

ments as may be shown to satisfaction of such board to be necessary or expedient.

In view of the foregoing, I am of the opinion that no portion of the appropriation designated under Maintenance F-9 to the Ohio Agricultural Experiment Station can be used for the purchase of land.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3779.

NEWSPAPER—DAILY REPORTER, COLUMBUS—NEWSPAPER OF GENERAL CIRCULATION—ELIGIBLE TO PUBLISH APPLICATION FOR PAROLE.

SYLLABUS:

The Daily Reporter, of Columbus, Ohio, is a newspaper of general circulation in Franklin County, Ohio, and is therefore eligible to print notices of applications for parole of prisoners under the terms of Section 2211-8, General Code.

COLUMBUS, OHIO, November 21, 1931.

HON. WM. H. DORE, *Secretary, Ohio Board of Parole, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“The Ohio Board of Parole has instructed me to ask you for a formal opinion at the earliest possible moment concerning the following question:

Under General Code Section 2211-8, a part of the section reads as follows: ‘The said notice shall also be published once each week for two consecutive weeks in a newspaper published and of *general circulation in said county.*’

For your information I will say that under the old law the words *general circulation* did not appear and also wish to say that under the old law many of the legal notices were carried in the papers in respective counties that had to do with legal notices. The Board is particularly interested in the status under the new law of the Daily Reporter published at Columbus, Ohio, which is listed as a daily law journal and daily legal news, also listed as a newspaper devoted to law, real estate, finance and general intelligence.

The Board upon coming into office find that some of the cases especially from Franklin County were advertised in the Daily Reporter, and being desirous of fully complying with the law the Board would appreciate very much if you would give us a formal opinion *as soon as possible* as to whether or not the Daily Reporter, published in Columbus, Ohio, does conform to the law as regards a paper in general circulation as required in General Code Section 2211-8, as referred to above.

The Board again repeats that on account of the great number of cases being advertised at the respective penal institutions that it is of

extreme importance that the Board be given this opinion at the earliest possible moment if it be at all possible to do so.

P. S. Enclosed find copy of a letter containing all the information this Board so far has been able to get concerning this paper. I am enclosing this with this letter so that you will have this further information in the rendering of your opinion."

Inasmuch as you have quoted in your letter the pertinent language of Section 9 of Substitute Senate Bill 149 of the 89th General Assembly, which section was codified by the Attorney General as Section 2211-8, General Code, it is unnecessary to quote said section in its entirety. Suffice it to say that the section requires that when the matter of parole of a prisoner is pending, notice must be published "in a newspaper published and of general circulation" in the county, wherein the prisoner was indicted.

The question which you desire answered is whether the Daily Reporter of Columbus, Ohio, is a newspaper published and of general circulation in Franklin County, within the meaning of the pertinent language of Section 2211-8, General Code.

Thus it must be determined first, whether or not the Daily Reporter is a newspaper, and second, if it is held to be a newspaper, whether or not it is of general circulation in Franklin County.

Before taking up the two parts of your question, it may be stated that the Supreme Court of Ohio has not specifically decided the matter you submit. However, there have been some helpful lower court decisions.

Approaching the first angle of your question, it may be said that an Ohio court has defined what constitutes a newspaper in which legal notices may be inserted. In the case of *Bigalke vs. Bigalke*, 19 C. C., 331, 10 C. D. 394, it was held in the syllabus as follows:

"The Cleveland Daily Record' although principally devoted to news of a legal character, is a 'newspaper' within the meaning of Section 5050, R. S., and the publication therein of legal notices, required by law to be published in a newspaper, is a compliance with the law."

Section 5050 of the Revised Statutes (now General Code Section 11298) then read as follows:

"The publication must be made for six consecutive weeks, in a newspaper printed in the county where the petition is filed, or, if there is no newspaper printed in the county, then in a newspaper printed in this state, and of general circulation in such county; if it be made in a daily newspaper, one insertion a week shall be sufficient; and it must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served when they are required to answer."

In the opinion the court quoted with approval the following from Wade on the Law of Notices, Section 1066:

"What is a Newspaper. In order to fulfill the terms of the law, the notice must be directed, by the court or officer, to be inserted, for

the statutory time, in some paper printed and circulated for the dissemination of news; but it is not essential that, to answer the description, the paper shall be devoted to the dissemination of news of a general character. It may, with equal propriety, be published in a paper devoted exclusively to the discussion of religious, legal, commercial or scientific topics, and the diffusion of knowledge touching special matters within its limited sphere, as in a public journal, the columns of which are open to news of a general character. It may be a religious newspaper, a commercial newspaper, a legal newspaper, or a scientific newspaper, or a political newspaper."

From the foregoing authority, it would seem that a newspaper to be a medium for legal advertising, as contemplated by Section 2211-8, General Code, supra, need not publish current matters that might be of interest to the public generally, but its news may be limited to a certain sphere, and of interest to a particular class only, as long as its columns are open to news of a general character. This is the great weight of authority in this country. See 46 Corpus Juris, 20, Section 5d.

From copies of the Daily Reporter which are before me, it appears that while the printed matter concerns itself primarily, with information on courts and court proceedings, nevertheless, there is some advertising matter, a limited amount of news on current events and information on business problems. It is to be noted that the paper states at the top of the first sheet of the four page edition, "A NEWSPAPER DEVOTED TO LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE." Hence, I am of the view that it may be classed as a newspaper within the meaning of that word as used in Section 2211-8, General Code.

