

IN THE SUPREME COURT OF IOWA

NO. 18-2096

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MARCUS NEWS, INC.,  
*Plaintiff-Appellant,*

v.

THE O'BRIEN COUNTY BOARD OF SUPERVISORS  
*Defendant-Appellee*

and

IOWA INFORMATION, INC.  
*Intervenor-Appellee.*

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Appeal from Iowa District Court for O'Brien County  
Honorable David A. Lester, Case No. EQCV022991

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**Brief of *Amicus Curiae* the Iowa Newspaper Association in  
Support of the Appellees**

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Keith P. Duffy AT0010911  
Joseph A. Quinn AT0006451  
NYEMASTER GOODE, P.C.  
700 Walnut St., Ste. 1600  
Des Moines, IA 50309  
Telephone: (515) 283-3100  
Fax: (515) 283-8045  
Email: [kduffy@nyemaster.com](mailto:kduffy@nyemaster.com)  
[jquinn@nyemaster.com](mailto:jquinn@nyemaster.com)  
*Attorneys for Amicus Curiae Iowa  
Newspaper Association*

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES .....	3
IDENTITY AND INTEREST OF AMICUS CURIAE.....	4
RULE 6.906(4)(D) STATEMENT OF AUTHORSHIP .....	5
ARGUMENT .....	5
I.    The term “geographic area” in Iowa Code Section 349.6 means something smaller than the entire county. ....	5
II.   Appellant’s “total combined subscription” argument has no statutory basis and should be rejected. ....	10
CONCLUSION.....	12
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS .....	14
PROOF OF SERVICE AND CERTIFICATE OF FILING.....	15

## TABLE OF AUTHORITIES

### Cases

<i>City of Des Moines v. Iowa Dep't of Transportation</i> , 911 N.W.2d 431 n.8 (Iowa 2018).....	9
<i>Homan v. Branstad</i> , 887 N.W.2d 153 (Iowa 2016) .....	9
<i>Marcus v. Young</i> , 538 N.W.2d 285 (Iowa 1995) .....	9
<i>McGill v. Fish</i> , 790 N.W.2d 113 (Iowa 2010) .....	7, 9

### Statutes

Iowa Code § 349.1 .....	5
Iowa Code § 349.3 .....	5
Iowa Code § 349.4 .....	5
Iowa Code § 349.6 .....	passim

### Rules

Iowa R. App. P. 6.904(3)(m).....	9
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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

The Iowa Newspaper Association (“INA”) is an association of 274 daily and weekly newspapers that work together to preserve and protect newspapers’ Constitutional and First Amendment rights in order to promote an informed citizenry. Iowa’s newspapers play a critical role in notifying Iowans of the official proceedings occurring in their local communities including counties, cities, and school districts. Accordingly, each year, a county board of supervisors is required by statute to select newspapers in which to publish the county’s official proceedings.

Most newspapers focus their coverage to a particular city, school district, or other geographic area within a county. The interpretation of Iowa Code Section 349.6—the statute at issue in this appeal—involves a determination of what constitutes a “geographic area” under Iowa Code Section 349.6. Iowa’s newspapers make their own decisions about which geographic areas they wish to cover and those areas are not determined on a “county line” basis. Because its members desire to preserve their constitutional right to tailor their coverage and target their

preferred subscribers so as to best serve their chosen audience, the INA has a unique and significant interest in the interpretation and application of Iowa Code Section 349.6.

**RULE 6.906(4)(D) STATEMENT OF AUTHORSHIP**

INA is represented by the undersigned counsel of the Nyemaster Goode, P.C., law firm, who authored this brief in whole. No party, party's counsel, or other person contributed money to fund the preparation or submission of this brief.

**ARGUMENT**

**I. THE TERM "GEOGRAPHIC AREA" IN IOWA CODE SECTION 349.6 MEANS SOMETHING SMALLER THAN THE ENTIRE COUNTY.**

Every January, a county board of supervisors is required to "select the newspapers in which the official proceedings shall be published for the ensuing year." Iowa Code § 349.1. Newspapers apply and a contest for the official newspaper exists "[i]f more applications are filed than there are newspapers to be selected." *Id.* §§ 349.3-4. Under Iowa Code Section 349.6, if a county is required to have more than one official newspaper, and "there are more newspapers than the number required for official county newspapers," then "newspapers under common ownership

published in the same city, and having approximately the same subscriber list *or* offered for sale in or delivered to *the same geographic area*, shall be treated as one newspaper.” *Id.* § 349.6 (emphasis added). The parties in this case stipulated that none of the newspapers involved in this appeal have “approximately the same subscriber list” under Iowa Code Section 349.6. App. 94 (Joint Stipulation of Facts (filed 7/23/2018), at 5, ¶¶ 29-30). This narrowed the issue to whether the parties’ papers were “offered for sale in or delivered to the same geographic area” under Iowa Code Section 349.6.

