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“NEWSPAPER”—DEFINITION—SECTIONS 5704, 5704-2, 5718-2, 5751 G. C.—PUBLICATION, LISTS OF LANDS: FORECLOSURE, FORFEITED, DELINQUENT — NEWSPAPER OF OPPOSITE POLITICS — INDEPENDENT IN POLITICS — WHERE ONLY ONE PAPER MEETS REQUIREMENTS — WHAT CONSTITUTES NEWSPAPER OF GENERAL CIRCULATION IS QUESTION OF FACT FOR COUNTY AUDITOR TO DETERMINE.

SYLLABUS:

1. *The definition of “newspaper” in Section 5704-2, General Code, applies also to the term “newspaper” as used in Sections 5718-2 and 5751, General Code.*

2. *Section 5718-2, General Code, requires the list of lands omitted from foreclosure proceedings to be published in two newspapers of opposite politics published and of general circulation in the county, and if there is only one newspaper meeting these requirements, such publication may be made only in such newspaper and may not be made in a newspaper independent in politics, even though it may be published and of general circulation in the county.*

3. *Section 5751, General Code, requires the notice of sale of forfeited lands to be published in two newspapers of opposite politics printed and of general circulation in the county, and if there is only one newspaper meeting these requirements, such notice may not be published in a newspaper independent in politics, even though such newspaper may be printed and of general circulation in the county.*

4. *The publication of the list of delinquent lands and the display notice, required by Section 5704, General Code, may be made in a newspaper independent in politics published and of general circulation in the county if there are not two newspapers of opposite politics published and of general circulation in the county.*

5. *What constitutes a newspaper of general circulation within the meaning of the term as used in Sections 5704, 5718-2 and 5751, General Code, is a question of fact to be determined by the county auditor.*

Columbus, Ohio, January 13, 1940.

Hon. Ralph J. Bartlett, Prosecuting Attorney,  
Columbus, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

"The Auditor of this county has requested an opinion from this office upon the following facts, and inasmuch as the same is of general importance throughout the state at this time, I respectfully request your opinion thereon:

'In Franklin County there are three daily newspapers, The Ohio State Journal, The Columbus Citizen, and The Columbus Dispatch.

Each of these papers has a circulation of 50,000 to 150,000 daily. The Ohio State Journal has declared itself to be a Republican newspaper. The other two have declared themselves independent newspapers although they have on several occasions supported Democratic candidates or principles.

There are also published in this county a number of weekly newspapers. The Canal Winchester Times, The Reynoldsburg Press, The Tri-Community News, and The Ohio State News are community weeklies each having a circulation of from 1,000 to 2,000. In each case their circulation is confined largely to the village or community which they serve although each circulates a few copies in other portions of the county. Each of these weeklies has declared Democratic affiliations.

Section 5704 G. C. requires

"the delinquent list and duplicate to be published 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."

Section 5704-2 G. C. defines a newspaper for the purpose of Section 5704 and

"in any other section of the General Code to which the same are applicable."

Sections 5718-1 and 5718-2 G. C. provide that delinquent lands may be omitted from foreclosure proceedings and that a list of these omitted lands is to be published

"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."

Section 5751 G. C. provides that forfeited lands are to be sold after the County Auditor first causes notice

"to be advertised once a week for two consecutive weeks

\*\*\* in two newspapers in the English language of *opposite politics and of general circulation* printed in his county.”

QUESTION 1:

Does the definition of newspapers as stated in Section 5704-2 cover the newspapers mentioned in Sections 5718-2 and 5751?

QUESTION 2:

Are the requirements of Sections 5704, 5718-2 and 5751, relative to publication in two newspapers of *opposite politics and general circulation*, met by publication of these lists in one Republican newspaper and one independent newspaper even though there be a newspaper of declared Democratic faith and having in mind that the independent newspaper has, in public opinion, a complete general circulation coverage of the county as against the minor circulation provided by the newspaper of declared politics? ”

1. Section 5704, General Code, requires the county auditor immediately after each August settlement to make and certify a list and duplicate thereof of all the delinquent lands within his county. The section further provides for the publication of the list of lands on such delinquent land list and duplicate as follows:

“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; provided, however, 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 for such display notice shall contain the applicable provisions of section 2653 of the General Code, the times and methods of payment of taxes provided by law, 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 such delinquent land lists simultaneously with the certification of the lists to the county treasurer. 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.

