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NEWSPAPER OF GENERAL CIRCULATION IN COUNTY —
CLERK OF COURTS OWNER — PUBLICATION OF LEGAL
NOTICES AUTHORIZED OR REQUIRED BY PROBATE COURT
NOT ILLEGAL, NOT IN VIOLATION OF SECTION 12910 G. C.

SYLLABUS:

Where the clerk of courts of a county is the owner of a newspaper of general circulation in said county, the publication in said newspaper of legal notices authorized or required by the probate court of said county is not in violation of Section 12910, General Code, and is not illegal.

Columbus, Ohio, July 24, 1943.

Hon. Gordon D. Lovett, Prosecuting Attorney,
West Union, Ohio.

Dear Sir :

I acknowledge receipt of your communication requesting my opinion, reading as follows :

“We would like to have your ruling on the following proposition :

Mrs. K. is now the clerk of the court of Adams county, Ohio, and she is also the owner and publisher of the Adams County News, a newspaper of general circulation in said county, and the probate division of the Common Pleas Court has been publishing its notices in the Adams County news.

Now, since Mrs. K. is the clerk of court of Adams county, is it proper and legal to continue to publish the notices of said court in her newspaper?”

The answer to your question turns upon an interpretation of Section 12910, General Code, which reads as follows :

“Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years.”

This section is one of several enactments, all of long standing, intended to guard against the evil of permitting public officers to profit by their position and resulting influence in securing public contracts. A kindred section almost identical in terms is Section 12911, which forbids any such officer to be interested in a contract with a political subdivision with which he is *not* connected, where the amount involved is more than fifty dollars, without public bidding.

A further section is Section 12912, General Code, which makes it illegal for any officer or councilman of a municipality, or a trustee of a township, to be interested in the profits of any contract, job, work or services with or for the public body with which he is connected.

Some of the implications arising on an examination of Section 12910, above quoted, are too obvious to require serious study or authority. It is quite clear that the clerk of courts is one holding an office of trust or profit in the county and is therefore subject to the statute. It may also be assumed that the notices in question are "for the use" of the county.

To become "interested" in a contract within the meaning of this statute, it is not necessary that the officer make a profit on the contract. It was held in *Doll v. State*, 45 O. S. 445, relative to a city officer:

"To become so interested in the contract, it is not necessary that he make profits on the same. But it is sufficient, if while acting as such officer, he sell the property to the city for its use, or is personally interested in the proceeds of the contract of sale, and receives the same or part thereof, or has some pecuniary interest or share in the contract."

It is to be observed that this particular statute deals particularly with contracts of "purchase" by such political subdivision which likewise involves the idea of a "sale". It is true that in common parlance we use these words in a very broad sense, including the idea of purchase or sale of personal services, of consents, of favors, of votes, etc. In the light, however, of the obvious purpose of the statute and its entire wording, I am of the opinion that the word "purchase" is here to be interpreted in a somewhat more restricted sense. The thing which is forbidden by this statute is that an officer should be interested in the purchase by his political subdivision of "property, supplies or fire insurance."

I come now to what I consider the real question involved, viz., whether publication in a newspaper of a legal notice, authorized or required by the probate court of the county, amounts to a purchase, for the use of the county, of *property* or *supplies*. Clearly it is not the purchase of fire insurance.

It is stated in 42 Am. Jur. 188, quoting from *Wood v. Insurance Co.*, 112 Neb. 66, that :

“The term ‘property’ as ordinarily employed, includes every interest one may have in anything that is the subject of ownership, together with the right to freely possess, use, enjoy and dispose of it.”

It is further stated in 42 Am. Jur. p. 217, that ownership of property implies the acquisition of title ; it also implies the right of possession or control thereof, and the right to defend such possession against intrusion or trespass of others.

It seems plain to me that what the Legislature had in mind, in referring to property and supplies to be purchased by a subdivision such as a county, included only those tangible properties, real or personal, which are normally required for carrying out the powers of the subdivision. This would include purchases of property of a more or less permanent character and supplies consisting of such articles as are ordinarily used up in the operation or conduct of the business. While space in a newspaper may in a certain sense be said to be purchased, yet one does not, in causing a notice to be published, acquire anything which he can keep, use or dispose of any more than when he purchases personal service.

The very fact that the Legislature saw fit to mention fire insurance specially, in addition to “property and supplies”, lends weight, in my opinion, to the conclusion that it did not consider property or supplies as including anything as intangible as insurance.

