

1244.

TAXES AND TAXATION—PUBLICATION OF DELINQUENT TAX LIST—
SECTION 5704 AND 5710 G. C. CONSTRUED.

Section 5704 G. C., as amended in 108 O. L. Parts I and II, pages 50 and 1243, respectively, and section 5710, G. C., as amended in 107 O. L., page 736, relating to the publication of the delinquent tax list, construed.

COLUMBUS, OHIO, May 14, 1920.

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

GENTLEMEN:—Referring to your letter of recent date and the personal conference with Mr. Halbedel, of your department, relative to the interpretation of section 5704 G. C., I beg to advise you as follows:

(1) *Section 5704 G. C. as amended 108 O. L. Part I, Page 50.*

The foregoing amendment reads as follows:

“Section 5704. Each county auditor shall cause a list of delinquent lands in his county to be published once a week for two consecutive weeks, between the twentieth day of December and the second Thursday in February, next ensuing, in one daily newspaper in the English language of the political party casting the largest vote in the state at the last general election, and in one daily English newspaper of the political party casting the next largest vote in the state at the same election, both published in the county and of general circulation therein. If there be no such daily newspaper published in the county then in two weekly English newspapers published and circulated therein, if there are two such papers published; if not, then in one such weekly English newspaper will be sufficient. There shall be attached to the list a notice that the delinquent lands will be certified to the auditor of state as delinquent, as provided by law.”

This amendment, as you suggest, appears to be free from ambiguity and needs no interpretation so far as the particular question you have in mind is concerned. While that section was in force, publication of the delinquent tax list should have been in the newspapers and in the order following, viz:

First: In two daily newspapers in the English language of the two political parties casting the largest vote in the state at the last general election, and published in the county and of general circulation therein:

Second: If there were not two such daily newspapers, but one only, then publication should have been made in that one; or,

Third: If no such daily newspaper was published in the county, then in two weekly English newspapers published and circulated therein, if there were two such papers; if not, then in one such weekly English newspaper.

There was no authority under that amendment to publish delinquent lists in either tri-weekly or semi-weekly newspapers, and it is with respect to this phase of the subject that I understand you are particularly interested.

(2) *Section 5704 as amended 108 O. L. Part II, Page —, (H. B. 751).*

The foregoing amendment, which is now in force, reads as follows:

"Each county auditor shall cause a list of delinquent lands in his county to be published once a week for two consecutive weeks, between the twentieth day of December and the second Thursday in February, next ensuing, in one daily newspaper in the English language of the political party casting the largest vote in the state at the last general election, and in one daily English newspaper of the political party casting the next largest vote in the state at the same election, both published in the county and of general circulation therein. If there be no such daily newspaper published in the county then in two weekly English newspapers published and circulated therein, if there are two such papers published; if not, then in one such weekly English newspaper will be sufficient. If there be no such weekly English newspaper published and circulated therein, then in two tri-weekly English newspapers published and circulated therein, if there are two such papers published; if not, then in one such tri-weekly English newspaper will be sufficient. If there be no such tri-weekly English newspaper published and circulated therein, then in two semi-weekly English newspapers published and circulated therein, if there are two such papers published; if not, then in one such semi-weekly English newspaper will be sufficient. There shall be attached to the list a notice that the delinquent lands will be certified to the auditor of state as delinquent, as provided by law."

Under this amendment publication of the delinquent list should be made in the newspapers and in the order following, viz:

First: Two daily newspapers in the English language of the two political parties casting the largest vote in the state at the last general election, and published in the county and of general circulation therein, etc.;

Second: If there are not two such daily newspapers, but one only, then publication should be made in that one only;

Third: If there be no such daily newspaper, then in two weekly English newspapers published and circulated therein, if there be two such papers published; if not, then in one such weekly English newspaper:

Fourth: If there be no such weekly newspapers published and circulated therein, then in two tri-weekly English newspapers published and circulated therein, if there are two such papers published; if not, then in one such tri-weekly English newspaper; or

Fifth: If there be no such tri-weekly English newspaper published and circulated therein, then in two semi-weekly English newspapers published and circulated therein, if there are two such papers published; if not, then in one such semi-weekly English newspaper.

(3) You also inquire whether or not delinquent lists which were published in tri-weekly and semi-weekly newspapers before the last amendment of section 5704 G. C., when publication in such newspapers was unauthorized, should be republished in the newspaper designated by the statute as now in force.

In my opinion the failure of the county auditor to publish the delinquent list in the proper newspapers was an omission to publish by inadvertence or mistake, within the meaning of section 5710 G. C., which reads as follows:

"If a county auditor, by inadvertence or mistake, omits to publish the delinquent list of the county, *as required by law*, he shall charge the lands and town lots with the taxes, assessments and penalty, if such taxes, assessments and penalty with which the lands and town lots therein stand charged have not been paid before the tenth day of August of the next succeeding year. He shall also charge them with the taxes and assessments

of the current year, and record, certify and publish them as part of the delinquent list."

It would follow, therefore, that if the taxes, assessments and penalties involved in such unauthorized publication, are not paid before the tenth day of August, the lands and town lots against which they are charged, should be included in the delinquent list to be published under section 5704 G. C. between the twentieth day of December and the second Thursday in February next ensuing.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1245.

STATE TEACHERS RETIREMENT ACT—DISCUSSION OF LEVY UNDER SECTION 7896-55 G. C. TO PROVIDE FUNDS FOR ADMINISTERING SAID ACT—SAID LEVY IS NOT A PART OF FOUR PRINCIPAL LEVIES OF SCHOOL DISTRICT—IT IS A SEPARATE LEVY—AUTHORITY OF BUDGET COMMISSION AND ELECTORS IN REGARD TO SAID LEVY.

1. *The levy provided for by section 7896-55 G. C. is not a part of any of the four principal levies of a school district. It is accordingly not included within the tuition levy, which to the extent of one mill is subject only to the fifteen mill limitation of the Smith one per cent law by virtue of the provisions of H. B. 615 (108 O. L., Part II, —) but with other local school levies must be brought within the limitation of three mills provided by section 5649-3a G. C. as amended in said bill.*

2. *The board of education in making up its annual budget must designate the levy under section 7896-55 not as a special item of some other fund, but as a separate levy. The budget commission in acting upon the school levies is not at liberty to reduce this levy unless such reduction is compelled by the fact that the levy itself, without consideration of contingent and building fund levies and so much of the tuition fund levy as is in excess of one mill, will exhaust the three mill limitation of section 5649-3a G. C. or with other levies applicable in the same district will cause the ten mill limitation of section 5649-2 G. C. to be exceeded; but if the electors of the district approve additional levies under sections 5649-4 and 5649-5 et seq G. C. the levy provided for by section 7896-55 may be included within the levies that may be thus made outside of all limitations.*

COLUMBUS, OHIO, May 14, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—You request the opinion of this department upon the following question:

"Section 7896-55 G. C., relative to a levy by boards of education to provide funds necessary to meet the financial requirements of the teachers' retirement law is as follows:

'Employers who obtain funds directly by taxation are hereby authorized and directed to *levy annually* such additional taxes as are required to provide the additional funds necessary to meet the financial requirements imposed upon them by this act, and *said tax shall be placed before and in preference to all other items except for sinking fund or interest purposes.*'"