

General Code, ineligible to serve depends upon the facts in each particular case. If such judge of elections had been engaged in actively promoting his candidacy for such office he would be ineligible. If on the other hand he did not seek or aspire to the office or actively promote his candidacy, he would be eligible, notwithstanding the fact that he had served as a judge of the election in which he was elected.

I am herewith enclosing copies of Opinions Nos. 1566 and 1390 herein referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1566.

COUNTY BONDS—ADVERTISEMENT OF SALE—ADDITIONAL ADVERTISEMENT—PROVISIONS FOR, CONSTRUED.

SYLLABUS:

1. *Notice of the sale of county bonds must be advertised once a week for three consecutive weeks and on the same day of the week, the first advertisements being published at least twenty-one days before the date of sale in a newspaper having general circulation in the county where the bonds are sold.*
2. *County commissioners may, if they so deem proper, further advertise the sale of county bonds in accordance with the provisions of Section 6252 of the General Code, provided that such additional publications shall not be in excess of the three weeks provided by Section 2293-28 of the General Code.*
3. *Where such additional advertisement is authorized, it must be published in two newspapers of opposite politics at the county seat if there be such newspapers published thereat, and, in addition thereto, notices shall be published in two newspapers of opposite politics in each city of eight thousand inhabitants or more within such county.*

COLUMBUS, OHIO, January 12, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“Section 2293-28, General Code, 112 O. L. 376, provides for advertising bonds for sale. It is provided that notices of the sale shall be advertised once a week for three consecutive weeks and on the same day of the week, the first advertisement being published at least twenty-one full days before the date of the sale in a newspaper having general circulation in the county where the bonds are issued. Section 6252, General Code, provides for the publication of certain advertisements and notices and such other advertisements of general interest to the tax payers as the auditor, treasurer, probate judge, or commissioners may deem proper, shall be published in two newspapers of opposite politics at the county seat if there be two such papers published thereat, and in counties having cities of 8,000 population or more, not the county seat, publication shall be made in two newspapers of opposite politics in such city.

Question 1. May the county commissioners in their discretion advertise the sale of county bonds in two newspapers of opposite politics in a city of 8,000 population, not the county seat of the county?

Question 2. Are the commissioners required to publish such advertisement in such papers?"

Section 2293-28 of the General Code provides in part as follows :

"If said notes or bonds are rejected by such officers, then notes having a maturity of two years or less may be sold at private sale at not less than par and accrued interest, and all bonds and notes having a maturity of more than two years shall be sold to the highest bidder, after being advertised once a week for three consecutive weeks and on the same day of the week, the first advertisement being published at least twenty-one full days before the date of sale, in a newspaper having general circulation in the county where the bonds are issued."

This section is a part of the uniform bond act and the provisions therein contained for advertising bond sales being very specific must at all events be strictly followed.

You have invited my attention, however, to Section 6252 of the General Code, the substance of that section being given in your communication. You ask whether or not, in the discretion of the county commissioners, the sale of county bonds may be advertised in two newspapers of opposite politics in a city of eight thousand population not the county seat of the county. In the interest of clarity I quote the provisions of Section 6252 of the General Code, in full, as follows :

"A proclamation for an election, an order fixing the times of holding court, notice of the rates of taxation, bridge and pike notices, notices 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 at the county seat, if there be such newspapers published thereat. In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of such notices shall be made in two newspapers of opposite politics in such city. This chapter shall not apply to the publication of notices of delinquent tax and forfeited land sales."

This section makes it mandatory to publish certain specified notices in the manner therein provided and in addition states that "such other advertisements of general interest to the taxpayers as the auditor, treasurer, probate judge or commissioners may deem proper," shall be so published. Obviously, therefore, publication of such other advertisements may be made if, in the judgment of the officials named, they are of general interest to the tax payers. In the event that such publication is deemed proper, the statute clearly directs additional publication in two newspapers of opposite politics in the county seat, if such there be, and also in all cities of eight thousand inhabitants or more in the county, although not the county seat.

Your question resolves itself into a determination of whether or not the notice of a bond sale can be construed as a matter of general interest to the tax payers, so that, in the exercise of the judgment of the commissioners, publication may be made in the manner provided in Section 6252 of the General Code. You will observe that this section makes mandatory the publication of notice to contractors and I feel that the letting of public contracts is similar in nature to a bond sale. In both instances the tax paying public is vitally interested in seeing that a proper price is obtained, the object being to secure real competition. Theoretically, at least, every member of the public is a potential bidder and the more widely knowledge of the bond sale is disseminated the greater the possibility of competition and resultant benefit to the county. I therefore feel that the county commissioners may, in their discretion, de-

cide to proceed in the manner provided in Section 6252 of the Code and advertise the bonds in two newspapers of opposite politics in the county seat, if such there be, and also in two newspapers of opposite politics in every city of eight thousand population or more, not the county seat of the county. In other words, the publication under this section must be made at the county seat and the provision for the publication in cities other than the county seat is in addition to the publication at the county seat.

You will observe, however, that no specified length of publication is contained in Section 6252, General Code. It is necessary to point out, as stated in the first part of this opinion, that the provisions of Section 2293-28 must, at all events, be fully met, and an advertisement once a week for three consecutive weeks and on the same day of the week must be published in a newspaper having general circulation in the county where the bonds are issued. These two provisions as to publication being supplementary, the provisions of Section 2293-28 might well be complied with by the publication in one of the two newspapers in the city, which is not the county seat, provided such newspaper is one of general circulation in the county. Likewise, the requirements of the special section might be met by the publication for the time prescribed in Section 2293-28 in one of the newspapers at the county seat. In so holding, however, I do not wish to be understood as approving publication in the additional newspapers in excess of the length of time prescribed by Section 2293-28 of the Code. The special provision only authorizing publication for three weeks and Section 6252 of the Code being silent as to the duration of the publication therein authorized, it is my opinion that publication in any additional newspaper could not be for a longer period than three weeks. This is the effect of the holding in the case of *Printing Company vs. State*, 68 O. S. 362, and I quote the following from the opinion of the court on pages 366 and 367 :

“Publication of the report of the examiners of the county treasury, etc., appointed by the probate judge, is authorized by Section 1129, Revised Statutes. It is to be published ‘one week in two newspapers of opposite politics, of general circulation in the county.’ Section 4367 also authorizes the publication of certain notices of general interest to the taxpayers as the auditor, treasurer, probate judge, or commissioners may deem proper in two newspapers of opposite politics. This does not in terms limit the number of publications, but it does not give those officers discretion to fix the number of publications where the number is fixed by other sections. Sections 22b, 798 and 1136-2, fix the number of publications of notices for the sale of bonds, for notices to contractors and for proposals to banks to become depositaries of county funds. In so far as these several sections of the statute provide for the number of publications they control, and publications in excess of the limit fixed are unauthorized. We hold the excessive publications stated in the petition to have been all unauthorized save as to the very small matter of notices to coal dealers, upon which no specific limit seems to have been placed by any section of the statute to which our attention has been called.”

In your second question you ask whether the commissioners are required to make such publication in two newspapers of opposite politics in a city of eight thousand population not the county seat. As I have before indicated, publication of notice of the bond sale under the provisions of Section 6252 of the General Code is discretionary with the county commissioners. There is, therefore, no mandatory duty upon them to make such publication, but, in the event they so do, and comply fully with the provisions of Section 6252, as above indicated, the expenditure of funds for this purpose would not, in my opinion, be illegal.

Respectfully,

EDWARD C. TURNER,
Attorney General.