

Datestamp: 02/20/2009

## Looks like curtains for the Citizen

### Bid deadline passes; paper likely to close March 21

RENÉE SCHAFFER HORTON

rshorton@tucsoncitizen.com

The deadline for bids on the Tucson Citizen has passed - apparently with no offers - which means the paper likely will cease publication March 21 after 138 years in business.

A spokeswoman for the paper's corporate owner described the Feb. 19 bid deadline as "flexible," leaving the door open for an 11th-hour purchase.

But national media experts say it is doubtful a buyer will come forward because Gannett Company Inc. is not selling its 50 percent interest in the joint operating agreement it has with the Arizona Daily Star.

The Citizen and the Star, owned by Lee Enterprises Inc., have had a JOA since 1940. Under the agreement, each paper produces independent editorial and news content, while production, distribution, advertising and other non-news operations are handled by a third corporation, Tucson Newspapers. The papers share equally in the profits from Tucson Newspapers operations.

Gannett, which announced Jan. 16 it was putting the Citizen up for sale, appears to be preparing to close the paper.

The company filed an amendment to the JOA with the U.S. Department of Justice on Feb. 13. The department oversees newspaper joint operating agreements created under the Newspaper Preservation Act, which created an exemption to federal antitrust laws for jointly-operated newspapers.

The amendment, signed by representatives of Gannett and Lee, allows the corporations to get out of a requirement in the original JOA that calls for publishing two papers through 2015.

The amendment also strikes all references to the Tucson Citizen from the original documents and contains a provision that anyone who might buy the Citizen before March 21 cannot negotiate to get into the JOA.

However, it allows for Gannett to continue its interest in the JOA, meaning it will continue to receive half the profits from the enterprise, and pay half the costs.

The Justice Department does not have to approve the amendment - which is required to prevent breach of contract. It can decide to investigate or halt the closure, although media experts say that rarely happens.

Mark Fitzgerald, editor-at-large of the newspaper trade publication Editor & Publisher, said the Justice Department has been "fairly laissez faire" about investigating the disengagement of newspaper JOAs.

He said that while some question the legality of selling a JOA-yoked paper without offering the paper's stake in the agreement, the practice is "very common, especially if you don't want to find a buyer."

Gannett's announcement Jan. 16 said it was selling only "certain assets" of the Citizen, including the paper's name, Web site, Web address, subscriber list and wire service contracts.

"A (failing) paper is only valuable as it is in the partnership, but as a struggling paper on its own - no one's going to buy that," Fitzgerald said.

When the federal governments approved the JOA in 1970, each paper had a daily circulation of 60,000.

But the morning Star now has a daily circulation of about 94,055 and the afternoon Citizen's has fallen to 17,000.

Robert J. Dickey, president of Gannett's Community Publishing division, said Jan. 16 that the reason for selling the Citizen was because it was no longer profitable. He did not go into details when delivering the news to Citizen staffers.

Tucson Newspapers CEO Mike Jameson described the Citizen as "upside down" in regard to revenues and expenses.

"It costs (Tucson Newspapers) more to operate the afternoon newspaper than the newspaper contributes in revenue to the organization," he said. "If you remove it, you have less revenue, but you also have less expense and in this case the expense is more than the revenue."

Profits from Tucson Newspapers operations plunged from 2007 to 2008, according to annual reports from Lee Enterprises for those years.

In 2007, total profit for the JOA was \$36.5 million, resulting in a profit split for the Citizen and the Star of \$18.2 million each.

Total profit for the joint venture in 2008 was about \$21 million, so each parent company got only \$10.5 million.

"This is an unprecedented economic downturn," Jameson said, explaining the profit slide. "Our top categories of advertising revenue, from department stores to auto to real estate - all of those have been hit particularly hard. It's a very serious situation, so I'm fairly confident (selling the Citizen) wasn't a decision that was made lightly because, you know, the Citizen's been around a long time."

Antitrust lawyers at the Department of Justice did not return repeated calls for comment on the Citizen-Star agreement, but James R. Wade, the former chief of the Litigation III section of the Department of Justice Antitrust Division, reviewed the Citizen-Star JOA for this article.

