

make it mandatory on the taxing subdivision to spend the funds which are delineated therein for any purpose, but rather to require that it be determined therefrom that the cost of operations of all of the subdivision can be provided for by levies within tax limitations.

We should bear in mind that the general fund of a subdivision is for the payment of "any expenditures for current expenses of any kind."

I am therefore of the opinion that it is not mandatory for the county commissioners to appropriate money for the payment of a county agricultural agent appointed by the trustees of the Ohio State University pursuant to the provisions of Section 9921-1a even though in the budget estimate filed with the county budget commission pursuant to the provisions of Section 5625-20, General Code, there was included an item designated: "For personal services."

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

1657.

NEWSPAPER—PROCEDURE OF COUNTY TREASURER IN PUBLISHING RATES OF TAXATION WHEN TWO NEWSPAPERS OF OPPOSITE POLITICS DO NOT EXIST WITHIN CITY OF OVER 8,000 POPULATION WITHIN COUNTY—NEWSPAPER OF GENERAL CIRCULATION DISCUSSED.

*SYLLABUS:*

1. *Where there are not two newspapers of opposite politics published in a city of over eight thousand population in a county, but there are two non-partisan newspapers published in such city and of general circulation in the county, the county treasurer should publish the notices of the rates of taxation in those two newspapers as a compliance with the terms of sections 6252 and 2648, General Code, and the said treasurer may not, at his own discretion, insert the tax rates in either of such newspapers.*

2. *Question of whether or not a certain newspaper, on the facts submitted, is a newspaper of general circulation in a county, discussed.*

COLUMBUS, OHIO, September 29, 1933.

HON. SAM L. SUMMERS, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—You have submitted a request for my opinion reading as follows:

"The city of Kent, Ohio, has a population of over eight thousand and there are two newspapers in the city; both newspapers profess to be politically independent papers. The question now confronting the commissioners is, whether they should pay The Bulletin Publishing Company for the rates of taxation published for the past six consecutive weeks. I am desirous of having the following questions, with reference to General Code, Section 6252, passed upon by you.

1. When there are two newspapers published in a town of over eight thousand, neither professing to be a partisan paper, can the Treas-

urer, at his own discretion, insert the tax rates in either of them?

2. The Bulletin, a weekly newspaper, of which the second issue appeared on December 29, 1932 and carried the first insertion for tax rates of Portage County, and had at that time a paid circulation of fifty; and a circulation of twenty-four hundred, in the city of Kent, Brimfield Township, Franklin Township, Streetsboro Township, and Aurora Township. Further, 'The Bulletin' is devoted entirely to local news, of interest to the community which it serves. It is printed in English and carries no 'patent inside or boiler plate.' At present the paid circulation has reached over three hundred subscribers and continues to have a circulation of twenty-four hundred, distributed throughout the above named townships.

I ask your opinion as to whether or not such a newspaper could be termed as having a general circulation with reference to General Code Section 6252 which is to be taken in *pari materia* with Section 2648."

Sections 6252 and 2648, General Code, provide as follows:

Sec. 6252. "A proclamation for an election, an order fixing the times of holding court, notice of the rates of taxation, bridge and pike notices, notice to contractors and such other advertisements of general interest to the taxpayers as the auditor, treasurer, probate judge or commissioners may deem proper, shall be published in two newspapers of opposite politics at the county seat, if there be such newspapers published thereat. In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of such notices shall be made in two newspapers of opposite politics in such city. This chapter shall not apply to the publication of notices of delinquent tax and forfeited land sales."

Sec. 2648. "Upon receiving from the county auditor a duplicate of taxes assessed upon the property of the county, the county treasurer shall immediately cause notice thereof to be posted in three places in each township of the county, one of which shall be at the place of holding elections in such township, and also be inserted for six successive weeks in a newspaper having a general circulation in the county. Such notice shall specify particularly the amount of taxes levied on the duplicate for the support of the state government, the payment of interest and principal of the public debt, the support of state common schools, defraying county expenses, repairing of roads, keeping the poor, building of bridges, township expenses and for each other object for which taxes may be levied on each dollar valuation."

In an opinion of this office, reported in Opinions of the Attorney General for 1932, volume I, page 264, the above statutes were before my immediate predecessor for consideration and he held, as disclosed by the syllabus:

"In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of the notice of the rates of taxation must be made for six consecutive weeks in two newspapers of opposite politics in each such city." (Italics the writer's.)

The foregoing opinion stated at page 265, after quoting the statutes set forth above:

"It has been held that these two statutes are in *pari materia* and are to be read and construed together. *Elliott vs. Commissioners*, 16 Bull. 69; *State vs. Commissioners*, 1 O. D. 584; Report of the Attorney General for 1910-1911, page 815; Opinions of the Attorney General for 1918, vol. I, page 307; Opinions of the Attorney General for 1918, vol. II, page 1611; Opinions of the Attorney General for 1927, vol. I, page 327."

