

Lone Star Review

2012 Conference

It's not too early to set your calendar to be in Austin, Texas, on March 22-23, 2012, for the 98th Annual TCMA Conference. Conference registration is open through **March 2, 2012**.

Your conference registration **includes** your overnight hotel accommodations. Additional nights are available. To make it easy for you a conference registration page has been created. Simply go online to register and when you click submit, you will be taken to the PayPal page to complete your registration and to use your credit card to pay. You may also join or renew your membership all with just a few clicks.

The conference agenda is online on the 2012 Conference page. **Harry Davis (Austin American-Statesman)** will deliver a presentation of how the Statesman is changing from District Managers to Independent Contractors.

Mike Zinser (TCMA General Counsel) returns with a presentation of the recent National Labor Relations Board appointments and the impact on newspapers. Congress is considering these inappropriate appointments during Congressional recess. Mike will bring us an important view on this timely topic.

Maria Ravera (Sacramento Bee) will give a presentation of how small to mid-size newspapers can use Reader Rewards as a loyalty program for their subscribers.

Bailey Dabney (Claremore (OK) Daily Progress) will lead off the conference with a topic entitled, "You Can Still Grow your Newspaper." Dabney has worked for several CNHI newspapers and will bring a fresh perspective for the small to mid-size newspaper.

Vend-O-Rama returns this year. Other sectionals have added Vend-O-Rama to their conference. Vend-O-Rama began in Texas! This is a great time to visit the vendors and take home some cash.

A hot idea incentive has been added this year. Read about the incentive on page two of this newsletter.

A social off-site event is scheduled for Thursday night at Fado's Irish Pub and Restaurant in Austin's warehouse district.

Get in the game to stay current with what's happening by registering today to be at the Austin Conference.



Follow TCMA on your Facebook page. It's really very simple! Just click on the logo above and then click on "Like" to have TCMA added to your Facebook page.



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Vend-O-Rama Returns



The popular Vend-O-Rama returns this year. On Thursday afternoon, Vend-O-Rama will take place.

This has proven to be popular with our Vendors as they can participate in the meeting and have time to meet with the attendees during the refreshment breaks, also in the same room.

The Vendor Display tables will be accommodated in the same room as our General Session meeting room. Attendees will visit each booth and have a card signed or

stamped. At the conclusion of Vend-O-Rama turn in your card. At the conclusion of the Conference on Friday, March 23, 2012, a drawing will be held from the cards submitted. You have to be present to win cash prizes. In recent years several attendees left early and left behind prizes up to \$200.00.

Vendors: If you have not reserved your booth there is still time. Go online to the Buyer's Guide page and reserve your booth. Special discounts are available for vendors who publish an ad or purchase one of the special vendor packages.

Got a Hot Idea?

Your terrific idea of a change you implemented at your newspaper can earn you money! Go online to complete the [Hot Idea form](#), print it and bring it with you to the 2012 Conference and you will automatically earn \$25 plus a chance for more prizes.



2012 Membership

Have you renewed your membership for 2012? Next year will be the 100th Anniversary of TCMA. You will not want to miss any of the upcoming details as we approach 2013.

Your membership fee enables the Association to provide you with a quarterly newsletter as well as supporting the Carrier of the Year Competition.

A special offer will be made to our Vendor members this year to cover membership, a newsletter ad and buyer's guide ad for a one time payment. PayPal has a new feature allowing TCMA to send you a customized invoice with a link to the TCMA PayPal site to pay your invoice. If you are interested and would like a special invoice please let our Secretary know at tcma@texascma.org

Don't forget! You can **renew online** and use your credit card to pay for your membership and other services provided by TCMA.



TCMA Board Changes

The TCMA Board of Directors met in Austin on February 3, 2012. There are several changes to the Board of Directors.

President **Marti Christiansen** announced she will be leaving the Austin American-Statesman on April 1, 2012, to become an Independent Contractor for the Austin American-Statesman. The Statesman is changing their distribution model from District Managers to Independent Contractors. Marti will become an Independent Contractor.

President-Elect **Kelly Johnson**, resigned from the Austin American-Statesman on December 23, 2011, to pursue an opportunity in the real estate profession in the Austin area.

Secretary/Treasurer **J W Smith**, retired from the Houston Chronicle on October 3, 2011, after 40 years of service with the newspaper. By request of the Board of Directors, Smith agreed to continue as Secretary/Treasurer for TCMA.

First Vice President **Bill Campbell** will become President at the conclusion of the 2012 Conference.

Second Vice President **Eric Buck** will become President-Elect at the conclusion of the 2012 Conference.

The Board will need to appoint a First Vice President. If you are interested in serving on the Board of Directors contact **J W Smith** at tcma@texascma.org.

Nominations for Second Vice President will be taken at the 2012 Conference on Thursday afternoon. If you are interested in becoming a TCMA Board Member and have questions, contact **J W Smith** for more information about serving on the TCMA Board.

TCMA By-Law Amendments

The TCMA Board of Directors voted on two proposed amendments to the TCMA By-Laws and Constitution while meeting in Austin, Texas, on February 3, 2012.

The proposed changes to the By-Laws refer to Article III, Section 3 and Section 5 regarding membership and serving on the Board of Directors. These changes are needed to the By-Laws to put in place what has become a common practice over the years.

Members whose membership dues are current and attending the 2012 Conference will be given an opportunity to vote on the proposed changes at the conference. Each member who registers for the conference will be mailed a copy of the proposed amendments before the conference.

TCMA History

In 2013 TCMA will celebrate its 100th Anniversary!

