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NEWSPAPER — IF ONLY ONE AFFILIATED WITH EITHER POLITICAL PARTY CASTING LARGEST AND SECOND LARGEST VOTE IN STATE AT LAST GENERAL ELECTION, IS PUBLISHED AND OF GENERAL CIRCULATION IN COUNTY WHERE NO CITY HAS POPULATION IN EXCESS OF 8000, PUBLICATION, COUNTY AUDITOR'S REPORT NEED BE MADE ONLY ONE TIME IN SUCH NEWSPAPER — SECTION 2508 G.C.

SYLLABUS:

If only one newspaper affiliated with either of the political parties casting the largest and second largest vote respectively in the state at the last general election is published and of general circulation in a county having no city with a population in excess of eight thousand, the publication of the county auditor's report provided for in Section 2508, General Code, need be made only one time in such newspaper.

Columbus, Ohio, December 9, 1942.

Hon. Frederick L. Orum, Prosecuting Attorney,
Cadiz, Ohio.

Dear Sir:

You have requested my opinion as follows:

“The Auditor of Harrison County has requested my opinion on whether or not his annual report can be published in a non-county seat newspaper not of opposite political affiliation to our one county seat paper.

General Code Section 2508 indicates that said report shall be published in a newspaper of the political affiliation to the party casting the largest vote in the state at the last general

election and in another paper with political affiliations casting the second largest vote and further says that if there are not two such papers then one paper shall be sufficient.

Our local situation is such that we have no paper with the political affiliations opposite that of our county seat newspaper.

To further confuse the situation General Code Section 6252 (effective September 4, 1941) attempts to liberalize certain old rules of publication.

I would like your opinion on the following:

1. In a county where there are not two newspapers of opposite political affiliation must the auditor's annual report be published in the county seat newspaper and a non-county seat newspaper?

2. Does Section 6252 repeal in any particular by implication the publication provisos of Section 2508 of the General Code of Ohio?"

Section 2508, General Code, to which you refer, provides:

"Upon completing said report the county auditor shall submit the same to a judge of the court of common pleas for said county who shall determine whether said report is in conformity to this act, and if not said judge shall direct the said auditor to make specified changes therein so as to make it conform herewith. If the judge certifies that said report is in compliance herewith or after the auditor shall make changes therein as directed by the judge, said auditor shall cause an exact copy of said report to be immediately published one time in one English newspaper of the political party casting the largest vote in the state at the last general election, and in one English newspaper of the political party casting the second largest vote in the state at the last general election, published in the county and of general circulation in said county, if there are two such papers published; if not, then a publication in one newspaper only is required, provided, however, such report shall be published only in the English language, and if the newspapers have no political affiliation then, in the two newspapers having the largest circulation, and if there are no newspapers in said county, then the newspapers of the adjoining counties having the largest circulation in such county. Political newspapers shall have precedence over non-partisan papers.

In addition to the above the county auditor may cause such report to be published in the newspaper having the largest circulation in each city in which there is a population in excess of 8000, and in which such report is not otherwise published."

Although you do not state definitely that your county seat newspaper is a newspaper of a political party, I infer that it is from your state-

ment that there is no newspaper in your county of politics "opposite" that of your county seat newspaper. I am further assuming that such newspaper is of the political party casting the largest vote in the state at the last general election or of the political party casting the second largest vote in the state at such election and that such paper is of general circulation in said county. If the paper is of one of such political parties and there is no paper published and of general circulation in such county of the other political party, Section 2508, General Code, provides that publication in only the one newspaper is required. This section does not contemplate that the report shall be published in another newspaper of the same political party unless such newspaper has the largest circulation in a city in the county in which there is a population in excess of eight thousand. This situation obviously could not exist in your county.

Section 6252, General Code, as amended by the Ninety-fourth General Assembly, provides:

"A proclamation for an election, an order fixing the time of holding court, notice of the rates of taxation, bridge and pike notices, notice to contractors and such other advertisements of general interest to the taxpayers as the auditor, treasurer, probate judge or commissioners may deem proper, shall be published in two newspapers of opposite politics of general circulation as defined in section 5704-2 of the General Code at the county seat if there be such newspapers published thereat. Provided, however, that if there be not two newspapers of opposite politics of general circulation published in said county seat, such publication shall be made in one newspaper published in said county seat and in any other newspaper of general circulation in said county as defined in said section 5704-2, wherever published, without regard to the politics of such other newspaper. In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of such notice shall be made in two newspapers of opposite politics of general circulation in such city as defined in said above-mentioned section. This chapter shall not apply to the publication of notices of delinquent and forfeited land sales."

You will note that Section 2508, General Code, is a special statute dealing with the auditor's report. Although Section 6252, General Code, is specific with respect to a proclamation for holding an election, an order fixing the time of holding court, notice of the rates of taxation, bridge and pike notices, and notices to contractors, it is general in character as to other advertisements. If therefore there is any conflict between Section 2508, General Code, and Section 6252, General Code, such

conflict is with respect to that portion of Section 6252, General Code, which is general in its nature and not with respect to those portions of the section which are special. It is well settled in Ohio that in case of conflict between a special statute and a general statute, the special provision operates as an exception and prevails over the general language, and this is true even though the general statute may be a later enactment than the special statute. Thus, in *Fosdick v. Village of Perysburg*, 14 O.S., 472, it was held as shown by the fifth paragraph of the syllabus:

“It is an established rule in the construction of statutes, that a subsequent statute, treating a subject in general terms, and not expressly contradicting the provisions of a prior act, shall not be considered as intended to affect more particular and positive provisions of the prior act, unless it be absolutely necessary to do so in order to give its words any meaning.”

See also the following authorities decided by our Supreme Court:

Shunk v. First National Bank, 22 O.S., 508, 515

Ohio for use of Brown County v. Kelley 25 O.S., 29, 33

State v. Newton, 26 O.S., 200, 206

State v. Jackson, 36 O.S., 281, 286

Commissioners v. Board of Public Works, 39 O.S., 628, 632

When this principle is applied to your question, it is clear that Section 2508, General Code, is controlling as to the publication of the auditor's report and that Section 6252, General Code, has nothing whatever to do therewith.

You are accordingly advised that Section 6252, General Code, does not modify or repeal in any respect the provisions of Section 2508, General Code. You are further advised that if only one newspaper affiliated with either of the political parties casting the largest and second largest vote respectively in the state at the last general election is published and of general circulation in a county having no city with a population in excess of eight thousand, the publication of the county auditor's report provided for in Section 2508, General Code, need be made only one time in such newspaper.

Respectfully,

THOMAS J. HERBERT
Attorney General.