

1322.

PUBLICATION—OF ORDINANCES, RESOLUTIONS, ETC., OF A MUNICIPALITY IN ONE ENGLISH NON-PARTISAN NEWSPAPER OF GENERAL CIRCULATION, WHERE ONLY ONE IS PUBLISHED, IS A COMPLIANCE WITH SECTION 4228, GENERAL CODE.

SYLLABUS:

In a municipality in which there is only one English newspaper published and of general circulation, and that of a non-partisan character, the publication in that paper of such ordinances, resolutions, statements, orders, proclamations, notices and reports required by law, or ordinance to be published in the manner and for the period required by law, is a compliance with the requirements of Section 4228, General Code.

COLUMBUS, OHIO, December 2, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion with reference to the legal publication of municipal ordinances, resolutions, proclamations, statements, notices and reports, which by law or ordinance require publication. The specific question submitted is as follows:

“Would publication in one non-partisan newspaper which is the only newspaper published in the municipality be sufficient, there being one other newspaper of general circulation in such municipality but not published therein?”

Section 4228, General Code, reads as follows:

“Unless otherwise specifically directed by statute, all municipal ordinances, resolutions, statements, orders, proclamations, notices and reports, required by law or ordinance to be published, shall be published as follows: In two English newspapers of opposite politics published and of general circulation in such municipality, if there be such newspapers; if two English newspapers of opposite politics are not published and of general circulation in such municipality then in one such political newspaper and one other English newspaper published and of general circulation therein; if no English newspaper is published and of general circulation in such municipality, then in any English newspaper of general circulation therein or by posting as provided in Section 4232 of the General Code; at the option of council. Proof of the publication and required circulation of any newspaper used as a medium of publication hereunder shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of council.”

By the terms of Section 4227, General Code, it is provided that “ordinances of a general nature, or providing for improvements shall be published as hereinafter provided before going into operation.” Section 4229, General Code, provides the number of times ordinances, resolutions, etc., enumerated in Section 4228, supra, shall be published. Section 4232, General Code, provides that in municipalities in which no newspaper is printed or published, as defined by law, the publication of ordinances and other matters requiring publication, as enumerated in Section 4228 supra, may be made either by posting or by publication in any newspaper printed or published in Ohio and of general circulation in the municipality.

Examination of these several provisions of the statutes discloses that no express provision is made to meet the situation of a municipality wherein but one English non-partisan newspaper is published. If one partisan English newspaper is published in the municipality, publication must be made, not only in it, but in another English newspaper of general circulation in the municipality. If no English newspaper is published in the municipality, the law is satisfied if publication is made in but one paper. It would seem reasonable to say that the legislature, in providing that publication in one paper was sufficient in cases where the element of partisanship of papers published and of general circulation in the municipality did not enter into the matter, and no English newspaper was published in the municipality, must have intended that publication in one newspaper would be sufficient if that paper was published and of general circulation in the community.

It seems clear if where no English paper is published in the municipality, publication in one English newspaper of general circulation therein, whether a partisan paper or not, is sufficient publication, that the publication in a non-partisan English newspaper, published and of general circulation in the municipality, would be sufficient. The legislature must have so intended even though it did not expressly so provide.

It would seem to be an anomalous construction of Section 4228, General Code, to say that it is necessary to either make publication by posting, as provided in Section 4232, General Code, or by publication in two newspapers, when but one English newspaper, and that of a non-partisan character, is published and of general circulation in the community, whereas, if no English newspaper is published and of general circulation in the community, publication is sufficient if made in any English newspaper of general circulation in the community, although published elsewhere.

However, there are other considerations which lead to a like conclusion.

On October 22, 1902, there was enacted an act entitled: "To provide for the organization of cities and incorporated villages and * * * to repeal all sections of the Revised Statutes inconsistent therewith." Section 124 of this act (96 O. L. page 60) provided:

"In passing, recording, publishing and authenticating ordinances, council shall be governed by the provisions of Sections 1694, 1695, 1696, 1697, 1698 and 1699 of the Revised Statutes of Ohio and for all purposes such sections shall be and remain in full force and effect; and in addition thereto all ordinances and resolutions requiring publication shall be published in two newspapers of opposite politics published and of general circulation in such municipality if such there be."

It will be noted from the foregoing that Section 1695, Revised Statutes, was expressly continued in force. This section was published in the Fourth, Fifth and Sixth Editions of Bates' Revised Statutes as Section 1536 (621) and provided, *inter alia*, as follows:

"Ordinances of a general nature and providing for improvements shall be published in some newspaper of general circulation in the corporation."

In the codification of 1910, Section 1536 (621), Revised Statutes, was codified as Section 4227, General Code, but the words "some newspaper" were omitted, and the words "shall be published as hereinafter provided", were substituted. At that time, 1910, Section 4228, General Code, provided that all ordinances and resolutions requiring publication should be published in two newspapers of opposite politics, published and of general circulation in the municipality, if such there be, and Section 4229, General Code, made similar provisions for the publication of statements, or-

dinances, resolutions, orders, proclamations, notices and reports which were required by law or ordinance to be published.

