

2965.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
VAN WERT AND CARROLL COUNTIES, OHIO.

COLUMBUS, OHIO, April 5, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2966.

ROADS AND HIGHWAYS—CONTRACTS ENTERED INTO BY DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS SHALL BE ADVERTISED FOR LETTING FOR "TWO CONSECUTIVE WEEKS" BY SECTION 1206 G. C.—NOT REQUIRED THAT SUCH ADVERTISEMENT BE INSERTED ON SAME DAY OF EACH WEEK.

The provisions of section 1206 G. C. to the effect that state aid highway contracts entered into by the Department of Highways and Public Works shall be advertised for letting for "two consecutive weeks," do not require that such advertisement, when inserted in a daily newspaper, shall be inserted on the same day of each week; hence an advertisement for bids to be received on Saturday, April 8th, is sufficient if inserted on Wednesday, March 22nd, and on Thursday, March 30th.

COLUMBUS, OHIO, April 5, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

GENTLEMEN:—Your communication of recent date is received, reading as follows:

"Your opinion is respectfully requested on the matter of advertising for the receiving of bids for the improvement of certain state aid road projects.

In certain instances advertisements have been placed in daily newspapers on March 22 and March 30 for receiving bids on April 8 for the construction of road projects. Unless it is not in accordance with the statute to advertise for the receiving of bids on Wednesday of one week and Thursday of the following week, and receive bids on Saturday of the third week, all of the legislation is regular."

The advertisement referred to in your letter is that prescribed by section 1206 G. C. That section deals with the letting of contracts by the state highway commissioner (now the Department of Highways and Public Works), for the construction of roads on the state aid plan. It reads in part:

"Section 1206. * * * the state highway commissioner shall advertise for bids for two consecutive weeks in two newspapers of general circulation and of the two dominant political parties published in the county or counties in which the improvement, or some part thereof, is located * * *"

Your question is in effect whether the advertisement when inserted in a daily newspaper must be published on the same day of the week for two consecutive weeks.

The answer is in the negative.

In the case of *Wilson vs. Scott*, 29 O. S., 636, the court had under consideration among other questions, the subject of notice of the time and place of sale on execution. The statute then under consideration provided in substance that where the advertisement

“is made in a newspaper published weekly, it shall be sufficient to insert the same in five consecutive numbers thereof.”

The statute further provided, according to the court’s statement, that when the advertisement is published in a daily paper, it is sufficient to insert it in the paper once a week for five consecutive weeks “but in such case it must appear on the same day of each week.”

In stating its views as to this statute the court said (Opinion p. 641) :

“The requirement that the insertion must be on the same day of each week relates only to cases of publication in a daily newspaper. Although weekly newspapers are usually published on the same day of the week, there is no law requiring that it must be so. Hence, where the advertisement is made in a weekly paper, it is not essential that it appear in numbers published on the same day of each week. It is sufficient if it be published in each number for five consecutive weeks, provided the first number be published for at least thirty days before the day of sale. * * *

In the case before us, the first number in which the notice was inserted was published on the first day of December, and the sale took place on the 31st of the month. We are of opinion, therefore, that the period of advertisement was sufficient, notwithstanding the first number of the weekly newspaper in which it appeared was published one day in advance of the usual day of publication.”

This view of the court was carried into the fourth syllabus in substantially the language already quoted.

Since it is clear from the case cited that the advertisement if published in a weekly newspaper need not appear on the same day of the week, it follows that if published in a daily newspaper, the advertisement need not appear on the same day of the week unless the statute specifically so requires. It will be noted that in the case cited the statute did specifically require that when published in a daily newspaper, the advertisement appear on the same day of the week; but in section 1206 now being considered, there is no requirement as to time other than that the advertisement be inserted for two consecutive weeks. Certainly the word “Consecutive” does not in itself import that the insertion must be made on the same day of the week.

The case of *Wilson vs. Scott*, *supra*, was referred to in the subsequent case of *Lemert vs. Clarke*, 1 O. C. C. 569; 1 O. C. D., 318. That case concerned advertisements which appeared both in a daily newspaper and in a semi-weekly newspaper. The publication in the semi-weekly newspaper did not appear on the same day of the successive weeks for which it was published. The case did not turn on the legality of the advertisement in the semi-weekly newspaper; but the court in making incidental reference to such advertisement said that it probably came within the rule of *Wilson vs. Scott* and would be sufficient.

Cases dealing with the point in other jurisdictions than Ohio seem to be very few in number. However, attention is called to the following:

In an early Massachusetts case *Bachelor vs. Bachelor*, 1 Mass. 256, it was held:

“An order to give notice by publication in a newspaper three weeks successively, is complied with by publishing in such paper *in* three successive weeks, although there be not an interval of a week between either the first and second, or second and third publications.”

In *Stoeever's Appeal*, 3 Watts & Sergeant, 154, the Supreme Court of Pennsylvania held:

“A direction to advertise for six successive weeks is complied with, though one of the notices be published the 20th of May, and the next on the first of June.”

No doubt an impression has prevailed that when a required weekly notice is published in a daily newspaper for a given number of weeks, the insertions must be made on the same day of the week. This impression is probably due in the first place to the fact that as a rule daily newspapers for the purpose of convenience do make insertions on the same day of the week. Again, the impression may have had its origin in the fact that in the early history of the state, most, if not all, of the newspapers were weekly newspapers. These newspapers of course generally appeared on the same day of the week. Then when the legislature came to legalize advertisements in daily newspapers, it provided that the advertisement should appear on the same day of the week (see Saylor's Statutes, Vol. I, p. 752, Chap. 664); thus, in a sense, making the daily newspapers weekly newspapers for advertisement purposes. However this may be, the fact remains that section 1206 G. C. does not expressly or by implication require that the advertisement appear on the same day of the week, whether it be published either in a daily or weekly newspaper.

As a result of what has been said, the particular advertisement described in your letter is in conformity with the terms of section 1206 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2967.

APPROVAL, LEASE TO CITY OF CINCINNATI FOR MIAMI AND ERIE CANAL LANDS AS AUTHORIZED BY THE GENERAL ASSEMBLY OF OHIO, 103 O. L. 720, AND 105 O. L., 293, 294.

COLUMBUS, OHIO, April 5, 1922.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—Referring to your communication of October 5, 1921, and subsequent correspondence regarding the preparation of a lease to the city of Cincinnati for Miami and Erie canal lands as authorized and directed by acts of the General Assembly of April 18, 1913, 103 O. L. pages 720, et seq., and of May 17, 1915, 105 O. L. pages 293 and 294.