Your first question presents a situation where there are not two newspapers of opposite politics published in a city of over eight thousand population in Portage County, and therefore it is impossible to obey the strict mandate of such section 6252, General Code, as it has been construed by this office.

The obvious intent of sections 6252 and 2648, General Code, is that the rates of taxation receive wide publicity, to the end that the general public be adequately advised as to such rates. In order that the general public would have the best opportunity to see this data, the legislature thought it advisable to require publication in two newspapers of opposite politics in all cities of over eight thousand population. It was probably felt that some citizens in a city and its surrounding territory would be apt to read only the paper of their politics, and so if the publication would be required in papers of opposite politics, all the citizens would have the opportunity of obtaining this information. If there are no political newspapers, it would seem that the purposes of the legislature would be best carried out by requiring the publication in two non-partisan newspapers of general circulation in the county, printed and published in such city, if there are two such newspapers.

This view would seem to have support from an examination of the case of *In re Prohibition Petition in Toledo*, 7 Appellate, 222. It was held in such case, as disclosed by the second paragraph of the syllabus:

"The requirement of section 6151, General Code, that the notice shall be published in two newspapers of opposite politics, is substantially complied with by a publication in the Toledo Blade and in the Toledo News-Bee, the object of the publication being to give notice to the public."

At the time of the rendition of this decision, the Toledo News-Bee was generally regarded as an independent paper and the Toledo Blade was and still is a Republican newspaper. There was no strictly Democratic newspaper in Lucas County at that time. Hence, it was impossible to comply strictly with the provisions of the then section 6151, General Code, (now repealed) which provided as follows:

When a petition, provided for in this subdivision of this chapter (local option in residence districts), has been filed with the mayor of the municipal corporation or with a judge of the court of common pleas in the county, such mayor or judge shall forthwith cause a notice of the hearing on such petition to be published *in two newspapers of opposite party politics published in such municipal corporation*, if there are two. \* \* \* " (Italics the writer's.)

Since the court sanctioned the publication as made and held in effect that it was not illegal to publish the notice in an independent paper and a political paper,

instead of in two newspapers of opposite party politics, which did not exist, I am of the view that it is not improper to hold that the notices of rates of taxation should be published in two newspapers of general circulation in the county, published and printed in a city of over eight thousand population, if there are not two newspapers of opposite politics and there are two or more newspapers of general circulation in the county, published in such cities.

Consequently, I am of the opinion, in specific answer to your first question, that where there are not two newspapers of opposite politics published in a city of over eight thousand population in a county, but there are two non-partisan newspapers published in such city and of general circulation in the county, the county treasurer should publish the notices of the rates of taxation in these two newspapers as a compliance with the terms of sections 6252 and 2648, General Code, and the said treasurer may not, at his own discretion, insert the tax rates in only one of such newspapers.

Coming now to your second question, there is no doubt that the "Bulletin" to which you refer is a "newspaper" within the meaning of statutes requiring a publication in a newspaper. The recent Supreme Court cases of *Bising vs. City of Cincinnati*, 126 O. S. 218, and *State ex rel. vs. Urner*, 127 O. S. 84, approve the definition of a "newspaper" in which publication of legal matters may be made, as a "publication appearing at daily or weekly intervals, reporting the news or happenings of local or foreign interest, or both, such as social, religious, political, moral, business, professional, editorial and other kindred subjects intended for the information of the general reading public." See 126 O. S. 218 at page 223, and 127 O. S. 84.

The question is, is the "Bulletin" a "newspaper" having general circulation in the county within the meaning of section 2648, General Code? There have been several lower court decisions in Ohio which are helpful in deciding this question. In the most recent of these cases, *Ambos vs. Campbell*, 40 Appellate, 346, it was held in the third and fourth paragraphs of the syllabus, as follows:

"3. Newspapers may be of 'general circulation' in county within statute requiring publication of notice concerning annexation petition, although circulation need not consist exclusively of paid subscribers (Section 3520, General Code).

4. Newspaper with partly unpaid circulation of over 10,000, extending throughout nearly every section of county, held newspaper of 'general circulation' in county, within statute requiring publication of notice concerning annexation petition (Section 3520, General Code)."

