

## SUPPORT FOR HB 474

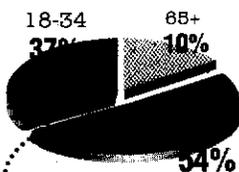
Under current Montana law, private parties can fulfill their obligation to give public notice for various purposes, such as publication of a summons in a civil action (M.C.A. §25-3-302), by placing an advertisement in "a newspaper of general circulation." Government entities however, must utilize a newspaper of general *paid* circulation. The distinction, though, is no longer significant. The additional requirement placed upon government notices merely protects the commercial interests of newspapers that meet the criteria by limiting competition, consequently increasing costs for taxpayers. Montana's counties would be better served if the relevant statutes were changed to omit the archaic requirement for paid circulation, which is precisely what HB 474 will do.

I suspect that the statutes were originally intended to ensure that government notices were restricted to reputable publications. Obviously, if a public notice is published in a feeble pamphlet that nobody reads, it would be ineffective, and the citizens' interests would not be satisfied. But it is unlikely that lawmakers who drafted these laws could foresee the emergence of substantive free newspapers with controlled distribution and broad reach like the *Missoula Independent*, the *Billings Outpost*, and the *Butte Weekly*.

The average net circulation of a single issue of the *Independent* currently exceeds 22,000 copies, making it the fourth largest newspaper in the state, measured by readership. Distribution is carefully managed. We count the number of copies dropped at each of our more than 600 pick-up points and likewise count the number of copies left behind on the racks every week. An outside auditor monitors the accuracy of our count. (A copy of our most recent audit report is included with this letter. Many of Montana's paid circulation newspapers, for instance the *Kalispell Daily Inter Lake*, do not audit their circulation, so no confirmation of their claimed distribution exists.) Last year, the Missoula District Court ruled that the *Independent* is indeed "a newspaper of general circulation." We publish many of the public notices placed by private parties in Missoula. And we have won countless awards for our outstanding editorial content from the Montana Newspaper Association, the Society of Professional Journalists, and others. Yet the law makes us ineligible to handle government notices.

That's too bad for Missoula taxpayers, because the *Independent* charges at least 20 percent less for public notices than the paid circulation daily newspaper in town, and we'd go even lower, if we thought we could get the business.

The Missoula *Independent* reaches a highly desirable demographic.



Of all *Independent* readers, 54% are 35-64, 37% are 18-34 and 10% are 65+.

The average age of an *Independent* reader is 42.

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Free rack distribution is a viable approach to newspaper publishing. Yellowstone and Silver Bow counties have substantive free weekly newspapers that would be suitable for public notices, but like the *Independent*, they do not fulfill the requirement for paid circulation set forth in the statutes. Looking toward the future, it's easy to imagine many more free weeklies taking root in other Montana cities. There's a current effort already underway in Helena and a likely effort developing in Bozeman. The time has come for state law to recognize the trend.

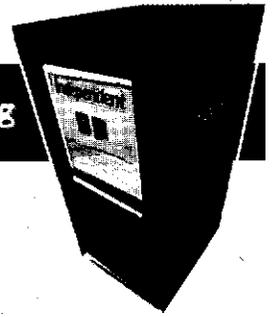
You will probably hear shortly from the Montana Newspaper Association, which opposes this bill on the grounds that removing the requirement for paid circulation would undermine the people's right to know, but they're grossly exaggerating the threat. The truth is that the requirement for paid circulation does absolutely nothing to ensure the legitimacy of the publication running the notice. A feeble flyer that costs a penny could be deemed "paid," even if nobody reads it. The real substance of the law is the requirement for "general" circulation, and that requirement is preserved by HB 474.

The suggestion that HB 474 would somehow undermine the people's right to open government is simply not supportable. In its current form, it would merely expand the options for county governments to permit them to place legal notices in newspapers of general circulation that don't charge for the privilege of reading.

The MNA will also be hard-pressed to explain why it is agreeable to the current state law which permits private parties to publish vital information, for instance a notice to creditors, in a free newspaper of general circulation, but is opposed to giving local governments the same flexibility. There is no legitimate reason to hold local governments to a different standard, much less the arbitrary and indefensible standard of "paid" circulation.

In addition to eliminating the word "paid" from the statute, you will also notice that HB 474 eliminates the requirement for a second-class mailing permit as well. A second-class permit allows qualified periodical publications to send copies to subscribers at a reduced postage rate. Free papers can get the permits, but it is very difficult, and a huge can of worms. In the interest of simplicity, you should consider the requirement for a second-class mailing permit as the equivalent of paid circulation. More directly to the point, though, it seems undesirable to let a potentially inept federal bureaucracy decide what constitutes a legitimate newspaper in Montana, using rules that are designed for an entirely different purpose, to determine postal rates.

HB 474 is sensible and fair on its face. It will give county governments a better chance to seek competing bids for legal notices, which will save taxpayers money, while giving Montana's legitimate free newspapers a competitive opportunity to serve the citizens. Best of all, there's no downside, unless you're allied with a paid circulation newspaper. Don't let the big dailies push us around. Local governments, taxpayers, and the free newspapers deserve to prevail on this issue.



## Witness Bio

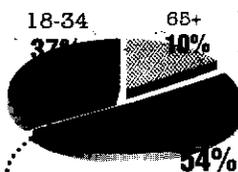
**Matt Gibson** has been the owner and Publisher of the Missoula *Independent* since 1997. He currently serves on the board of directors of the Montana Newspaper Association, Missoula County United Way, and the Partnership for Children, a joint venture between the InterMountain Children's Home in Helena and Missoula Youth Homes.

Mr. Gibson previously spent five years on the board of directors of the Missoula Food Bank, where he held the office of president, and three years on the board of the Washington, D.C.-based Association of Alternative Newsweeklies.

He came to Montana in 1990 to take his first job after college as a reporter for the Livingston *Enterprise*. He now makes his home in Missoula.

The Missoula *Independent* has been published since 1991. With weekly circulation in excess of 22,000 copies, it is the fourth largest newspapers in the state, reaching an estimated 46,000 western Montana adults with each issue. The *Independent* has been honored with countless editorial awards, and is a proud member of the Missoula Chamber of Commerce and the Missoula Downtown Association.

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