There shall be attached to the list a notice that the delinquent lands will be entered upon the foreclosure list, as provided by law, unless the taxes, assessments, penalties and interest are paid."

Section 5704-2, General Code, to which you refer in your letter, provides as follows:

"As used in sections 5694 and 5704, as amended by this act, and in any other sections of the General Code, to which the same are applicable unless otherwise specifically defined therein, 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; 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 an opinion numbered 6348 of the Opinions of the Attorney General for the year 1936 it was stated in the syllabus:

"The provisions of Section 3 of Amended Senate Bill No. 466, of the first special session of the 91st General Assembly (Section 5704-2, General Code) which provisions define the term 'newspaper', have reference only to the publication of notices involving the subject matter set forth in Sections 5694 and 5704, of the General Code."

In the body of the opinion the then Attorney General said:

"Prior to the enactment of Senate Bill 466, it was a well known fact that there were countless delinquent taxes in the various counties that it was desired to collect, so as not to require unnecessary additional taxes. Amended Senate Bill 466 was enacted to stimulate the collection of this vast amount of delinquent taxes, and the construction of the subject matter of section 3 of the act should therefore have an interpretation that confines the meaning of such subject matter solely to the collection of delinquent taxes."

The subject matter of Section 5704, General Code, as noted above, is the preparation, certification and publication of the list of delinquent lands. An examination of Section 5694, General Code, discloses that its subject matter is the preparation, certification and publication of the list of delinquent personal and classified property taxes.

Section 5718-2, General Code, provides that the list of lands omitted from foreclosure proceedings pursuant to Section 5718-1, General Code, shall be published "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." It is further provided in this section that upon completion of such publication, such lands shall be forfeited to the state. Section 5751, General Code, requires the auditor of each county on receiving from the Auditor of State the list of forfeited lands in his county, if the taxes, assessments, penalties and interest are not paid on or before the fifteenth day of January next ensuing, to "cause notice thereof to be advertised once a week for two consecutive weeks prior to the second Monday of March in two newspapers in the English language of opposite politics and of general circulation printed in his county." The form of such notice is set forth in Section 5754, General Code, and must in substance state that if the taxes, assessments, penalties, interest and costs charged against such forfeited lands are not paid before the second Monday in March each tract on which same remain unpaid will be offered for sale on the second Monday in March to satisfy such taxes, assessments, penalties, interest and costs.

These forfeited lands consist of lands offered for sale in foreclosure proceedings and not sold for want of bidders pursuant to Chapter 14, Title I, Part Second, General Code, lands the delinquent land tax certificate of which has been redelivered to the county auditor and notice duly given pursuant to Section 5817-3, General Code, and also lands omitted from

foreclosure proceedings and duly published pursuant to Sections 5718-1 and 5718-2, General Code.

It might be urged that neither Section 5718-2, General Code, nor Section 5751, General Code, involves the subject matter set forth in Sections 5694 and 5704, General Code, and that the provisions of Section 5704-2, General Code, defining the term "newspaper" have no application to such term as used in Sections 5718-2 and 5751, General Code. As noted above, the subject matter of Sections 5704 and 5694, General Code, is the preparation, certification and publication respectively of the list of delinquent lands and delinquent personal and classified property taxes; whereas, Sections 5718-2 and 5751, General Code, provide respectively for the publication of lands omitted from foreclosure proceedings which are thereby forfeited to the state and for the advertisement of the sale of forfeited lands. In other words, it might be claimed with some degree of plausibility that Sections 5694 and 5704, General Code, deal with subject matter entirely different from that of Sections 5718-2 and 5751, General Code.