Wade said there is "a big question" surrounding selling newspapers currently in JOAs without including their vested interest in those agreements.

"It leads some people to say that by selling it that way, they are essentially guaranteeing that no viable buyer will emerge," said Wade, now a partner in the Washington D.C. office of Haynes and Boone LLP.

Representatives from Gannett and Tucson Newspapers would not confirm whether the Justice Department has contacted them, but a spokesman from Lee Enterprises said representatives from the department began making inquiries as soon as Gannett announced its intention to sell the Citizen.

"I know the Justice Department has been involved in the fact-finding of the case," said Dan Hayes, Lee's vice president for corporate communications. "We've had our legal staff answering questions from the Justice Department as (the sale) proceeds."

Wade said if the Justice Department was investigating the sale, it would do so in part to make sure Gannett and Lee had not colluded to close the Citizen just to make more money or "eliminate competition that will allow them to charge higher than competitive rates in the relevant market."

Representatives of Lee and Gannett would not comment about discussions held among the two companies prior to Gannett announcing the sale of the Citizen.

Larry Aldrich, president and CEO of University Physicians Healthcare and former president of Tucson Newspapers, said he would be "quite surprised" if there had not been conversations between the companies.

"Typically most of these things are done in consultation and awareness and some cases in agreement with the other JOA partner," Aldrich said. "They'd be talking about the willingness to restructure the contract subject to Justice Department approval."

Should the Justice Department raise objections, Aldrich said "a good enough lawyer" could argue against breach of contract caused by the failure of Gannett to produce a newspaper.

"The problem is the contract has to be looked at in context," said Aldrich, who has 25 years of litigation experience. "I'm a good enough lawyer I think I could argue that the contract certainly contemplates two newspapers being published but doesn't compel two newspapers to be published."

Aldrich said Gannett might have an interest in buying the Star from Lee Enterprises.

"It's my opinion that it's not Gannett's MO to just own a profits-interest in an agency when they don't own the newspaper," Aldrich said. "It would be a little goofy for Gannett to retain that, so they would either sell their interest to Lee or they would purchase the (Star). And that's the uncertainty - in this kind of market, Lee might be looking and saying the value of newspapers is really low and we're not going to get fair value for our property, so we're not selling right now."

John Humenik, editor and publisher of the Star, would not comment for this article, but Hayes said Lee wasn't selling the paper.

"We have no immediate plans to make any changes," Hayes said. "Right after Gannett made the announcement, our CEO sent a note to our publishers all across the company to pass on the news release from Gannett and she said we do not anticipate any staffing changes at the Star as a result of this."

Tara Connell, a Gannett spokeswoman, said the only thing on the table is selling the Citizen and would not comment on the possibility of Gannett buying the Star.

Robert Broadwater, managing director of the New York-based Broadwater and Associates, is handling the sale of the Citizen for Gannett. He would not say if any bids were received by Feb. 19.

Broadwater is also handling the sale of Denver's Rocky Mountain News and the Seattle Post-Intelligencer, both in JOAs with larger papers in their cities.

In a phone interview, Broadwater said, "I do not recall" when asked how many JOA sales he had brokered.

He gave the same answer when asked how many of the sales he handled resulted in newspaper closures.

According to the company's Web site, Broadwater provided "financial advisory services" to the E. W. Scripps Co. "in connection with the termination" of joint operating agreements in Birmingham, Ala., and Albuquerque.

The Albuquerque Tribune, an afternoon newspaper, was on the auction block for seven months prior to closing last February.

The Birmingham Post-Herald, a five-day afternoon newspaper, was closed by Scripps in September 2005 with no attempt to sell it.

Gannett's Connell said Feb. 10 that Feb. 19 was the "target date" for completed bids for the sale of the Citizen, "but if a bid comes in within a realistic amount of time to close, we'll take it."

She did not define what that time frame would be.

