Problematic: NMA

The sale of marijuana for both medicinal and recreational purposes has been made legal in several states with more considering it, but newspapers need to know that publishing ads for marijuana sales remains problematic, according to a recent summary released by the News Media Alliance (NMA).

Currently, a newspaper accepting advertisements for marijuana would face several legal challenges arising from the fact that marijuana remains a Schedule I controlled substance under federal law, even in states where it is legal.

Among the report elements:

- *The Controlled Substances Act ("CSA") makes advertising for Schedule I substances a felony.* Under the CSA "[i]t shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance," of which marijuana is one. 21 U.S.C. § 843(c)(1). A companion section of the Act criminalizes digital advertising. *Id.* § 843(c)(2). These offenses are punishable with a fine and up to four years in prison.

- *The United States Postal Service ("USPS") takes the position that material containing an advertisement for marijuana is "nonmailable," both under the CSA and USPS-specific regulations.* In November 2015, the Portland District of the USPS issued a statement on "Mailpieces Containing Advertisements About Marijuana" explaining that such materials were nonmailable. This garnered significant attention, and several members of Congress wrote to the USPS seeking clarification.

In a December 2015 letter, the USPS General Counsel Thomas Marshall issued a national policy applying to all postal Districts reiterating that these materials are nonmailable, but making clear that while USPS employees should advise mailers of the standards that apply to marijuana advertisements, they do not have the authority to reject such materials.

Instead, they must send a report to the Postal Inspection Service, and the matter would then be turned over to the responsible law enforcement agencies for investigation if appropriate. We understand that in January 2016, the Postal Service contacted several newspapers throughout the country that carried advertisements for marijuana, informing them that they were breaking federal law by including these advertisements and mailing them to subscribers through the postal service.

- *The amendment that currently protects marijuana operations in states that have legalized the drug for medical use from federal prosecution is set to expire on January 19, 2018.* The Rohrabacher-Blumenauer Amendment expires on January 19, 2018 along with the latest continuing resolution extending current government funding levels. (As it is tied to a spending bill, the Amendment needs to be continually renewed. In an attempt to resolve this, Rep. Dana Rohrabacher introduced the Respect State Marijuana Laws Act in the House in February 2017. It has not progressed out of committee.) In May 2017, Attorney General Sessions sent a letter to Congressional leadership asking them not to renew the Rohrabacher-Blumenauer Amendment. If it is not renewed by the 19th, the DOJ will be able to fund actions against activities revolving around medical marijuana, including advertising, even in states where medical marijuana is legal.

- *Although there was hope the Obama-era Department of Justice ("DOJ") would affirmatively state that it would not prosecute individuals running marijuana advertisements, current Attorney General Sessions has reversed this position.* In August 2013, the DOJ issued a memorandum (sometimes referred to as the Cole memo, after its author, Deputy Attorney General James M. Cole) instructing United States Attorneys that prosecuting marijuana businesses acting legally under state law was not a priority.

In December 2014, Congress passed the Rohrabacher-Blumenauer Amendment as part of an omnibus spending bill, prohibiting the Department from using funds allocated under the bill from preventing states that have legalized medical marijuana from implementing those laws. (For example, in an ongoing appeal of an action against five Washington state residents prosecuted for medical marijuana cultivation and use, the DOJ is now taking the position that it did not have the authority to continue its prosecution after December 2014, even though the lawsuit began in 2012.)

Against this backdrop, in March 2016 several members of Congress wrote to then-Attorney General Loretta Lynch asking her to make clear that DOJ would not prosecute individuals for running marijuana advertisements. DOJ did not issue any statement in response. In contrast, current Attorney General Jeff Sessions is known for his strong position against marijuana, notably stating that the drug is "only slightly less awful" than heroin.