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1. ORDINANCE—MEASURES PASSED BY MUNICIPAL COUNCIL, REQUIRED BY LAW TO BE BY ORDINANCE, INCLUDING EMERGENCY ORDINANCES, MUST BE PUBLISHED—SECTIONS 4228, 4230 G. C.
2. ORDINANCES WHICH GO INTO IMMEDIATE EFFECT—APPROPRIATIONS FOR CURRENT EXPENSES OF MUNICIPAL CORPORATION, STREET IMPROVEMENTS UNDER CERTAIN PROVISOS, EMERGENCY ORDINANCES OR MEASURES NECESSARY FOR IMMEDIATE PRESERVATION OF PUBLIC PEACE, HEALTH OR SAFETY—SECTIONS 4227-3, 4230 G. C.

## SYLLABUS:

1. Under the provisions of Section 4230 General Code, measures passed by a municipal council which are required by law to be by ordinance, including emergency ordinances, must be published in the manner prescribed by Section 4228, General Code.

2. Ordinances providing for appropriations for the current expenses of a municipal corporation, or for street improvements petitioned for by the owners of a majority of the feet front of the property benefited and to be especially assessed for the cost thereof, and emergency ordinances or measures necessary for the immediate preservation of the public peace, health or safety, go into immediate effect as provided in Section 4227-3, General Code, notwithstanding the provisions of Section 4230, General Code, requiring their publication.

Columbus, Ohio, January 17, 1946

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

I have before me your communication requesting my opinion and reading as follows:

“The Ninety-sixth General Assembly amended General Code Section 4230, and the last paragraph thereof is not entirely clear to us, to wit:

‘\* \* \* Except as herein provided, all ordinances including emergency ordinances, shall be published in accordance with the provisions of section 4228.’

Question 1. Do the said provisions now require publication of ordinances not of a general or permanent nature, or creating a grant, or providing for the expenditure of money, such as appropriation ordinances, those directing officials to furnish information, reports, etc.?

Question 2. If emergency ordinances now require publication according to section 4228 G. C., does this mean that such ordinances do not take effect until they have been published two consecutive weeks, regardless of the provisions of section 4227-3 General Code?"

Section 4227 General Code, reads in part as follows:

"Ordinances, resolutions and by-laws shall be authenticated by the signature of the presiding officer and clerk of the council. Ordinances of a general nature, or providing for improvements shall be published as hereinafter provided before going into operation. *No ordinance shall take effect until the expiration of ten days after the first publication* of such notice. \* \* \*"

(Emphasis added.)

The above section in substantially its present reading, was in force even prior to the enactment of the municipal code of 1902. The act providing for initiative and referendum in connection with the enactment of municipal ordinances was originally passed in 1911 (102 O. L. 521). It is codified as Sections 4227-1 to 4227-13, inclusive, of the General Code. Section 4227-2 General Code, provides in part, as follows:

"Any ordinance, or other measure passed by the council of any municipal corporation shall be subject to the referendum except as hereinafter provided. *No ordinance or other measure shall go into effect until thirty days after it shall have been filed with the mayor* of a city or passed by the council in a village, except as hereinafter provided. \* \* \*"

(Emphasis added.)

Section 4227-3 General Code, so far as pertinent, reads as follows:

"Whenever the council of any municipal corporation is by law required to pass more than one ordinance or other measure to complete the legislation necessary to make and pay for any public improvement, the provisions of this act shall apply only to the first ordinance or other measure required to be passed and not to any subsequent ordinances and other measures relating thereto. Ordinances or other measures providing for *appropriations* for the current expenses of any municipal corporation, or for *street improvements* petitioned for by the owners of a majority of the feet front of the property benefited and to be especially assessed

for the cost thereof as provided by statute, and *emergency ordinances* or measures necessary for the immediate preservation of the public peace, health or safety in such municipal corporation, shall go into immediate effect. \* \* \*." (Emphasis added.)

It will be observed that there are apparent conflicts between the provisions of the sections last quoted and Section 4227. It appears to me that these conflicts may be resolved if we keep in mind that Section 4227 was the fundamental law and that the provisions of the initiative and referendum statutes in so far as they are in apparent conflict may be regarded as exceptions. While Section 4227 provides that, "No ordinance shall take effect until the expiration of ten days after the first publication", Section 4227-2 provides that, "No ordinance or other measure shall go into effect until thirty days after it shall have been filed with the mayor of a city or passed by the council in a village, except as hereinafter provided." These two provisions can both be complied with in the enactment of an ordinance and there is no necessary conflict.

