

**OPINION NO. 66-014****Syllabus:**

By reason of Sections 731.20 and 731.23, Revised Code, an annual appropriation ordinance of a municipal corporation must be published as prescribed by Sections 731.21 and 731.22, Revised Code. Opinion No. 66, Opinions of the Attorney General for 1911, page 1500, Opinion No. 262, Opinions of the Attorney General for 1912, page 1655, and Opinion No. 25, Opinions of the Attorney General for 1913, page 192, overruled; Opinion No. 691, Opinions of the Attorney General for 1946, page 8, approved and followed.

- - - - -

**To: Roger Cloud, Auditor of State, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, January 12, 1966**

Your request for my opinion reads:

"Recently a village requested an opinion from us as to whether or not an annual appropriation ordinance, upon passage, should be published.

"1912 O.A.G. No. 66, page 1500, decided January 25, 1911; 1912 O.A.G. No. 262, page 1655, decided April 3, 1912; and, 1913 O.A.G. No. 25, page 192, decided December 7, 1912, held that semi-annual appropriation ordinances were not general in nature nor did they provide for improvements and, therefore, need not be published. These opinions were based on a circuit court case arising in Jackson County in May, 1910, involving the Transcript Printing Company v. the City of Wellston. We are unable to find this case reported. 1946 O.A.G. No. 691, page 8, first syllabus, held:

"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.'

"This opinion was rendered in answer to the following question:

"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.?'

"General Code Section 4230 is now Ohio Revised Code Section 731.23 and concerns the publication and certification of ordinances in book form. 4228, General Code, is now Ohio Revised Code Section 731.21 which provides for the media in which publication should be made. Part of O.R.C. 731.20 states:

"'Ordinances of a general nature or providing for improvements shall be published as provided by Sections 731.21 and 731.22 of the Revised Code before going into operation.'

"It would appear that these code sections carry forth the conclusions reached in the early Attorney General Opinions.

"However, 1951 O.A.G. No. 654, page 383, and 1960 O.A.G. No. 1649, page 583, held that salary ordinances are general in nature, and therefore, must be published. This conclusion was reached because it was felt that publication was necessary where the money to be spent had a direct financial or other type effect on the people. In other words, if the money comes from general taxation the effect is general in nature. This would appear to be true for appropriation ordinances also as they might concern moneys raised through general taxation.

"It has been our observation that many of the municipalities in Ohio do not publish appropriation ordinances and, therefore, we respectfully request your consideration of the following question:

"Must annual appropriation ordinances be published in accordance with Revised Code Section 731.22 (A)?"

As you have mentioned, early opinions from this office held that appropriation measures need not be published. Opinion No. 66, Opinions of the Attorney General for 1911, page 1500, reads:

"I am aware it has been the ruling of this department heretofore that the semi-annual appropriation ordinance was an ordinance of a general nature which required publication in two newspapers of opposite politics of general circulation in the municipality. However, this identical question was decided by the circuit court of Jackson County, Ohio, in the past year, holding that the semi-annual appropriation ordinance was not an ordinance of general nature which required publication in two newspapers of opposite politics of general circulation

in the municipality. The style of the case was *The Transcript Printing Co. vs. The City of Wellston, Ohio*, decided in May, 1910. The case was not taken to the supreme court. I do not think there is any other decision in Ohio upon this question.

"I will, therefore, hold that the semi-annual appropriation ordinance is not an ordinance of general nature requiring publication in two newspapers of opposite politics of general circulation in the municipality."

In Opinion No. 262, Opinions of the Attorney General for 1912, page 1655, reference was made to Opinion No. 66, supra, and this conclusion was reached, as shown by the first paragraph of the syllabus:

"The semi-annual appropriation ordinance is not an ordinance of a general nature and need not be published in any newspaper."

In Opinion No. 25, Opinions of the Attorney General for 1913, page 192, dated December 7, 1912, it was said in the syllabus that there is no express provision for the publication of a semi-annual appropriation ordinance. This language appears at page 193:

"Under section 4227, General Code, the only ordinances that require publication are those of a general nature or providing for improvement. It has been held by this department, following the decision of State ex rel. *Transcript Printing Co. vs. City of Wellston*, decided by the circuit court of Jackson county, Ohio, that a semi-annual appropriation ordinance did not require publication as it was not an ordinance of a general nature or providing for an improvement. Therefore, as far as section 4227, General Code, is concerned there is no requirement upon a village council to publish such an ordinance, and there being no requirement of law in that regard there would be no power in council to publish such an ordinance under said section."

