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LIST—NOTICE OF LANDS TO BE FORFEITED TO STATE—
FEES—PUBLISHING NOTICE OF HEARING, SECTION 5718-1b
G. C. FIXED BY SECTION 6251-1 G. C.—FEES ALLOWABLE
FOR PUBLISHING LIST OF OMITTED PROPERTIES, SECTION
5718-1b G. C. ARE FIXED BY SECTION 5706 G. C.

SYLLABUS:

The fees allowable for publishing the notice of hearing provided for in Section 5718-1b, General Code, are fixed by Section 6251-1, General Code, and the fees allowable for publishing the list of omitted properties as provided in said Section 5718-1b are fixed by Section 5706, General Code.

Columbus, Ohio, April 25, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

Your request for my opinion reads as follows :

"Section 5718-1b of the General Code, provides that upon the filing of the application, prepared under the provisions of Section 5718-1a, General Code, the Court shall fix a day for hearing of objections to the action of the Board of Revision in making list of omitted lands, and shall order the Clerk to cause notice of the time and place of hearing, together with a list of such omitted lands, to be published once a week for two consecutive weeks in two newspapers, as provided in Section 5704, of the General Code.

Section 5706, General Code, sets forth the rates that may be charged by newspapers for the publication of the Delinquent and Forfeited lists and the Omitted list provided for in Section 5718-1b, of the General Code.

Section 6251-1, General Code, provides certain rates which publishers may charge and receive for the publication of advertisements, notices and proclamations required to be published by all Courts of record in this state, except probate courts.

May we respectfully request your opinion upon the following question :

Where the Clerk of Courts has caused notice of hearing and list of omitted lands to be published, as required by Section 5718-1b, General Code, would the payment to the newspapers for such publication be calculated according to the rates set forth in Section 5706, General Code, or the rates set forth in Section 6251-1 of the General Code?"

Section 5718-1b, General Code, to which you refer, is a part of the law dealing with the collection of taxes and particularly the proceedings relative to delinquent lands. Section 5718, General Code, requires the county auditor as a preliminary step to the foreclosure of tax liens, to certify to the prosecuting attorney a list of the delinquent lands. Section 5718-1, General Code, requires the auditor, before so doing, to submit such list to the county board of revision, who may order the omission from foreclosure proceedings of those properties which in the opinion of

the board will not upon sale bring a sufficient amount to pay the total amount charged against them on the tax duplicate, together with the costs of foreclosure. Section 5718-1a, General Code, requires the prosecuting attorney, in the name of the members of the board of revision, to file in the Common Pleas Court an application setting out a list of such omitted lands and praying for an order confirming the action of the board and forfeiting such lands to the State of Ohio.

Section 5718-1b, General Code, reads in part as follows:

“Upon the filing of such application *the court* shall fix a day for the hearing of objections to the action of the board of revision in making such list of omitted lands and *shall order the clerk of the court to cause notice* of the time and place of hearing, together with a list of such omitted lands, to be published once a week for two consecutive weeks in two newspapers as provided in Section 5704 of the General Code. Proof of such publication shall be filed with the clerk of court and by him preserved as part of his records. * * *” (Emphasis added.)

This section further prescribes the form of the notice and advises all persons interested that they may file objections.

Section 5718-1c, General Code, authorizes the court, after a hearing, if it finds the objections not well taken, to order such lands forfeited to the state. It will be seen, therefore, that this is a judicial proceeding affecting substantial rights of property.

It will be noted that the notice is to be published as provided in Section 5704, General Code. That section relates to the publication of a list of delinquent lands action of the board and forfeiting such lands to the State of Ohio.

Section 5718-1b, General Code, reads as follows:

“Upon the filing of such application *the court* shall fix a day for the hearing of objections to the action of the board of revision in making such list of omitted lands and *shall order the clerk of the court to cause notice* of the time and place of hearing, together with a list of such omitted lands, to be published once a week for two consecutive weeks in two newspapers as provided in Section 5704 of the General Code. Proof of such publication shall be filed with the clerk of court and by him preserved as

part of his records. The list as published shall contain the names of the owners, as found on the auditor ('s duplicate, of such lands at the time they were omitted, a description of the property as it appears on the tax list and the amount of taxes, assessments and penalties due at the time of omission. The legal notice shall be in substance as follows:

NOTICE OF LANDS TO BE FORFEITED
TO THE STATE OF OHIO

The following is a list of lands, lots and parts of lots upon which the taxes, assessments, etc., have been certified delinquent for two years:

(Here insert the list)

Such lots and lands were omitted by the county board of revision from foreclosure proceedings. The owners, mortgagees, lienors and any other persons having or claiming any interest in such lands, lots or parts of lots, will take notice that the court has fixed the date of.....(time).....at..... (place).....when objections to the action of the board of revision will be heard. Written objections may be filed prior to that date. If no valid objections are presented as to any of said lands the action of the county board of revision will be confirmed and said lands ordered forfeited to the State of Ohio to be sold pursuant to law."