However, when we come to Section 4227-3, we do find a special provision as to ordinances providing for appropriations, for certain street improvements and emergency measures, whereby it is declared that these shall go into immediate effect. Plainly, the General Assembly enacted this provision with knowledge of the general provisions of Section 4227, and intended to make an exception as to those measures. That special provision would doubtless prevail over the general even if it did not have the advantage of being later in time of enactment.

While the statutes nowhere provide that an emergency ordinance does not require publication, yet, in the case of *Vansuch v. State*, 112 O. S. 688, the court in a per curiam uses the following language:

"It was held by this court in *Shryock, a Taxpayer, v. City of Zanesville*, 92 Ohio St., 375, 110 N. E., 937, that the council of a municipality is authorized to pass emergency ordinances necessary for the immediate preservation of the public peace, health, and safety. Such ordinances do not require publication, and are not subject to the referendum, but go into immediate effect."

The court in that case had before it an ordinance passed as an emergency ordinance, the validity of which was in issue, and one of the grounds of challenge as to its validity was the allegation that the ordinance not having been published as provided by law did not go into effect. The

court made no reference to the apparent conflict to which I have referred, and did not enter into a discussion of its reasons for the above quoted statement. We must, however, accept the statement quoted as a settled proposition of law, at least as of the time when that decision was rendered.

One of my predecessors had under consideration the question whether the several ordinances and measures enacted in the course of legislation looking to municipal improvement subsequent to the resolution of necessity, could be passed as emergency measures and whether such ordinances or measures so passed would require publication, and it was held in 1927 Opinions, Attorney General, page 1768:

“Ordinances and measures enacted in the course of the legislation for a municipal improvement subsequent to the resolution of necessity therefor may be passed as emergency measures under authority of Section 4227-3 of the General Code, when in the sound judgment of council such emergency exists, and such ordinances or measures so passed do not require publication.”

The then Attorney General quoted from the case of *Vansuch v. State*, supra, and referred to the apparent conflict between the provisions of Section 4227 and Section 4227-3 supra. The opinion then proceeds as follows:

“I might point out, however, that the matter of the effective date of a measure has not necessarily any direct bearing upon whether or not publication thereof should be had. Nor can it be argued with much force that because an ordinance is an emergency, it would be futile to publish it since it goes into immediate effect. The history of the pertinent sections of the Code is sufficient to refute such an argument. Statutes relating to publication of ordinances long antedate the constitutional and statutory provisions relative to the initiative and referendum. The object of publication clearly could not have been at that time to advise the public in order that it might take effective action with relation to the legislation. Prior to the initiative and referendum provision, the action of the legislative body was final. Yet there has been for many years provision for publication of ordinances, the obvious purpose of which was to keep the public advised as to what the law was. It is immaterial that people had no recourse from the enactment of the legislative body. They still had a right to be advised as to what action was being taken. It therefore can scarcely be said to follow that because an emergency ordinance is not subject to a referendum, it would be futile to publish the measure. The public still has the right to be advised as to what is going on.”

Notwithstanding the above reasoning, which appears to be convincing, we could consider it well settled that an ordinance duly passed as an emergency measure does not require publication, unless Section 4230 General Code, in its present form, necessitates a different conclusion.

Section 4230 reads as follows:

“When ordinances are revised, codified, rearranged and published in book form and certified as correct by the clerk of council and the mayor, such publication shall be a sufficient publication, and the ordinance or several ordinances so published in book form, under appropriate titles, chapters and sections, shall be held the same in law as though they had been published in a newspaper or newspapers. A new ordinance so published in book form, which has not been published according to law, and which contains entirely new matter shall be published as heretofore required by law, provided however, that if such revision or codification is made by a municipality, and the same contains new matter, it shall be a sufficient publication of such codification, including such new matter, to publish, in the manner required by law as to the enactment of ordinances, a notice of the enactment of such codifying ordinance, containing the title of such ordinance and a summary of the new matters covered by the same. Such revision and codification may be made under appropriate titles, chapters and sections and in one ordinance containing one or more subjects.

Except as herein provided, all ordinances including emergency ordinances shall be published in accordance with the provisions of section 4228.”

That section as it stood for many years provided for publication in book form, of a codification or revision of municipal ordinances. The 95th General Assembly amended it by introducing the provision as to publication of a summary statement as to new matter. The final paragraph of that amendment read:

“Except as herein provided, all ordinances shall be published *according to law.*” (Emphasis added.)