INA wholeheartedly agrees with the District Court’s inescapable conclusion “that O’Brien County as a whole cannot be considered the ‘same geographic area’ under these facts without effectively doing away with the impact of the legislatively created limitations created by the phrase[] itself.” App. 321 (Ruling and Order, (filed 10/10/2018), at 6). Not only is the District Court’s decision consistent with prior district court rulings on this issue (see *id.*), it is consistent with Iowa’s long-established rules of statutory interpretation.

When a case presents issues of statutory interpretation, the “starting point in statutory interpretation is to determine if the language has a plain and clear meaning within the context of the circumstances presented by the dispute.” *McGill v. Fish*, 790 N.W.2d 113, 118 (Iowa 2010). Courts “do not search for legislative intent beyond the express language of a statute when that language is plain and the meaning is clear.” *Id.* The rules of statutory construction are only applied “when the statutory terms are ambiguous.” *Id.* The Iowa Supreme Court instructed courts to “rely on the dictionary as one source to determine the meaning of a word left undefined in a statute.” *Id.* at 119.

The Legislature chose to use the phrase “same geographic area” in Section 349.6, but did not define that term. The District Court in this case referred to the court’s prior decision in *Iowa Information., Inc. v. The O’Brien County Board of Supervisors*, Case No. EQCV019970 (O’Brien County, August 10, 2009). App. 320-21 (Ruling and Order (filed 10/10/2018), at 5-6). In accordance with the Iowa Supreme Court’s direction, that prior decision “looked at the basic dictionary definitions of each word” in

the statute. *Id.* The prior district court decision noted that a “standard dictionary” defined an “area” as “a region or territory including and surrounding a city, constituting of a *large part* of a state or county or several states or countries or embracing an entire continent or parts of more than one continent.” App. 196-97 (Intervenor’s Trial Brief (filed 8/1/2018), at 21-22 (emphasis added)).<sup>1</sup> INA agrees with these prior district court decisions and the dictionary definitions contained therein. An entire county is a not a “geographic area” under the plain language of Section 349.6.

INA also points out that the Legislature *did not* use the term “same county” in Section 349.6, opting instead for the term “same geographic area,” further confirming the Legislature’s intent that a “geographic area” be something other than the entire county. The Iowa Supreme Court has “long recognized the principle of *expressio unius est exclusio alterius*, i.e., the expression of one is the exclusion of the other, as an aid to statutory interpretation.” *City of Des Moines v. Iowa Dep’t of Transportation*, 911 N.W.2d

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<sup>1</sup> A copy of *Iowa Information., Inc. v. The O’Brien County Board of Supervisors*, Case No. EQCV019970 (O’Brien County, August 10, 2009) is attached to the Intervenor’s Trial Brief, filed on August 1, 2018. App. 191-98.

431, 449 n.8 (Iowa 2018). “[T]he maxim ‘expressio unius est exclusio alterius’ . . . is an “established rule of statutory construction that ‘legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned.’ ” *Homan v. Branstad*, 887 N.W.2d 153, 166 (Iowa 2016) (quoting *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995)).<sup>2</sup> Indeed, the principle that “[i]n construing statutes, the court searches for the legislative intent as shown by what the legislature said, rather than what it should or might have said” is “deemed so well established that authorities need not be cited in support of” it. Iowa R. App. P. 6.904(3)(m). The Legislature’s choice to use the term “geographic area” instead of the term “county” clearly evidences its intent that a geographic area be something other than a county, as the District Court concluded.

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<sup>2</sup> Rules of statutory construction are only applied where statutory terms are ambiguous. *McGill v. Fish*, 790 N.W.2d 113, 118 (Iowa 2010). As detailed above, INA does not believe the language in Section 340.6 is ambiguous, but still includes this argument in the event the Court believes there is ambiguity in the plain language.