TCMA was founded on September 18, 1913, in Fort Worth, Texas.

One of the original members, **Harold Hough**, (Fort Worth Star-Telegram) met at the Fort Worth Elks Club for the purpose of beginning a state wide Association. Mr. Hough became President in 1916.

The original name was Texas Circulation Managers Association but was changed to the current Texas Circulation Management Association within the last twenty years.

A survey of the Circulation Sectionals in the USA indicated TCMA was the first Circulation Sectional to be organized.

The TCMA Board agreed to look for a hotel in Fort Worth to host the 100th anniversary conference in 2013.



Independent Contractor Ruling Shines on *The Jackson Sun*

Herron contracted as a home delivery independent contractor with *The Jackson Sun* (Tennessee). Approximately three months into his contract, over a span of three days, his complaints skyrocketed. When contacted, his girlfriend answered the phone and explained that Herron was “unavailable” and sick. After multiple calls attempting to contact Herron, she admitted that Herron “was in jail” and she had been substituting for him. *The Jackson Sun* terminated Herron’s contract because he failed to perform his contract services – the timely delivery of newspapers in a dry, readable condition, to the satisfaction of subscribers. Herron, naturally, filed for unemployment.

At the hearing, Herron initially claimed he did not even sign a contract; he recanted when it was presented, stating that his signature “might” be his. Herron claimed to not know how he was compensated, either, although it was a buy-sell relationship described in his contract. Herron also stated, “my old lady did the route when I was in jail and she did a good job.”

The Tennessee Department of Labor & Workforce Development explained that the Tennessee Code “explicitly excludes services performed by a direct seller if the individual is engaged in the trade or business of the delivery or distribution of newspapers on a buy-sell basis, which [Herron] was.” Thus, Herron’s services were excluded from being considered employment. *The Jackson Sun* was not responsible for Herron’s unemployment claim.

Editor’s Note: The Zinser Law Firm represented *The Jackson Sun* in this appeal. Additionally the Tennessee Direct Seller provision is virtually identical to the Direct Seller provision in the IRS Code.

***The Register-Guard* Reverses Oregon Employment Department**

On January 25, 2012, the Oregon Court of Appeals reversed a decision of the Employment Appeals Board that found that bundle hauler contractors were employees for purposes of unemployment compensation. The Court of Appeals described it as a “strange case.” Let me explain why.

In a hearing before the Administrative Law Judge, the ALJ found that the bundle hauler was an employee. *The Register-Guard* appealed that decision to the Employment Appeals Board of Oregon. The Employment Appeals Board rubberstamped the decision of the ALJ. *The Register-Guard* promptly appealed that decision to the Oregon Court of Appeals. *The Register-Guard* and the Employment Department both briefed the independent contractor issue in their initial briefs. While *The Register-Guard* was in the process of drafting its Reply Brief, the final word on the matter, the Employment Appeals Board withdrew its Order. Three weeks later, it filed a new Order on Reconsideration. The revised Order did not contain findings relevant to the question of whether the claimant was an independent contractor. The Order on Reconsideration did not even discuss the independent contractor issue, despite the fact that this revised Order was now the



only Order reviewing the ALJ's original determination that the claimant was an employee. The Employment Appeals Board, in its reconsidered decision, stated: "We assume without deciding that claimant provided services to [Petition] as an employee."

The Oregon Court of Appeals ruled that it agreed with the argument of *The Register-Guard*. There are no facts supporting the necessarily implied conclusion that claimant was an employee and not an independent contractor. The Court stated: "An agency cannot assume the outcome of the very issue it is taking upon itself to decide." The case was reversed and remanded.

The Employment Appeals Board of the State of Oregon is on a "witch-hunt" for bundle hauler contractors. The state's statute provides that there is an exclusion from the definition of employment for home delivery of newspapers. Bundle haulers do not fit within that exclusion. Therefore, the issue then becomes whether or not a bundle hauler is an employee or an independent contractor under the Oregon Unemployment Statute. *The Register-Guard* believes that the reason that the Employment Appeals Board withdrew its original decision is that it knew it had problems with that decision on appeal before the Oregon Court of Appeals. To withdraw its underlying decision and then to issue a reconsidered decision saying "We assume without deciding" that the individual is an employee is an unbelievable abuse of administrative discretion.

Editor's Note: The Zinser Law Firm, P.C., represented *The Register-Guard*.

Oregon Attorney General Recognizes Home Delivery Exclusion

In an unbelievable act of administrative abuse and discretion, an Administrative Law Judge in an unemployment hearing in Oregon refused to recognize a clear home delivery exclusion from the definition of employment. An exclusion is a beautiful thing. If a relationship is excluded from the Statute, the argument is over. A Company need never get into the independent contractor versus employee argument. The Oregon Statute excludes from its definition of employment service performed by an individual "in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution."

The Contractor at issue delivered newspapers only to home subscribers; he was not a bundle hauler contractor. The Administrative Law Judge would not permit testimony on either the exclusion or the independent contractor issue. On appeal to the Oregon Court of Appeals, the Assistant Attorney General assigned to represent the Employment Department embarrassingly recognized the error of the Employment Appeals Board. The Assistant Attorney General, representing the Employment Department, entered into a Joint Motion to Dismiss the Case, signing an understanding that service performed by an individual in delivery or distribution of newspapers or shopping news was excluded from the definition of employment in the Statute and therefore, *The Register-Guard* owed no tax on the profits of the independent contractor. Similarly, the individual is not eligible for unemployment compensation benefits.

Editor's Note: The Zinser Law Firm, P.C., represented *The Register-Guard*.

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