

vised, that section is workable only when the future contingent estates will arise upon the expiration of a present vested estate, the duration of which is either fixed or can be calculated in accordance with the method of section 5342 of the General Code.

In short, the case seems to this department to come within the principle of the *Matter of Terry*, 218 N. Y. 218.

The proper order to be made by the probate court in the inheritance tax proceeding in the estate of P is to value the property comprised in the devise and bequest to the trustees and enter an order of exemption based upon the value of the property as in fee; but said order should further note the future contingent interests of the children finding and determining that such interests when and if they arise will be successions in the estate of P., and should suspend taxation on such contingent interests.

When and if the children take, the proper procedure is to assess the tax under the second sentence of section 5336 of the General Code when the persons beneficially entitled thereto come into actual possession or enjoyment thereof. The appraisal at the time should be made under section 5344 of the General Code, to-wit, at the full undiminished value of the successions of the children, etc., without diminution for or on account of the valuation of the interest of the H Club upon which the several estates in expectancy have been limited.

In order to completely clarify the grounds of this opinion, it should be stated that it has been assumed as a matter of interpretation of the will that the H Club was in existence as a going concern at and prior to the death of the testator, and, moreover, that the H Club was actually in the enjoyment of the use of the premises in question in whole or in part at such times; so that the will has been construed as an expression of intention that this user should continue in the first instance, rather than that the trustees should make an initial choice between the H Club and some other club with similar objects. The materiality of this point is recognized, but the fact stated in the Commission's letter that the H Club is at present in existence, seems to justify this interpretation. If it were otherwise, it could not be said that the H Club or any other person had any present equitable interest, and a different problem would arise.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3378.

NEWSPAPERS—PROOF OF PUBLICATION BY AFFIDAVIT REQUIRED BY SECTION 4228 G. C. SHOULD BE FILED AFTER COMPLETION OF PUBLICATION OF EACH ORDINANCE—BLANKET PROVISION NOT PERMISSIBLE.

The proof of publication by affidavit required by section 4228 G. C. should be filed after the completion of the publication of each ordinance, etc., and it is not permissible to file an affidavit prior to publication to cover a prospective publication.

COLUMBUS, OHIO, July 21, 1922.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date submitting a question under section 4228 G. C. was duly received, and, omitting formal parts, reads as follows:

“Section 4228 G. C., regulating the publication of ordinances, resolutions, etc., in municipalities provides in part that:

'Proof of the place of printing and required circulation of any newspaper used as a medium of publication hereunder shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of council.'

This bureau has always contended that such affidavit must be filed in support of each ordinance, resolution, notice, etc., published in such newspapers. Question:

When a contract has been entered into between the publishers of a newspaper and the proper officers of a city for the publication required by law, would one affidavit as proof of the place of printing and required circulation, filed at the time of entering into a contract, be sufficient compliance with section 4228 of the General Code?

Section 4228 G. C., so far as pertinent to your inquiry, reads as follows:

"Unless otherwise specifically directed by statute, all municipal ordinances, resolutions, statements, orders, proclamations, notices and reports, required by law or ordinance to be published, shall be published as follows:
* * * Proof of the place of printing and required circulation of any newspaper used as a medium of publication hereunder shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of council."

It is the opinion of this department that section 4228 G. C. can admit of no other reasonable construction than that publication of the particular ordinance, etc., must precede the filing of the affidavit of the newspaper proprietor, and also, that an affidavit must be filed in support of each particular ordinance, etc.

The views above expressed also find support in the provisions of section 4231 G. C., which provides that immediately after the expiration of the period of publication, the clerk shall enter on the record of ordinances, in a blank to be left for such purpose, under the recorded ordinance, a certificate stating in which newspapers and on what dates publication was made, etc. Reference might also be made to section 6251 G. C. in support of the conclusions reached. That section is the one which prescribes the charges that may be made by newspapers for the publication of municipal advertisements, etc., and, among other things, makes special provision with respect to newspapers having a circulation of over twenty-five thousand. In opinion No. 2085, addressed to your department on May 18, 1921, it was held that the word "circulation", as used in section 6251 G. C. refers to and means the bona fide circulation of the particular issue or issues of the newspaper in which the advertisement is published.

In the course of the opinion it was said:

"It would seem, therefore, that the amount a newspaper is entitled to charge and receive under section 6251 G. C. for a particular advertisement, whether it be one requiring one or more insertions, will depend upon the bona fide circulation of the issue of the newspaper in which each insertion is published."

You are therefore advised that the proof of publication by affidavit called for by section 4228 G. C. should be filed after the publication of each ordinance, etc., is completed, and also that it is not permissible to file an affidavit prior to publication to cover a prospective publication.

Respectfully,
JOHN G. PRICE,
Attorney-General.