When the statutes were in the form as codified in 1910, the Supreme Court, in the case of *Village of Elmwood Place vs. Schanzle*, 91 O. S., page 354, held:

“In a municipality in which there is only one newspaper published and of general circulation the publication in that paper of ordinances of a general nature in the manner and for the period required by Section 4227, et seq., General Code, is a compliance with the requirements of those sections.”

Section 4227, General Code, has not been changed since the codification of 1910. If it had been codified as originally passed in 1902, there would be little room for discussion of the question of whether or not publication in one newspaper conformed to the intent of the law where no express provision was made to the contrary. In the case of *State ex rel., Baumgardner vs. Stockley*, 45 O. S. 304, 308, it is stated:

“It is well settled by the repeated adjudications of this court that, ‘Where all the general statutes of a state are revised and consolidated, there is a strong presumption that the same construction which the statute received before revision, should be applied to the enactment in its revised form, although the language may have been changed; and the same construction will prevail as before revision unless the language of the new act plainly requires a change of construction to conform to the manifest intent of the legislature.’ ”

In the course of the opinion in the case of *Elmwood Place vs. Schanzle*, supra, the court said with reference to the construction to be placed on Section 4227, General Code:

“Can it be said that it is clear and manifest that in the adoption of the General Code the general assembly intended to so change the statute then in force as to leave no provision for the publication of ordinances in a village in which only one newspaper is printed? Or can it be said that the words in the codified section are so free from ambiguity and doubt and express so clearly and distinctly the meaning of what the general assembly did enact that there is no occasion to resort to other means of interpretation? We think not. * * *

The history of legislation on the subject involved in this controversy is such as to clearly indicate that the settled policy of the state is to require that ordinances of a general nature shall be published. Publication is the object to be attained, the essential requirement. As part of the plan to attain the purpose, the publication is required to be made in two newspapers of opposite politics published in the municipality ‘*if such there be.*’ It is to be presumed that the legislature contemplated that if there were such papers of opposite politics the information contained in the publication would be fairly distributed among the people of the community.”

As stated by the court in the *Elmwood Place* case, supra, the history of legislation on the subject is such as to clearly indicate that the settled policy of the state is to require that certain ordinances, resolutions, statements, orders, proclamations, notices and reports be published. Publication is the object to be attained, the essential requirement.

Inasmuch as Section 4228, General Code, in its present form does not expressly provide how publication shall be made when the only newspaper that is published

and of general circulation in the community is a non-partisan English newspaper it follows that publication must be made either by posting, as provided in Section 4232, General Code, or by publication in two newspapers, or by publication only in the one paper that is published and of general circulation in the community.

Upon consideration of the history of legislation on the subject and the decision of the Supreme Court in the Elmwood Place case, *supra*, and bearing in mind that there have been no material changes in Sections 4227, 4229 and 4232, General Code since the decision of the above case, I am of the opinion that in a municipality in which there is only one English newspaper published and of general circulation, and that of a non-partisan character, the publication in that paper of such ordinances, resolutions, statements, orders, proclamations, notices and reports by law, or ordinances to be published in the manner and for the period required by law, is a compliance with the requirements of Section 4228, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1323.

BOARD OF TRUSTEES OF PUBLIC AFFAIRS—HAS SOLE AUTHORITY TO ENTER CONTRACTS FOR CONSTRUCTION OF MUNICIPAL WATERWORKS COSTING MORE THAN \$500—BOARD ESTABLISHED BY VILLAGE COUNCIL—AUTHORITY OF MAYOR AND VILLAGE CLERK DISCUSSED.

SYLLABUS:

1. *If the contracts involve the expenditure of more than five hundred dollars (\$500.00), the board of trustees of public affairs in a village has the sole authority to enter into contracts for the construction of municipal waterworks in said village, after such waterworks have been authorized by the council of said village.*

2. *When the council of a village determines to construct municipal waterworks, it shall at such time establish a board of trustees of public affairs for said village, and thereafter, all administrative duties with respect to the construction and operation of the said waterworks vests in said board of trustees of public affairs. These duties include the employment of engineers, the adoption of plans and specifications and the advertising for and the letting of contracts for the construction of such waterworks.*

3. *The mayor and clerk of a village, under no circumstances, have authority to execute contracts on behalf of said village for the construction of municipal waterworks therein.*

COLUMBUS, OHIO, December 2, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication which reads as follows:

“The syllabus of Opinion No. 1140 to be found at page 2467, Volume 3 of the Opinions for 1915, reads:

‘It is the duty of the council of a village when it orders waterworks to be constructed, to establish a board of trustees of public affairs, and it is the duty of the mayor, subject to confirmation by council to appoint the members of such board to hold office until the next regular election.