The court stated at pages 350 and 351 of the opinion:

"We shall now proceed to the other principal contention, namely, that notice of the hearing required by law, which was published in the Heights Press, was not legal, because the Heights Press is not a newspaper of general circulation within Cuyahoga county. The evidence discloses that the Heights Press has a paid circulation of 2,625 subscribers; that, while these subscribers are largely in the Heights region, they are scattered nevertheless through various parts of the county; that it has an unpaid circulation of 8,000 and altogether its actual circulation is between ten and eleven thousand, extending throughout nearly every section of this county. As we understand the law, it is

that, for a newspaper to be regarded as a newspaper of general circulation within the county, such circulation need not necessarily consist exclusively of paid subscribers; that the purpose of the law is clear, namely, that the notice should be inserted in a newspaper which people in this county are likely to read, and that, when the circulation is extensive throughout the county, it makes no difference whether it consists of paid subscribers or non-paying recipients of the same.

We hold, therefore, that the Heights Press, under the evidence, must be legally regarded as a newspaper of general circulation within the county."

In the foregoing case, a motion to certify the record to the Supreme Court was overruled on January 20, 1932.

In another of the cases, that of *Babst vs. Board of Education*, 8 Abstract, 332 (Ohio Appeals, Fourth District, Scioto County, decided March 12, 1930), it was stated in the syllabus:

"Contention that there was only one newspaper of general circulation in district, held not well founded where evidence showed a second paper with a circulation of ninety-six in a district with a population of three thousand and a much greater circulation in the surrounding county and adjoining counties."

In the last of these cases, that of *State, ex rel. The Sentinel Company vs. Commissioners of Wood County*, 14 C. C. (N. S.) 531 (affirmed by the Supreme Court without opinion in 84 O. S. 477), it was held as disclosed by the third paragraph of the syllabus:

"A newspaper having a circulation of eight hundred in a county containing a population of fifteen thousand distributed over twenty townships, and in fifteen of those townships containing a population of thirty-five thousand circulation of only thirty-six, is a newspaper of general circulation within the meaning of the statute providing for the publication."

An analysis of the three foregoing cases in connection with the facts of your communication, would seem to lead to the conclusion that a court would probably hold the "Bulletin" to be a newspaper of general circulation in Portage County. Your letter states that there was at the time of the insertion of the notices of rates of taxation a paid circulation of fifty and a circulation of twenty-four hundred in several of the townships of the county.

Under the doctrine of the *Ambos* case, a newspaper to be one of general circulation need not have all of its circulation paid for. However, under the language of the court in such case the newspaper must circulate "extensively" throughout the county. While you state that the circulation of twenty-four hundred was in the city of Kent and four townships, you do not state that there was no circulation, no matter how minute, in other townships. It is true that Portage County has around twenty-one townships, and therefore the circulation you state is in only four out of twenty-one townships. However, in the *Sentinel Company* case it appeared that there was only a circulation of thirty-six in fifteen of the twenty townships, and yet the court held the newspaper involved was one

of general circulation in the county. It certainly can fairly be assumed that the "Bulletin" had a scattering circulation of somewhere near thirty-six in the seventeen other townships in Portage County.

I note that you state that the "Bulletin" is devoted entirely to local news, of interest to the community which it serves. This does not prevent such newspaper from being one of general circulation. For in an annotation appearing in 68 American Law Reports, 542, entitled "What constitutes a newspaper of general circulation within a statute in relation to publication of notices," etc., it was stated by the annotator:

"It may be said generally that a newspaper is one of general circulation, even though it is devoted to the interests of a particular class of persons, and specializes on news and intelligence primarily of interest to that class, if, in addition to such special news, it also publishes news of a general character and of a general interest, and to some extent circulates among the general public."

Also it was stated in the case of *State ex rel. vs. Lorain Democrat*, 12 N. P. (N. S.) 529, (affirmed by the Circuit Court without opinion, September term, 1911, and also affirmed without opinion in 87 O. S. 467) at page 531:

"But, the use of the word 'general' in connection with circulation of a newspaper, while it may refer somewhat to the extent of its circulation through a given community, in the main refers to the character of the paper and the purpose of its publication, whether designed to represent some special interest, business, trade, society, religion, organization or whether designed for circulation as the disseminator of intelligence of passing events, local and general news and items of common interest.

A paper of general circulation is one not devoted to any single or particular object, but is devoted to matters pertaining to and of concern to the whole community and of public and common interest. The purposes to which the paper is devoted must be of common interest to many."

Under the foregoing authorities, the newspaper must be of common interest to many classes of people. Even though you state it is devoted entirely to local news, yet that local news is doubtless of general character and of interest to many classes of people.

I am therefore of the opinion, in specific answer to your second question that, based on the facts stated by you in your communication, the "Bulletin" would probably be held by a court to have been a newspaper having a general circulation within the county of Portage at the time of the insertion of the rates of taxation, and therefore eligible to publish the notices of rates of taxation, under sections 2648 and 6252 of the General Code.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*