

1430.

APPROVAL, BONDS OF JACKSON TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN COUNTY—\$80,000.00.

COLUMBUS, OHIO, December 23, 1927.

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

1431.

DISAPPROVAL, BONDS OF WEST PERKINS SPECIAL RURAL SCHOOL DISTRICT, ERIE COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, December 23, 1927.

Re: Bonds of West Perkins Special Rural School District, Erie County, Ohio—\$50,000.00.

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

GENTLEMEN :—The transcript pertaining to the above bond issue contains a proof of publication of a notice of election, which states that said notice was published in the Sandusky Register for four consecutive weeks, commencing on the 13th day of October, 1927. The copy of the notice of election attached to said proof of publication recites, briefly, that the question of issuing \$50,000.00 of bonds for the purpose of centralizing the schools of the above school district, to erect a new school building and purchase a site for the same, and to furnish and equip the same, will be submitted at the November 8, 1927, election. It also contains directions for marking the ballot.

The notice of election above referred to having been first published on October 13, 1927, and the election having been held on November 8, 1927, said publication appeared twenty-six days prior to the election.

Section 2293-21, General Code, provides in part:

“Notice of the election shall be published in one or more newspapers of general circulation in the subdivision once a week for four consecutive weeks prior thereto, stating the amount of the proposed bond issue, the purpose for which such bonds are to be issued, the maximum number of years during which such bonds shall run and the estimated average additional tax rate, outside of the fifteen mill limitation, as certified by the county auditor.”

The above section requires publication of the notice of election in at least one newspaper of general circulation in the subdivision once a week for four consecutive weeks prior thereto.

In the case of *City of Cincinnati vs. Puchta, Mayor*, 94 O. S. 431, the question presented was whether or not the publication of a notice of election for four consecutive weeks, covering the period of twenty-six days prior to the election, legally complied with Section 3946, General Code, which required thirty days' notice of the election in one or more newspapers printed in the municipality once a week for four consecutive weeks prior thereto. The Supreme Court held that the statute was substantially complied with and the validity of the election was upheld. On page 432 of the opinion, it was said:

"The chief purpose of this statute is evident, to-wit, four weekly publications. And these were made. We do not hold that in all cases such would be a sufficient compliance with the law, but in the absence of any allegation here that anybody was denied the right to vote, by reason of the statute not being literally complied with for the full thirty days, the regularity of the election proceedings is upheld."

The sufficiency of advertising for bids for construction work was attacked in the case of *State vs. Kuhner & King*, 107 O. S. 406. The second branch of the syllabus reads:

"The requirement of Section 1206, General Code, that 'the state highway commissioner shall advertise for bids for two consecutive weeks,' is mandatory, and a contract entered into on June 14, after advertisement in two weekly newspapers of the county on June 6 and June 13, is invalid."

On page 415 of the opinion the court said:

"Was this a compliance with the requirement of the section that 'the state highway commissioner shall advertise for bids for two consecutive weeks?' In our opinion the word 'for' has some significance as used in this statute, and applying the dictionary meaning thereof, which seems to us clearly indicated by the context as that most likely meeting the intent of the legislature, such advertisement is required 'during the continuance of' or 'throughout' the period of two weeks. \* \* \* The evident purpose of our statute was to require not only two publications, but two weeks' notice, and it was contemplated that a period of two weeks would be allowed for filing bids from the date of the first publication."

In a recent case arising in the common pleas court of Mercer County, involving an issue of bonds by Centerville Township Rural School District, one of the grounds urged for enjoining the issuance of said bonds was the insufficiency of the publication of the notice of election. It appeared that there being no newspaper published in the district, the clerk posted copies of the notice of election in eight public places in the district for the full time required by law and published said notice in a newspaper of general circulation in the district on October 15, 16, 17, 19 and 20, 1925, and in another newspaper on October 23 and 30, 1925. It also appeared that posters setting forth the necessity of the proposed issue of bonds, the amount of the levy, etc., were distributed generally to the electors, an effort being made to get one into the hands of every elector, and the matter was generally discussed throughout the district. An injunction was allowed by the common pleas court and the court of appeals of Mercer County in refusing the injunction and ordering the petition dismissed said:

"The proof by both plaintiff and defendant, shows such general knowledge by the electors, of the election, as to make of no legal consequence the failure to publish the newspaper notice required by the statute."

On October 26, 1927, the Supreme Court of Ohio overruled a motion to certify the record in the above case.

The net result of these cases is such as to leave in doubt the question of the sufficiency of the publication in the instant case. In other words, the question is one for a determination by a proper court as to whether the electors had such general knowledge of the election that failure to publish for the statutory period of four full weeks or twenty-eight days was of no legal consequence, and further that the failure to publish for the statutory period did not result in a denial to any one of his right to vote.

Section 2293-21, *supra*, also provides what the notice of election shall contain. It provides that the notice of election shall state the amount of the proposed bond issue, the purpose for which such bonds are to be issued, the maximum number of years during which such bonds shall run and the estimated average additional tax rate outside of the fifteen mill limitation, as certified by the county auditor.

The notice of election in the instant case did not state the maximum number of years during which the bond shall run or the estimated average additional tax rate outside of the fifteen mill limitation, as certified by the county auditor. The statute being plain as to what a notice of election shall contain, there is a grave doubt in my mind as to whether or not the notice in the instant case was a sufficient compliance with the statute. Until the question is presented to and decided by a proper court, I am constrained to hold that the notice of election above referred to was not a sufficient compliance with the requirements of law.

For the foregoing reasons, I am compelled to advise you not to purchase the above issue of bonds.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1432.

DISAPPROVAL, BONDS OF HIRAM VILLAGE SCHOOL DISTRICT,  
PORTAGE COUNTY, OHIO—\$2,000.00.

COLUMBUS, OHIO, December 23, 1927.

Re: Bonds of Hiram Village School District, Portage County, Ohio—\$2,000.00.

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

GENTLEMEN:—I have examined the transcript pertaining to the above issue of bonds and find that the notice of election was published for four weeks, beginning on October 13, 1927, which was twenty-six days before the election.

Section 2293-21, General Code, as enacted by the 87th General Assembly in House Bill No. 1, (112 O. L. 364, 373), provides that notice of the election shall be published in one or more newspapers of general circulation in the subdivision once a week for four consecutive weeks prior thereto.