It is now necessary to see whether or not the newspaper is of general circulation in Franklin County. A somewhat analogous question was passed upon by the Common Pleas Court of Lorain County, in the case of *State ex rel. v. Lorain Democrat*, 12 N. P. (N. S.) 529, affirmed by the Circuit Court without opinion, September term, 1911, and also affirmed by the Supreme Court without opinion in 87 O. S., 467. The court, in said case was construing the language of Section 2508, General Code, (now repealed) which provided that a newspaper published in the German language in a county, in order to be eligible to print the annual report of the county commissioners, must have a bona fide general circulation of not less than six hundred copies among the inhabitants of such county speaking the German language. The court stated at page 531:

"But, the use of the word 'general' in connection with circulation of a newspaper, while it may refer somewhat to the extent of its circulation through a given community, in the main refers to the character of the paper and the purpose of its publication, whether designed to represent some special interest, business, trade, society, religion, organization or whether designed for circulation as the disseminator of intelligence of passing events, local and general news and items of common interest.

A paper of general circulation is one not devoted to any single or particular object, but is devoted to matters pertaining to and of concern to the whole community and of public and common interest. The purposes to which the paper is devoted must be of common interest to many."

In other words, it would appear that a newspaper is one of general circulation, if it is devoted to matters which concern the whole community. It must contain news, although of limited amount, of a general nature, even though it makes a specialty of news of a particular kind. From data submitted, it appears that the Daily Reporter has 740 subscribers, among whom are attorneys, realtors, bankers, mortgage companies, all classes of insurance agencies, credit bureaus, merchants' associations and the like. Hence, it would appear that the paper is one of common interest to many classes of people, and is therefore a newspaper of general circulation in Franklin County.

As has been stated in a preceding paragraph, there have been no decisions of our Supreme Court determinative of your question. There have been, however, Supreme Court decisions of sister states based on almost the identical language of Section 2211-8, General Code, which you quote in your communication. For example, in the Iowa Supreme Court case of *Burak vs. Ditson*, 229 N. W., 227, 68 A. L. R., 538, 209 Iowa, 926 (decided February 18, 1930) it was held in the fourth paragraph of the syllabus, (229 N. W., 227) :

"A newspaper in the form of a four-page sheet measuring 10½ by 14 inches, with four columns on each page, published daily except Sundays and holidays, having an average daily circulation of between four and five hundred among lawyers and business men of the city in which it is published, and primarily concerned with information regarding court proceedings and courts, though containing some other matters, is a newspaper of general circulation within the meaning of a statute providing that the notice required for the commencement of actions must be published in some newspaper of general circulation."

Likewise, in the Indiana Supreme Court case of *Lynn v. Allen*, 33 L. R. A. 779, 145 Indiana, 584, 57 Am. St. Rep., 223, it was held in the syllabus (33 L. R. A., 779) :

"A daily journal having a circulation of about 3,000 copies among judges, lawyers, bankers, collection and commercial agencies, real-estate dealers, merchants, and other professional and business men, and kept on sale at public news stands, although devoted primarily to legal matters, but publishing proceedings of the board of public works and a complete record of deeds filed in the recorder's office, as well as mortgages, mechanics' and other liens, assessments, and sheriffs' sales of real estate, together with the quotations of local securities, railroad time-tables, and having one or more columns devoted to the general news of the day,—is a 'newspaper of general circulation,' within the meaning of Rev. Stat. 1894, §§320, 1296, relating to the publication of legal notices."

Very similar holdings were made by the Michigan and Illinois Supreme Courts, in the cases of *Lynch v. Durfee*, 101 Mich., 171, and *Railton v. Lauder*, 126 Ill., 219. A complete annotation of what constitutes a newspaper of general circulation within a statute in relation to publication of notices, etc., is to be found in 68 American Law Reports Annotated (1930) pages 542 to 550. The cases I have cited, and many others are therein reviewed.

At least one of my predecessors has passed on your exact question. I refer to an opinion of Hon. Edward C. Turner, found in Opinions of the Attorney

General for 1915, Volume II, page 1925. That opinion considered whether the Daily Court Reporter of Dayton, Ohio, was a newspaper of general circulation, and consequently entitled to publish legal advertising required by certain statutes. In the opinion it is stated at page 1927:

"Attached to your inquiry is a copy of the 'Daily Court Reporter', published at Dayton, Ohio, and purporting to give a digest of the day's news in legal, real estate and business circles, and carrying the announcement, as you state in your letter, that it has been approved by the courts as a sufficient medium for the publication of legal advertisements. An inspection of its printed matter shows that in this particular issue it carries no current news whatever in its columns and that it is devoted wholly to the news of the courts and the business of the various county offices as appears from their records. Among its legal advertisements is found the times for holding courts of appeal in its district and also legal notices which are required by law in cases where the service of summons personally cannot be made in civil actions.

It is apparent from the foregoing facts that this paper has been given such legal status as would qualify it to publish all notices provided by law, except those which are limited to newspapers of opposite politics, * * *."

In view of the foregoing discussion, I am of the opinion that the Daily Reporter, published in Columbus, Franklin County, Ohio, is a newspaper of general circulation in Franklin County, and is therefore eligible to print notices of applications for parole of prisoners required under the provisions of Section 2211-8, General Code.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

3780.

APPROVAL, BONDS OF TRUMBULL COUNTY, OHIO—\$90,000.00.

COLUMBUS, OHIO, November 21, 1931.

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

3781.

APPROVAL, NOTES OF CITY OF MASSILLON, STARK COUNTY, OHIO
 —\$10,689.52.

COLUMBUS, OHIO, November 23, 1931.

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