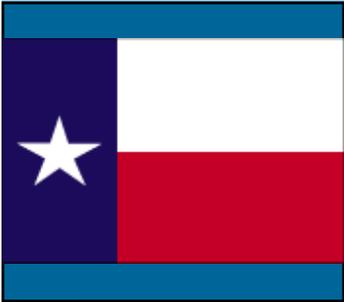


November 2009

TEXAS CIRCULATION  
MANAGEMENT ASSOCIATION

# TCMA Lone Star Review



## 2010 Conference Shaping Up!

**Mike Arnold**, TCMA President, is working on the program for the 2010 Annual Conference set to begin on Thursday, April 8, 2010, in Austin, Texas. In the August 2009 *Lone Star Review*, the Board of Directors announced a new conference format for 2010. In addition, TCMA negotiated a conference package with the Omni Hotel that allows us to create a one-price conference fee including your hotel room, your meals during the conference and other conference expenses.

Please reserve the dates of April 8-9, 2010, and plan to be in Austin for a truly affordable and educating conference.

**Marti Christiansen**, TCMA First Vice President, has just concluded a successful Carrier of the Year Competition. Marti announced there were more nominations this year and than last year. As of the November 15, 2009, COTY deadline, Marti reported 21 nominations for the Home Delivery Carrier Category, two for Single Copy and seven for the District Manager/Distributor Category. The finalists will be announce on December 1, 2009.

**Dave Runkle**, President-Elect, is diligently preparing a Buyer's Guide for the 2010 Conference. Associate Members (Vendors) will be sent information regarding the annual publication. The 2010 Buyer's Guide will be added to the BlueToad.com web site enabling users to logon and use the guide as a resource throughout the year. Ads will have links back to the vendor's web page. This should be a handy tool for our members to quickly access the vendors supporting TCMA.

**J W Smith**, Secretary/Treasurer, reminds TCMA members that November is the month for membership renewal notices to be sent. For the second year now, there are links on the TCMA web page to conveniently renew and pay for your membership dues. Just select the Membership link from the home page.



It's not too early to begin thinking about your contribution to TCMA. Each year at the conference a new Second Vice President is elected. This is a five year commitment to serve on the Board of Directors. If you would like to be involved and need more information, contact **Andy Nelson**, TCMA Chairman, at 972 977 8344 or [anelson@dallasnews.com](mailto:anelson@dallasnews.com).

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**L. Michael Zinser**  
**TCMA Legal Counsel**  
**Zinser Law Firm**  
**Nashville, TN**

There is clearly a broad-scale assault on independent contractor status throughout the United States. The issue is unemployment taxes. State unemployment compensation funds are broke. Record numbers of individuals are filing for unemployment benefits. The funds are running out of money. The funds are looking for new sources of tax revenue to fill their coffers. This seems to be a conscious decision to attack the independent contractor status of newspaper carriers. This writer is currently representing newspapers, in the unemployment tax context, in Oregon, California, Iowa, Pennsylvania and Ohio.

All of these cases begin in the same manner. The newspaper publishing company terminates the contract of an independent contractor newspaper carrier. This individual files a claim for unemployment benefits. Typically, the newspaper responds by saying they have no employment records for this individual. In the past, that was the end of the claim. Today, the state agencies are responding by submitting to the newspaper a multi-page questionnaire designed to elicit answers to help the state prove employee status. Regardless of the response or its strength, the state agency makes an initial determination that the individual is an employee. The newspaper then appeals, setting up a hearing before an administrative law judge in that state. In almost every instance, the state will attempt to have a brief telephone hearing for this purpose.

Please do not allow this to happen to you. A telephone hearing is a mistake. The publishing company should ask for an in-person hearing and ask that the agency set aside an entire day for your hearing. This hearing before the administrative law judge is your only chance to make a complete record. Every appeal after the ALJ's decision will be based upon the record you make at this first hearing. The record needs to be complete. You cannot create a complete record in a 30-minute telephone hearing.

**Doylestown *Intelligencer*** – I am pleased to report an independent contractor victory for *The Intelligencer* of Doylestown, Pennsylvania. In this case the independent contractor newspaper carrier remains under contract to this day. He filed for unemployment benefits when he lost his job with another company. The unemployment agency seized upon this as an opportunity to contest newspaper carrier independent contractor status. The independent contractor stood shoulder to shoulder with the publishing company, asserting, in writing, that he was an independent contractor and never intended to challenge his independent contractor status. In spite of this, the state of Pennsylvania insisted upon a hearing before the Administrative Law Judge.

Mounting a strong defense, *The Intelligencer* proved independent contractor status before the ALJ, who so ruled within the last two weeks. The ALJ found that the newspaper carrier was an independent contractor under that state's law, which provides that one is an independent contractor, if the individual is free from control or direction under his contract of service and in fact, and that the services were those of an individual customarily engaged in independently established trade, occupation, profession or business.

**Quad-City *Times*** – The independent contractor at issue here had three contracts with *Quad-City Times*; one for home delivery, one for single copy and one for bundle hauling. The contractor breached all three contracts, literally not showing up to pick up his papers and deliver. As such, all

*(Continued on page 3)*

(Continued from page 2)

three contracts terminated. Many months later, the individual filed a claim for unemployment benefits. The state of Iowa immediately got its tax auditing division involved. They submitted a lengthy questionnaire to the newspaper. The newspaper declined to complete the questionnaire, instead presenting a comprehensive, persuasive position paper. In spite of this, the initial determination made was that the carrier was an employee, and a telephone hearing was established. *Quad-City Times* objected to the telephone hearing, insisting on an in-person hearing, with a full day reserved for the hearing. The hearing was scheduled for September 24, 2009.

*Quad-City Times* mounted a comprehensive case presentation, including testimony by the Iowa Newspaper Association on industry practice, management personnel, and more than one independent contractor willing to testify on behalf of the publishing company in favor of independent contractor status. Facing this preparation, on September 22, 2009, the state of Iowa changed position, issued a new determination, finding that the former contractor was in fact an independent contractor for purposes of unemployment compensation benefits under Iowa state law. The ALJ called off the hearing. Independent contractor status was preserved for *Quad-City Times*.

**Action Plan** – Now is the time to conduct a complete independent contractor audit. Get your independent contractor house in order now, before the attack visits your newspaper. That audit should include the following:

- A review of your written contract;
- A review of customer service representative communication to the public and on carrier bundle tops;
- Internal training of all individuals having authority to contract on behalf of the daily newspaper.

## Buyer's Guide Update

TCMA will continue with the traditional Buyer's Guide format for the 2010 issue. As a bonus, the 2010 Buyer's Guide will be posted on the BlueToad.com site with links back to the TCMA web page.

Your ad will be seen in the book format and will also be online. We will be able to track the number of "hits" to the web version and these will be reported in the *Lone Star Review* during 2010.

Included with this edition of the newsletter, our Associate Members will receive a single invoice for 2010. Many vendors have asked for a combined invoice to pay for their membership, newsletter ads, and web site ads.

This year, the invoice will also include your conference registration.

TCMA was able to negotiate a terrific hotel package with the Omni Southpark Hotel in Austin, Texas. As a part of your conference fee, TCMA will reserve your hotel room (plus tax). Any additional charges will be the responsibility of the guest.

TCMA will have the same information online if you want to use your credit card to pay.

The single invoice is for your convenience only. Additional mailings and invoices will be sent in early 2010 for the Buyer's Guide and Conference Registration. We are working to make your support as easy as possible.



## Our Newest Member!

Jack Perkins II

Bryan Eagle

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