### **Citizen played key role in JOA law**

RENÉE SCHAFFER HORTON

rshorton@tucsoncitizen.com

The Tucson Citizen played a pivotal role in the passage of a law allowing newspapers to set up joint operating agreements that postponed the demise of two-newspaper towns.

The Arizona Citizen, which was born in 1870 as a weekly and went to daily publication in 1879, began experiencing financial strain in the 1930s. To stave off failure, the Citizen's owners in 1940 entered into a joint operating agreement with the owners of the Arizona Daily Star where the two papers would share business and publishing costs, set advertising rates together and share in profits.

This arrangement went unchallenged until 1965 when the Citizen's owners purchased the Star. In 1966, the U.S. Department of Justice sued Citizen Publishing Co. for violating antitrust laws barring monopolies.

The case was litigated for four years, finally winding up in the U.S. Supreme Court in 1969. Sitting on the sidelines were about 42 other joint-agency newspapers in 21 cities, according to a history of the Tucson Citizen written by former Citizen staffer Don Schellie. The fates of those papers would be determined by the suit against the Tucson Citizen.

"The Supreme Court affirmed that this was indeed a violation of the antitrust laws," said James R. Wade, the former chief of the Litigation III section of the Justice Department's Antitrust Division. "But then Congress took up the cause because they thought it was important to maintain editorial diversity in these cities."

The congressional defense of the Citizen-Star JOA resulted in the Newspaper Preservation Act, passed in 1970, which created a limited immunity from antitrust laws barring a monopoly for newspapers and allowing two newspapers to set advertising and circulation rates in the same market.

"The general view was that newspapers were in trouble even back then and the NPA was needed and that it was OK to sacrifice economic competition to keep the editorial competition and diversity," Wade said.

The Citizen and Star were able to extend their JOA after the Newspaper Preservation Act was passed. The last

Bid deadline passes; paper likely to close March 21

time it was renewed was in December 1988, with a small revision in 1990 extending the renewal to 2015.

The Citizen-Star JOA was one of 27 that have been created over time, according to Mark Fitzgerald, editor-at-large of the newspaper trade publication *Editor & Publisher*.

Since 1970, 16 of those 27 JOAs have ended, usually with the closure of one of the papers, which is frequently an afternoon paper.

Although JOAs might have looked like salvation to struggling papers in two-newspaper towns, Fitzgerald said the agreements were never meant as a panacea for the ills that plagued the industry.

"It doesn't preserve newspapers, absolutely not," he said. "It creates a monopoly inside a city. Back in the good old days when you had a city supporting two papers and one went under, maybe another one would emerge. But with JOAs, you split up the market, monopolize the advertising and what happens is cities like Tucson and Denver, when they can't support two papers, the lagging paper becomes a drag on the whole system."

E. W. Scripps put the Rocky Mountain News in Denver up for sale on Dec. 4.

Fitzgerald said the more newspapers a town has, the better informed the public will be overall, and that two newspaper towns are always better than one newspaper towns, "but JOAs don't save them."

"They are marriages of convenience," he said. "They last until they don't last anymore."

'It costs (Tucson Newspapers) more to operate the afternoon newspaper than the newspaper contributes in revenue to the organization. If you remove it, you have less revenue, but you also have less expense and in this case the expense is more than the revenue.'

Tucson Newspapers CEO Mike Jameson

## **A BAD YEAR FOR NEWSPAPERS**

Daily newspapers have been in steady declines of circulation revenues and advertising revenue for the past few years. The losses have escalated as advertisers move their business to the Internet (particularly classified advertising migrating to free sites such as Craigslist.com) as well as the general economic malaise that began in 2008. Here's a breakdown of the most recent bad news in the newspaper industry:

December 2008 was a poor month:

- \* The Detroit News and the Detroit Free Press announce they will reduce home delivery of the papers
- \* The Tribune Co., publisher of the Chicago Tribune and the Los Angeles Times, files for bankruptcy
- \* E.W. Scripps puts the Rocky Mountain News up for sale.

