

This is in line with a long list of cases holding that before public officials may be held liable upon a contract, such contract must have been entered into in substantial compliance with the statutes relating thereto.

In the syllabus of the Buchanan Bridge Company case it is said that "the courts will leave the parties to such unlawful transaction where they have placed themselves and will refuse to grant relief to either party."

The railroad company, being party to this void contract and having gone forward and constructed for, and opened to, the use of the public the relocated highway and separated crossing, may not thereafter close the same and exclude the traveling public therefrom. *Buchanan Bridge Co. vs. Campbell*, supra.

It would follow, and you are so advised, that the contract entered into by the county commissioners and the railroad company is illegal and void, and that it avails the company nothing from the fact that the project has been completed and fully paid for by the railroad company; and further, that the railroad company may not now close to and exclude the public from the relocated highway and reconstructed crossing.

Respectfully,
C. C. CRABBE,
Attorney General.

2548.

NEWSPAPER DEFINED—ARTICLE XVI SECTION OF THE CONSTITUTION OF OHIO CONSTRUED.

SYLLABUS:

Definition of "newspaper" as contemplated under the provisions of section 1 of article XVI of the constitution discussed.

COLUMBUS, OHIO, June 8, 1925.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion on the following:

"Article XVI, section 1 of the constitution of Ohio provides:

" 'Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published.'

"Will you kindly give this office a definition under this article and section as to what essentials constitute a newspaper, in distinction and contrast from other publications?"

Your question, of course, is, what is a newspaper within the meaning of the section of the constitution which you quote. It will be observed that there is no description of such publication referred to in the section. A newspaper has been defined by Webster to be:

"A paper published periodically, usually daily or weekly, containing the most recent intelligence."

The same term has been defined by Bouvier's Law Dictionary as follows:

"A paper for conveying news, printed and distributed periodically."

However, you are specifically referred to the case of *Bigalke, et al. vs. Bigalke*, 19 O. C. C., 351, wherein the question of what constitutes a newspaper was extensively discussed. The statute under consideration in this case required a publication to be made "in a newspaper printed in the county," and involved the *Cleveland Daily Record*. The following is quoted from said opinion:

"The *Cleveland Daily Record* is a newspaper that is devoted primarily, perhaps, and principally, to the proceedings in the courts and in the recorder's office and in the various county and city offices in the county in which it is published. To determine whether or not it complies with this definition which is a fair one under the authorities which are cited, we have examined, in taking the issue that is made a part of the bill of exceptions. We find there articles on religion; we find the political news of the day; we find notices of and comments upon conventions; we find marine news, and the news of fires, news pertaining to robberies, news pertaining to the progress of the war in the Philippines, and, almost if not quite, a column of miscellaneous news, and notices of all sales and mortgages made and deeds recorded and all assignments made. And then there are a large number of advertisements of all kinds and classes of business. And then it contains the decisions of the supreme and other courts, both federal and state courts, and the assignments as made for trial in the different court rooms—given as the court proceedings, the opinions of the supreme court and other courts quite in full; and then there are contributions of a literary character, and contributions of poetry—which certainly ought to go far towards making it a newspaper. And it contains the time table notifying parties of the time of the arrival and departure of trains upon the different railroads in the city of Cleveland; and also contains a great many legal notices, and, perhaps quite as important, the notices of attorneys, of where their shingles are found, and the city news generally.

"And the question is whether this is within the meaning I have read from Wade on the Law of Notice, a newspaper.

"No one paper published in any county in the state, perhaps, contains all the news or makes any pretense of containing all the news. And if we take the different newspapers, we will find certain portions of news that are very important, that are entirely omitted from such papers. If a paper is a political paper, its readers generally are politicians of its faith—many of them; and the political news is selected with the intention and purpose of giving to that class of readers the news that will be pleasing to them—and the news of other political parties are almost entirely omitted.

"So it will be seen at once that these papers differ in degree from the paper in which this notice was made, more than in character.

"A paper may be devoted primarily to religion and to religious views, and yet may give general news of the day. That makes it a newspaper.

"Some papers printed in a city like this, contain but a small amount of news, and that in very condensed form and that necessarily from the size of the publication and the size of the issue. But that necessarily makes them none the less a newspaper, from that fact."

From the foregoing it will be observed that a newspaper must be a publication

which deals to some extent with the most recent news, and have a circulation. The purpose of printing the notices required in section 1 of article XVI is to inform the public. Therefore, that fact must be kept in mind in selecting a publication. However, it is a question of fact as to exactly what does constitute a newspaper, and as to what is a sufficient circulation as to designate a publication as a newspaper, to be determined in each particular case with reference to the location in which such publication is required.

It is believed that the foregoing decision referred to may be used by you as a guide, and when applied to particular cases presented, will enable you to determine as to the sufficiency of a given publication.

Respectfully,
C. C. CRABBE,
Attorney General.

2549.

APPROVAL, BONDS OF VILLAGE OF COAL GROVE, LAWRENCE COUNTY, \$6,000.00.

COLUMBUS, OHIO June 8, 1925.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2550.

APPROVAL, BONDS OF CITY OF BOWLING GREEN, WOOD COUNTY, \$22,800.00.

COLUMBUS, OHIO, June 8, 1925.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2551.

DISAPPROVAL, BONDS OF CITY OF LOGAN, HOCKING COUNTY, \$56,000.00.

COLUMBUS, OHIO, June 8, 1925.

Re: Bonds of City of Logan, Hocking County, \$56,000.00.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:—I have examined the three transcripts submitted in connection with the foregoing issue of bonds, the same being for sewers and street improvements.