In its recent session the General Assembly saw fit to change the final paragraph to its present reading, to wit:

“Except as herein provided, all ordinances *including emergency ordinances* shall be published in accordance with the provisions of *section 4228.*” (Emphasis added.)

The question therefore, which we now have to decide is whether this legislative mandate as to the publication of emergency ordinances overrides the provision of Section 4227-3, which makes emergency ordinances effective immediately upon their passage. If it has this effect, then the whole purpose and effect of the provision for emergency legislation would be destroyed.

It will be noted that the General Assembly in adding this amendment simply provides that emergency ordinances shall be published in accordance with the provisions of Section 4228 General Code. Section 4228 does not *require* any ordinances to be published. It merely specifies the *manner* of publication of any ordinances which are "required by law or ordinance to be published." The amendment in question does not adopt by reference the provisions of Section 4227 *supra*, which declares that no ordinance shall take effect until the expiration of ten days after the first publication, nor has the general assembly indicated by any explicit wording an intention to do away with emergency ordinances or to destroy their character or change the rule as to their immediate operation.

It appears to me that we may well apply the reasoning suggested by the above quotation from the 1927 opinion, namely, that notwithstanding the fact that an ordinance might take effect immediately as an emergency measure, yet the public should be advised by publication of its passage and its terms.

We may also apply the familiar rule that the law does not favor repeals by implication and also the principle that in so far as possible, effect will be given to all the provisions of law relating to a given subject. The purpose of the general assembly in introducing the provision under consideration may not be easy to understand but in my opinion it has not changed the rule laid down in Section 4227-3 General Code, that "emergency ordinances or measures necessary for the immediate preservation of the public peace, health, or safety in such municipal corporation shall go into immediate effect." It does appear, however that ordinances passed as emergency measures must nevertheless be published at least for the purpose of public information.

There remains the question whether the amendment to Section 4230 General Code, which we have been considering adds any new obligation to publish ordinances which are not of a general or permanent nature, or providing for an improvement. It may be noted that Section

4227 *supra* only requires publication of ordinances of the two classes just mentioned. Section 4230 *supra*, as amended, was plainly designed to facilitate the codification of municipal ordinances, and particularly to avoid the expense of publishing in the regular way a possibly large volume of new ordinances. Hence, it was provided that as to such new matters it should be sufficient to publish a "summary of the new matter." The General Assembly saw fit then, presumably out of an abundance of caution to provide that except as to such abbreviated publication, ordinances including emergency ordinances should be published "in accordance with", that is, in the several newspapers specified in Section 4228. This does not, in my opinion, indicate a clear intention to broaden the scope of publication requirements, except as to "emergency ordinances".

The requirement of Section 4227 to which I have called attention, relates only to certain ordinances, and does not include resolutions. Section 4224 General Code provides that the action of council "shall be by ordinance or resolution." There is no statutory definition of the scope of these two words nor any general provision as to what actions shall be by ordinance and what by resolution. The general line of demarcation is however indicated by Judge Mauck in *Wuebker v. Hopkins et al.*, 29 O. App., 386, where he says :

"The position of the plaintiff in error in this behalf is correct in any case requiring the council to act by the passage of an ordinance. The statute, however, provides that the council may act either by ordinance or by resolution. Unless the statute prescribes one or the other methods of procedure, the adoption of a resolution is the proper procedure for an informal enactment providing for the disposition of a particular item of business, while the passage of an ordinance is the proper procedure for the enactment of a regulation of a general or permanent nature. 19 Ruling Case Law, 895; 43 Corpus Juris, 519.

Here the petition discloses that council was not taking action of a general or a permanent nature, but was simply making a contract for the employment of legal counsel. The statute recognizes it to be nothing more than a contract. Section 3809, General Code. It consequently required nothing more than the adoption of a resolution. Upon the adoption of such a resolution, the mayor had the determining vote in case of a tie. The council had no power, by calling the resolution an ordinance, to divest a mayor of the authority that he would have had if the measure had been properly denominated."

To like effect see *Blanchard v. Bissell*, 11 O. S., 96.

It would seem therefore, that many temporary or informal matters with which council is called upon to deal may properly be covered by resolutions and that as to such measures, the statutes we have been considering would have no application.

While I am inclined to believe that the General Assembly did not intend to broaden the scope of the laws' requirements as to publication of ordinances generally, yet I cannot wholly disregard the language used, and must therefore hold that Section 4230 General Code, as lately amended, requires all measures which by law must be enacted by passage of ordinances, to be published in accordance with the provisions of Section 4228 General Code.

Respectfully,

HUGH S. JENKINS

Attorney General