One of my predecessors, in considering the question whether it was a violation of the statute under consideration for the trustees of the township to employ the township clerk on road work and miscellaneous work, held that such employment was not prohibited. This opinion is found in *Opinions Attorney General for 1919*, p. 1474, and in the course of the opinion it was said :

“Very plainly the mere furnishing of personal service is not such an activity which would come within the prohibition of being ‘interested in a contract for the purchase of property, supplies or fire insurance,’ set out in Section 12910.”

As strengthening his conclusion, the then Attorney General referred to Section 12912, which makes it unlawful for an officer or member of council of a municipality or the trustees of a township to be interested in the “profits of a contract, job, work or service for such corporation

or township," and stated that that section would clearly cover the case except for the fact that it did not include the clerk of the township.

It is my opinion that the placing of a legal advertisement in a newspaper is not the purchase of property within the meaning of Section 12910, General Code.

Can it be said to be a purchase of "supplies"? The various definitions of the word "supplies," legal or otherwise, all seem to lead to the impression that the term is intended to signify a collection of goods or materials stored for current or future use. Out of a large number of judicial definitions given in particular cases, I take the following from 60 C. J., p. 1167:

" * * * quantity of something supplied or on hand; stock, store, or stores; such stores of food, etc., as are kept on hand for daily use; such things as are used to meet a want. The ordinary meaning of 'supplies' in its general and accepted use is such as to include goods, wares, and merchandise of almost every kind and nature, whether used in the household or on the farm, or in any sort of productive or constructive work requiring the labor or service of men or animals or machinery."

It seems to me that by no stretch of reasoning could space in a newspaper used for publication of a legal notice be included within any definition of "supplies". It comes closer to being a service than anything else. If the language of Section 12912 were broad enough to include county officers as well as municipal and township officers, it would apparently include and forbid a contract for such publication. In order that we may have before us the entire plan of legislation on this subject, it seems wise to set out Section 12912, as follows:

"Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work or services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, or becomes the employe of the contractor of such contract, job, work, or services while in office, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office."

This statute, I think, throws some light on the subject because while Sections 12910 and 12911 are limited strictly to purchases of property, supplies and fire insurance, Section 12912 attempts to gather up contracts of all sorts but is limited in scope to municipalities and townships.

In an opinion found in Opinions of Attorney General for 1917, p. 1293, it was held:

“A member of a board of education who is owner and publisher of a newspaper has no right to contract with the board to publish legal notices even though only the legal rate is charged for such publication.”

The then Attorney General discussed Sections 12910 and 12911, General Code, but appeared to place his decision entirely on the provisions of Section 4757, General Code, which provided specifically with reference to boards of education:

“No member of the board shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer.”

In an opinion found in Opinions of Attorney General for 1916, p. 1922, the question was as to the legality of a contract whereby the county surveyor was employed by the county commissioners to make certain ditch maps. The then Attorney General held said contract to be invalid only because the work done was a part of the regular work for which the county surveyor was already paid. The syllabus of the opinion was as follows:

“Under the facts as submitted, the county commissioners of Hardin county were not authorized to contract with the county surveyor for the making of ditch maps, and payments to such county surveyor on account of said contract were unauthorized. The transaction does not, however, fall within the purview of section 12910 G. C.”

In the opinion it was said:

“The thing for which the commissioners agreed to pay was the time and services of Mr. A., and section 12910 G. C. could not be regarded as applicable for the reason that under the contract in question the county did not acquire ‘property’ or ‘supplies’ in the sense in which those terms are used in the section in question.”

It should not be overlooked that Section 12910, General Code, is a criminal statute and that it must be strictly construed. The general rule as stated in Crawford on Statutory Construction, Section 240, is:

“Criminal and penal statutes must be strictly construed; that is, they cannot be enlarged or extended by intendment, impli-

cation, or by any equitable considerations. * * * Only those persons, offenses and penalties clearly included beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute and where there is any reasonable doubt, it must be resolved in favor of the person accused."

Specifically answering your question, it is my opinion that where the clerk of courts of a county is the owner of a newspaper of general circulation in said county, the publication in said newspaper of legal notices authorized or required by the probate court of said county is not in violation of Section 12910, General Code, and is not illegal.

Respectfully,

THOMAS J. HERBERT,
Attorney General.