

60.

PUBLICATION DELINQUENT LAND LIST—COUNTY AUDITOR—WHEN TWO REPUBLICAN, ONE INDEPENDENT, NO DEMOCRATIC NEWSPAPERS IN COUNTY—PUBLICATION UNDER SECTION 5704 G. C. MAY LEGALLY BE MADE IN ONE REPUBLICAN AND ONE INDEPENDENT NEWSPAPER—“NEWSPAPERS OF GENERAL CIRCULATION” DEFINED IN SECTION 5704-2 G. C.

*SYLLABUS:*

*Where there are in a county two Republican newspapers of general circulation therein, and there is in the county no Democratic newspaper of general circulation in such county but there is in the county an independent newspaper of general circulation therein, the publication of the delinquent land list provided for by Section 5704, General Code, may legally be made in one of such Republican newspapers and in the independent newspaper. Whether such publications referred to as newspapers are “newspapers” and, further, are “newspapers of general circulation” within the meaning*

*of this section, must be determined on a consideration of the specific and comprehensive provisions of this section and of Section 5704-2, General Code.*

COLUMBUS, OHIO, January 30, 1939.

HON. WILLIAM L. HOWELL, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you request my opinion as to the eligibility of certain newspapers in Knox County, Ohio, for the publication therein of the delinquent land list of the county which is prepared and certified by the county auditor as required by Section 5704, General Code, and which is to be published as therein provided.

In your communication to me you refer to three newspapers published in said county which, you state, has a population of approximately thirty thousand. The first of the newspapers therein referred to is a daily paper which is Republican in politics and which has a net paid circulation in the county of 6477; the second newspaper mentioned in your communication is a weekly paper, is independent in politics and has a net paid circulation within the county of 640; and the third newspaper therein mentioned is a weekly paper, is Republican in politics and has a net paid circulation within the county of 950.

Touching the question presented in your inquiry, Section 5704, General Code, as amended, 116 O. L., Part II, 263, after making provision for the preparation by the county auditor of a list of all the delinquent lands in the county, for the certification of the same and for the delivery of a duplicate thereof to the county treasurer, further provides that it shall be mandatory upon the county auditor to cause a list of the lands on such delinquent land list and duplicate to be published twice, within sixty days after the delivery of the duplicate to the county treasurer, in two newspapers of opposite politics in the English language published in the county and of general circulation therein. It is further provided that before such publication, it shall also be mandatory upon the county auditor to cause a display notice of the forthcoming publication of the delinquent land list and duplicate to be inserted once a week for two consecutive weeks in two newspapers of opposite politics in the English language published in the county and of general circulation therein. The copy of such display notice shall contain the applicable provisions of Section 2653, General Code, relating to the times and manner in which taxes may be paid, together with any other information which the county auditor may deem pertinent to the purpose of the notice, and shall be furnished by the county auditor to the newspapers selected to publish the delinquent land lists simultaneously with the certification of the lists to the county treasurer. More immediately pertinent to the question presented in your communication as to the qualification of the newspapers therein referred to to publish the

delinquent land lists of the county, Section 5704, General Code, provides as follows:

“If there is only one newspaper of a designated political affiliation published in the county and of general circulation therein, such display notice and delinquent land lists shall be published in it and also in a newspaper independent in politics published and of general circulation in such county. Where there is no newspaper of designated political affiliation published in such county then publication of such notice and delinquent land lists shall be made in two newspapers independent in politics published in such county and of general circulation therein. Publication of the delinquent land lists may be made by a newspaper in installments, providing the complete publication thereof is made twice during said sixty day period.”

As above noted, it appears from your communication that two of the newspapers therein referred to are Republican in politics, while the third paper therein mentioned has no designated political affiliation but is classed as an independent newspaper. It may be observed, therefore, that if these publications are newspapers of general circulation in Knox County, Ohio, the delinquent land list of the county may be published in any one of the two Republican newspapers referred to by you and in the independent newspaper.

No facts are stated in your communication upon which I can categorically answer the further question involved in your inquiry, as to whether any or all of these publications are newspapers of general circulation. In this connection, it is noted, however, that within the meaning of the term as used in Section 5704, General Code, the term “newspaper” is defined by Section 5704-2, General Code, as amended, 116 O. L., Part II, 266, as follows:

“\* \* \* the term ‘newspaper’ shall be held to mean a publication bearing a title or name, published at a fixed place of business, regularly issued at fixed intervals as frequently as once a week and having a second-class mailing privilege, being not less than four pages of five columns or more each; the primary function of such publication shall be to inform, instruct, enlighten and entertain, to which the general public as a whole will and does resort for intelligence of passing events of a political, religious, commercial and social nature, local and general current happenings, editorial comment, announcements, miscellaneous reading matter, advertisements and other notices.”

The necessary qualifications of a “newspaper of general circulation” for

the purpose provided for by Section 5704, General Code, are prescribed by Section 5704-2, General Code, as follows:

“\* \* \* provided such a publication to be a newspaper of general circulation shall have been published at regular intervals continuously during a period of at least twenty-four months or as a direct legal successor of such publication issued during the immediate prior period of at least two years; circulated and distributed from an established place of business to subscribers or readers generally of all classes in the county or counties in which it is circulated for a definite price or consideration for each copy or at a fixed price per annum (,) the circulation of which is proven bona fide by at least fifty per cent thereof being paid for by regular subscribers or through recognized news dealers; and must publish an average of forty per cent news matter which has sufficient merit to have created a following of paid readers, to be a newspaper of general circulation.”

In the case of *State, ex rel., vs. Quigley*, 134 O. S., 466, the court held that in determining the question of the qualification of a newspaper as one of general circulation in the county, the provisions of Section 5704, General Code, should be read in connection with those of Section 5704-2, General Code; and referring to the provision of Section 5704-2, General Code, that “a publication to be a newspaper of general circulation shall have been published at regular intervals continuously during a period of at least twenty-four months or as a direct legal successor of such publication issued during the immediate prior period of at least two years,” in its application to a newspaper of a designated political affiliation, the court held that such a newspaper, in order to qualify for the publication therein of the delinquent land tax list, is required to show that it was published as a newspaper of such designated political affiliation continuously during a period of at least twenty-four months or that it is a direct legal successor of a newspaper which was published as one of the same political affiliation for a period of at least two years.

Although, as before noted, I do not have before me the facts upon which I can express any opinion as to whether any or all of these publications are “newspapers” and further, are “newspapers of general circulation in the county,” as tested by the provisions of Sections 5704 and 5704-2, General Code, above quoted, and the decision of the Supreme Court in the case of *State, ex rel., vs. Quigley*, *supra*, the provisions of these sections prescribing the qualifications which a publication must have in order to be a “newspaper” and a “newspaper of general circulation” are at once so comprehensive and specific touching these questions that I anticipate you will not have any difficulty in determining whether the publications referred to in your communication or any of them can be legally selected

to publish the delinquent land list of the county in the manner provided by Section 5704, General Code.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*