At page 194 the author, referring to semi-annual appropriation ordinances, said this:

"In the case in question there is no provision whatever for the publication of the ordinance for the reason that it is not one of a general nature or providing for an improvement, and even though the cases of *Wasem vs. Cincinnati supra*, and *Cincinnati vs. Davis supra* were considered as stating the proper rule of law, yet in each of those cases the municipality was authorized to publish a particular ordinance or notice."

Section 731.20, Revised Code, was then Section 4227, General Code, and it has not been amended in the intervening years. That section reads:

"Ordinances, resolutions, and bylaws shall be authenticated by the signature of the presiding officer and clerk of the legislative authority of the municipal corporation. Ordinances of a general nature or providing for improvements shall be published as provided by sections 731.21 and 731.22 of the Revised Code before going into operation. No ordinance shall take effect until the expiration of ten days after the first publication of such notice. As soon as a bylaw, resolution, or ordinance is passed and signed, it shall be recorded by the clerk in a book furnished by the legislative authority for that purpose."

I am not familiar with The Transcript Printing Company case relied upon in the opinions discussed herein, and the writers did not include any statement of the reasoning upon which that conclusion was based. I would find it difficult to accept the statement that an appropriation measure is not an ordinance of a general nature without having some knowledge of the legal principles considered and applied. In my opinion, however, the General Assembly has made it mandatory that all ordinances be published.

Section 731.23, Revised Code, formerly Section 4230, General Code, now reads:

"When ordinances are revised, codified, rearranged, published in book form, and certified as correct by the clerk of the legislative authority of a municipal corporation and the mayor, such publication shall be sufficient publication, and the ordinances so published, under appropriate titles, chapters, and sections, shall be held the same in law as though they had been published in a newspaper. A new ordinance so published in book form, which has not been published as required by sections 731.21 and 731.22 of the Revised Code, and which contains entirely new matter, shall be published as required by such sections. If such revision or codification is made by a municipal corporation and contains new matter, it shall be sufficient publication of such codification, including the new matter, to publish, in the manner required by such sections, a notice of the enactment of such codifying ordinance, containing the title of the ordinance and a summary of the new matter covered by it. Such revision and codification may be made under appropriate titles, chapters, and sections and in one ordinance containing one or more subjects.

"Except as provided by this section, all ordinances, including emergency ordinances,

shall be published in accordance with section 731.21 of the Revised Code."

The final paragraph of that section was not part of the law at the time the earlier opinions were issued. In 1943, in 120 Ohio Laws, 629, 630, this paragraph was added to Section 4230, General Code:

"Except as herein provided, all ordinances shall be published according to law."

This paragraph was amended in 1945, in 121 Ohio Laws, 360, to read:

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

Section 4228, General Code, is now Section 731.21, Revised Code. After this amendment, the then Attorney General issued Opinion No. 691, Opinions of the Attorney General for 1946, page 8. The syllabus reads:

"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."

Your attention is also invited to Opinion No. 654, Opinions of the Attorney General for 1951, page 383, and Opinion No. 1649, Opinions of the Attorney General for 1960, page 583. These opinions held that ordinances fixing salaries are ordinances of a general nature and require publication.

It is my conclusion that an appropriation ordinance is one of a general nature which would require publication pursuant to Section 731.20, Revised Code, but in any event, publication is required by Section 731.23, Revised Code.

Section 731.22, Revised Code, about which you have specifically inquired, reads:

"The publication required in section 731.21 of the Revised Code shall be for the

following times:

"(A) Ordinances, resolutions, and proclamations of elections, once a week for two consecutive weeks;

"(B) Notices, not less than two nor more than four consecutive weeks;

"(C) All other matters shall be published once."

It is, therefore, my opinion and you are advised that by reason of Sections 731.20 and 731.23, Revised Code, an annual appropriation ordinance of a municipal corporation must be published as prescribed by Sections 731.21 and 731.22, Revised Code. Opinion No. 66, Opinions of the Attorney General for 1911, page 1500, Opinion No. 262, Opinions of the Attorney General for 1912, page 1655, and Opinion No. 25, Opinions of the Attorney General for 1913, page 192, overruled; Opinion No. 691, Opinions of the Attorney General for 1946, page 8, approved and followed.