January wasn't much better:

- \* The Hearst Corporation puts the Seattle Post-Intelligence up for sale
- \* The Minneapolis Star-Tribune files for bankruptcy

Bid deadline passes; paper likely to close March 21

\* The Los Angeles Times announces plans to lay off 300 people - 70 from the newsroom - and fold its stand-alone California section into the main news pages, beginning March 2.

\* Gannett Company, Inc. puts the Tucson Citizen up for sale.

And the downturn continued in February:

\* The Tucson area's Vail Sun closes Feb. 3 after only two years of publication

\* Employees of the Sacramento Bee are told by corporate owner McClatchy Newspapers that they should expect layoffs, wage cuts and mandatory furloughs in early March.

## **TWO-PAPER REQUIREMENT**

The original joint operating agreement between the corporate parents of the Tucson Citizen and the Arizona Daily Star requires publication of two papers through 2015, even if one of the papers is sold.

Section 5.3(f) of the JOA reads that, following the sale of either paper, "and for the remaining term of this Agreement . . . the Buying Party shall print, produce, distribute and market (both circulation and advertising) the newspapers in the same manner that this agreement contemplates shall be done by (Tucson Newspapers), subject in all cases to the editorial independence of the newspapers as contemplated herein. Each of Star and Citizen shall continue to be obligated to provide news and editorial product . . ."

The amendment filed Feb. 13 negates that section, reading, "From and after the Closing Date, Star and Citizen shall each continue to have a 50 percent interest in the assets, liabilities, profits and losses of TNI Partners (the Partnership) and the Partnership Agreement shall continue in full force and effect except that, (a) the purpose of the partnership shall be to operate a single newspaper, the Arizona Daily Star, and (b) all direct and indirect references to the Tucson Citizen shall be deleted."

## **TUCSON CITIZEN TIMELINE**

1870: The Arizona Citizen, a weekly newspaper, is founded by John Wasson

1877: Wasson sells the paper to John Clum.

1879: Clum takes the paper daily and changes the name to the Tucson Daily Citizen.

1879: The Arizona Daily Star begins publication after several years of fits and starts as a weekly.

1880: Clum sells the paper and moves to Tombstone. The Citizen then changes hands numerous times until 1936.

1936: William A. Small Sr. buys the Citizen.

1940: The Citizen enters into a joint operating agreement with the Arizona Daily Star.

1965: Citizen purchases the Star for \$10 million to prevent it from falling into the hands of a national newspaper chain. The stated intent is to find a local buyer and sell it as soon as possible.

1966: The U.S. Justice Department sues Citizen Publishing, saying its ownership of the Star violates federal

Bid deadline passes; paper likely to close March 21

antitrust laws. The Citizen loses and appeals all the way to U.S. Supreme Court.

1969: Supreme Court rules newspaper JOAs are a violation of antitrust laws. The Citizen leads an effort to create an exemption to antitrust laws for newspapers.

1970: Congress passes the Newspaper Preservation Act and President Nixon signs it.

1970: Citizen Publishing sells the Star to St. Louis-based Pulitzer Co. for \$10 million.

1976: The Small family sells the Citizen to New York-based Gannett Co. for \$30 million in stock

1977: Gannett changes the paper's name to the Tucson Citizen

1988: Gannett and Pulitzer renew the JOA for 25 years.

1990: A small revision to the JOA extends its life to 2015.

2005: Lee Enterprises buys Pulitzer Co., takes over ownership of the Star

2009: Gannett announces it will sell or close the Tucson Citizen, effective March 21.

**Caption:** Husband-and-wife team Anna Marie and Howard McGrath sell the Citizen on Thursday at South Palo Verde Boulevard and East Ajo Way. Citizen science reporter Alan Fischer (center) speaks with fellow city desk reporters Thursday in the Citizen's newsroom. The old Star-Citizen building in 1949, at its North Stone Avenue site. The scene in the Tucson Citizen newsroom in the early 1970s, before the paper moved to its South Park Avenue address in 1973.

**Publication:** Tucson Citizen

**Section:** Local

**Source:** Citizen Staff Writer

**Edition:**

**Page:** 1A

**Book:** A

**Byline:** RENÉE SCHAFER HORTON

**From:**