## **II. APPELLANT’S “TOTAL COMBINED SUBSCRIPTION” ARGUMENT HAS NO STATUTORY BASIS AND SHOULD BE REJECTED.**

In its Brief, Appellant erroneously claims the District Court should be reversed because “the subscription number with a combination of subscribers of Marcus News (both of its publications together) and Iowa Information’s N’West Iowa REVIEW” would result in the highest total number of unique subscribers. Appellant’s Br., at 31. However, this argument has absolutely no basis in Iowa Code Section 349.6. In cases such as the case at bar, where it is undisputed that the newspapers do not have “approximately the same subscriber list,” the question for the county board of supervisors—and the courts on appeal—is whether the papers are “offered for sale in or delivered to the same geographic area.” Iowa Code § 349.6. The “total combined subscription” method is completely absent from the statute and INA does not believe it is appropriate to use such a method. Had the Legislature wished this to be the standard, it would have said so.

Instead of a statutorily unjustified “total combined subscription” method proposed by Appellants, INA believes the Court should apply the “same geographic area” test mandated by the statute because this test represents how newspapers allocate their resources and manage their coverage of local issues. As noted in the Intervenor-Appellee’s Trial Brief,

It should come as no surprise that the division of subscribers has remained largely the same from 2009 to the present, because The Sheldon Mail-Sun has continued to focus on issues relating specifically to the City of Sheldon and the Sheldon school district, while The N’West Iowa REVIEW has continued to focus on regional issues relating to O’Brien County and northwest Iowa as a whole.

App. 188 (Intervenor’s Trial Brief (filed 8/1/2018), at 13). The Intervenor-Appellee has two different newspapers that focus their coverage on two different “geographic areas” (i.e., the area included in the City of Sheldon and the Sheldon school district, as opposed to regional issues relating to O’Brien County and northwest Iowa as a whole). Newspapers make decisions about the areas, subjects, and topics they will cover. By using the term “geographic area,” the Legislature has recognized the unique and important role Iowa’s newspapers play in covering local issues

important to a particular geographic area. This is why Section 349.6 requires both joint ownership (and thus the ability to target the reporting) and coverage of the same geographic area in order to combine the newspaper's subscribers. Appellant's "total combined subscription" method completely ignores both the ability to target the reporting that accompanies joint ownership and disregards the concept of "geographic area" altogether. This undermines the Legislature's express instructions in favor of a pure numbers game without regard to the area covered by a newspaper and should be rejected.

### **CONCLUSION**

The District Court's decision properly interpreted Iowa Code Section 349.6. The statute uses the term "geographic area," which is something less than the entire county. The District Court properly recognized that the statute requires counties to determine whether a newspaper covers the same geographic area and did not apply the inappropriate and unjustified "total combined subscription" method set forth by the Appellant. INA asks that the District Court's decision be affirmed.

Respectfully submitted,

*/s/ Keith P. Duffy*

Keith P. Duffy AT0010911

Joseph A. Quinn AT0006451

NYEMASTER GOODE, P.C.

700 Walnut St., Ste. 1600

Des Moines, IA 50309

Telephone: (515) 283-3100

Fax: (515) 283-8045

Email: [kduffy@nyemaster.com](mailto:kduffy@nyemaster.com)

[jquinn@nyemaster.com](mailto:jquinn@nyemaster.com)

*Attorneys for Amicus Curiae*

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS, AND  
TYPE-STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because it contains 1,669 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Century Schoolbook 14 point font.

/s/ Keith P. Duffy AT0010911

## PROOF OF SERVICE AND CERTIFICATE OF FILING

I hereby certify that on April 12, 2019, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel of record.

Colby M. Lessmann  
Ray Edgington  
613 Pierce Street  
P.O. Box 1557  
Sioux City, IA 51102

Micah J. Schreurs  
1201 S. 2<sup>nd</sup> Avenue, Ste. 1  
P.O. Box 469  
Sheldon, IA 51201

Jeff Wright  
Jacob B. Natwick  
1128 Historic Fourth Street  
Sioux City, IA 51102

Thomas Wholey  
934 3<sup>rd</sup> Avenue, Ste. 200  
Sheldon, IA 51201

/s/ Keith P. Duffy AT0010911