

OPINION 66-111**Syllabus:**

If a codification of ordinances published by a non-charter municipal corporation pursuant to Section 731.23, Revised Code, contains new matter, then, in addition to the book form publication of such enactment, Section 731.23, Revised Code, requires that a separate notice of enactment be published, in conformity with Sections 731.21 and 731.22, Revised Code, which contains the title of the codifying ordinance and a summary of the new matters contained therein.

To: William H. Weaver, Williams County Pros., Atty, Bryan, Ohio
By: William B. Saxbe, Attorney General, June 22, 1966

The question posed in your request for my opinion reads as follows:

"When a non-charter municipal corporation desires to revise, codify and publish in book form its Ordinances in accordance with Revised Code Section 731.23 of Ohio and such codified ordinance contains subjects and acts not heretofore regulated by Municipal Ordinances, must those provisions contained in the codified ordinance which were not part of the Ordinances prior to the codification be published in accordance with Revised Code Sections 731.21 and 731.22 of Ohio; or, can they be summarized and contained in the publication of the Ordinance providing for such revision and codification?"

It becomes immediately apparent that your question requests clarification and construction of Section 731.23, Revised Code, which provides:

"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 a 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 a 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 matters 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 last paragraph of this section provides that all ordinances must be published in the manner prescribed by Section 731.21, Revised Code, unless relieved of the responsibility by the section quoted above. Section 731.21, *supra*, prescribes the manner in which an ordinance is to be published. As a general statement, sufficient for our purposes here, the section requires the ordinance to be published in one or more newspapers of general circulation throughout the community. Section 731.22, Revised Code, prescribes the length of time for which the publication must run. It should be noted that, while Section 731.21,

Revised Code, prescribes the manner in which publication is to be made, and Section 731.22, Revised Code, prescribes the time for which it is to run, neither of the sections provides any requirement as to the substance of the subject matter to be published. As to the substance of the publication, it is now well-settled in Ohio that, except where a municipality avails itself Section 731.23, Revised Code, the ordinance must be published in its entirety. Opinion No. 313, Opinions of the Attorney General for 1933, page 346; State v. Waller, 44 Ohio Law Abs. 591.

With this background, the problem of properly construing Section 731.23, supra, becomes less troublesome. The first sentence of this section completely relieves the municipality of its responsibility to make any newspaper publication in the case of a codification which merely rearranges and restates the existing law and which does not effect a departure from the general purport of that previously published. Opinion No. 218, Opinions of the Attorney General for 1919, Vol. I, page 382.

The second sentence of Section 731.23, supra, requires that, if the codification does include subject matter which is a substantial departure from the scope and effect of the original legislation, as defined by Opinion No. 218, supra, then a separate publication must be made in conformity with the requirements, as to manner and time of publication, prescribed by Sections 731.21 and 731.22, Revised Code.

In light of the above discussion, it is apparent that the effect of the third sentence of Section 731.23, supra, is to relax the normal requirement, discussed above, as to the substance of the separate publication required by the second sentence of this section. Thus, if the codification, published in book form, contains new matter, it is not necessary to separately publish the new matter in its entirety. The third sentence declares that it shall be sufficient if a separate publication is made, in conformity with Sections 731.21 and 731.22, Revised Code, which contains:

"* * * a notice of the enactment of such codifying ordinance, containing the title of the ordinance and a summary of the new matters covered by it."

The reason for requiring a separate newspaper publication only in the case of new matter was noted in Opinion No. 218, Opinions of Attorney General for 1919, Vol. I, p. 382, at page 384, which reads in part as follows:

"* * * It is perceived that the purpose of the requirement for publication is to advise the members of the public of their liability to the mandate or restraint of the ordinance, and the publication of ordinances at the time of the original enactment remains sufficient in the case of the later codification into book form, so long as the revision and re-arrangement does not introduce new matter amounting to a departure from the general purport and the effect of the original.

"In case an essential departure or enlargement in scope or applications is to be accomplished, the usual publication is deemed essential."

As to the sufficiency of the summary required by this section, I refer you to the case Columbus v. Baldasaro, 70 Ohio Law Abs., 411.

Thus, in answer to your specific question, it is my opinion that, if a codification published by a non-charter municipal corporation pursuant to Section 731.23, Revised Code, contains new matter, then, in addition to the book form publication of such enactment, Section 731.23, supra, requires that a separate notice of enactment be published, in conformity with Sections 731.21 and 731.22, Revised Code, which contains the title of the codifying ordinance and a summary of the new matters contained therein.