(Emphasis added.)

It is to be noted that the court is to order publication of two matters: (a) notice of the time and place of hearing, and (b) a list of such omitted lands.

Section 5718-1c, General Code, authorizes the court, after a hearing, if it finds the objections not well taken, to order such lands forfeited to the state. It will be seen, therefore, that this is a judicial proceeding affecting substantial rights of property.

Section 5718-1b supra, provides that the notice and the list of omitted lands are to be published "as provided in Section 5704, General Code." That section relates primarily to the publication of a list of delinquent lands with notice to those interested that unless the delinquent taxes, etc. are paid the lands will be entered upon the foreclosure list. The obvious

reason for the reference to this section in Section 5718-1b supra, is that Section 5704 specifies the kind of newspapers in which publication may be made.

We come then, to the provisions of Section 5706, General Code. It reads in part:

“The publishers of newspapers, for advertising the delinquent and forfeited lists of the several counties, *the omitted list provided for in Section 5718-1b* of the General Code and the notice of sale, shall be entitled to receive for each insertion a sum not exceeding the following rates: For the notice of sale, ten dollars; for designating the several school districts, townships, villages and cities, and the several wards in a city, fifty cents each; and for each tract of land, city or town lot, or part of lot, contained in each such list, thirty cents. * * *”

(Emphasis added.)

There is a further provision for a different basis in case of a newspaper having a circulation of over twenty-five thousand. Here then is an explicit provision as to the fees for publishing the *omitted list* provided for in Section 5718-1b. But it is significant that while provision is also made for a flat fee of ten dollars for a notice of sale, Section 5706 is silent as to compensation for publication of the notice of hearing of the application to forfeit. We must, therefore, look to some other provision of the statutes for determining such compensation. All of the sections to which I have above referred, together with many more sections of the General Code relating to delinquent lands were either enacted or amended in an act of the General Assembly passed May 5, 1943, and effective August 11, 1943. It is rather significant that the same legislature on May 28, 1943 enacted Section 6251-1, effective September 16, 1943, reading in part as follows:

“Publishers of newspapers may charge and receive for the publication of advertisements, *notices* and proclamations *required to be published by all courts of record* of this state, except probate courts, the following sums, to wit: For the first insertion, one dollar and fifty cents for each square; and for each additional insertion authorized by law, seventy-five cents for each square. * * *”

(Emphasis added.)

As already pointed out, the proceedings contemplated by Section 5718-1b supra, are judicial in character, and there can be no doubt that the notice required by that section is a notice "required to be published by a court of record." If, therefore, we keep in mind that Section 5718-1b, General Code, requires the publication of a "list" which is specifically taken care of by Section 5706, supra, and also of a "notice" of a hearing, then it would seem that Sections 5706 and 6251-1 supra, are not only not inconsistent, but that the latter supplements the former so far as our present problem is concerned. The notice provided for by Section 5718-1b advises all persons in interest of the time and place of hearing, of their right to file objections and of the decree that may be entered. Plainly it is such a notice as should be paid for according to the schedule set out in said Section 6251-1.

My immediate predecessor, on April 14, 1944, rendered Opinion No. 6835, answering a general question as to the scope of said Section 6251-1, General Code, particular attention being directed to "notices required in Common Pleas Court in proceedings to forfeit lands omitted from the foreclosure list." The syllabus of that opinion is as follows:

"The rates of compensation for the publication of advertisements, notices and proclamations prescribed by Section 6251-1, General Code, are by that section specifically limited to those advertisements, notices and proclamations required to be published by courts of record, other than the probate court. Such section does not prescribe the rates of compensation for the publication of advertisements, notices and proclamations of county, township, school district or other officials who are not officers or employees of a court of record, other than the probate court."

It will be noted that the above syllabus does not specifically mention the proceedings looking to forfeiture, but in the course of the opinion the then Attorney General said:

"The only one of the publications enumerated in your letter which the common pleas court or any of its officers or employees is required to make is that provided in Section 5718-1b, General Code, * * *"

In writing that opinion apparently no consideration was given to Section 5706 supra, and it might be concluded that the opinion dealt with the *list* as well as the *notice* required to be published under Section 5718-

1b, General Code. Confining it, however, to the *notice* of hearing, the holding thereof is not inconsistent with the conclusion reached herein.

Specifically answering your inquiry it is my opinion that the fees allowable for publishing the notice of hearing provided for in Section 5718-1b, General Code, are fixed by Section 6251-1, General Code, and that the fees allowable for publishing the list of omitted properties as provided in said Section 5718-1b are fixed by Section 5706, General Code,

Respectfully,

HUGH S. JENKINS

Attorney General