However, Sections 5704, 5718-2 and 5751, General Code, are each parts of the comprehensive machinery established by the legislature for the purpose of collecting delinquent taxes on real estate. It is true that Sections 5718-2 and 5744, General Code, provide for the forfeiture of lands to the state, but this forfeiture of title is only for the purpose of providing an effective method of collecting the delinquent taxes and not to vest title in the state in the sense that this term is ordinarily used and understood. In Opinion No. 206 of the Opinions of the Attorney General for the year 1933, found in Volume I, at page 291, it was stated in the syllabus:

"When lands are 'forfeited' to the state by reason of the fact that no bidders were obtained at a sale in foreclosure of the delinquent tax lien against a parcel of property pursuant to the provisions of Sections 5705 et seq. General Code, and become 'forfeited lands' the only interest of the state in such lands is that of a holder of legal title thereof, to be disposed of, and the proceeds applied toward the payment of the taxes, assessments, penalty, interest and court costs standing charged against such parcel, and the state has no right to possession of such lands or to the rents arising therefrom, and must account to the 'former owner' for any sum received in excess of the amount of such taxes and charges."

In the body of the opinion the then Attorney General, at page 297, used the following language:

“Considering the language of the entire act with reference to its effective purpose that is, of obtaining a more convenient or practical method of subjecting lands upon which the taxes have been permitted to remain delinquent for an unreasonable time to the payment thereof, the apparent legislative intent is to vest the absolute legal title to the forfeited lands in the state of Ohio but to permit the equitable title and right of possession to remain in the former owner until such time as it is divested by sale by the state or until such legal title has been redeemed by the payment of the taxes, assessments, interest, penalties and court costs standing charged against such parcel upon the records of the county within which such property is located. In other words, the legislature has merely provided what to it seemed a better method of exposing the property to sale than by alias orders issued from the court by placing the entire control of such sale in the county auditor of the county in which the premises are located. I do not believe that the language of the act shows the intent of the legislature to divest the former owner of his right of possession until an actual sale has been effected of the lands in question, especially in view of the fact that the statute specifically provides the amount for which the property may be redeemed and further, since in Section 5745, General Code, the delinquent lands are made taxable as though owned by the former owner.”

It would therefore seem that Sections 5704, 5718-2 and 5751, General Code, are all parts of a plan adopted by the legislature, the purpose of which is to provide an effective and convenient method of collecting delinquent taxes on real estate. By the express provisions of Section 5704-2, *supra*, the term “newspaper” as defined therein is to apply not only to such term as used in Sections 5694 and 5704 but in any other sections of the General Code “to which the same are applicable.” In other words, Sections 5718-2 and 5751, General Code, deal with the same general subject matter contained in Section 5704, General Code, and therefore, adopting the views expressed by my predecessor in Opinion No. 6348 for the year 1936, I am of the opinion that the definition of the term “newspaper” contained in Section 5704-2, General Code, applies to such term as used in Sections 5718-2 and 5751, General Code. However, in this connection, it should be noted that Section 5718-2, General Code, provides that the newspaper used for publishing the list of lands omitted from foreclosure proceedings must be “published in the county” and Section 5751, General Code, provides that the newspaper used for advertising the notice of sale of forfeited lands must be “printed in the county.”

2. You will note that Section 5704, General Code, requires the county

auditor to cause the lists of delinquent lands and the display notice to be published in two newspapers of opposite politics. The section further provides that if there is only one newspaper of a designated political affiliation published in the county and of general circulation therein, such list and display notice shall be published in it and also in a newspaper independent in politics published and of general circulation in the county. This section permits the publication in an independent newspaper only when there is no newspaper of designated political affiliation meeting the requirements of the statute.

Sections 5718-2 and 5751, General Code, respectively provide that the publications therein required shall be made in two newspapers of opposite politics of general circulation in the county. No provision is made in either of these sections for publication in a newspaper independent in politics in case there is only one newspaper of declared political affiliation meeting the requirements of the respective statutes. Nor do I think that Section 6255, General Code, has any application to this problem. In my Opinion No. 397 I said:

“The legislature, however, has set up certain requirements which newspapers must meet in order to qualify. If, as in the instant case, there are not two newspapers which qualify, the legislative mandate is sufficiently met by a publication in the only newspaper which so qualifies.”

Thus, if there were only one newspaper of declared political affiliation of general circulation in a county, the notices required to be published by Sections 5718-2 and 5751, General Code, could be published only in it, for it would be the only newspaper meeting the requirements of these statutes.

In your letter you state that there are a number of weekly newspapers published in this county having a circulation of from one thousand to two thousand, the circulation of which is confined largely to the village or community which they serve, although each circulates a few copies in other portions of the county. You further state that each of these weeklies has declared itself to be Democratic in politics. You also state that there are three daily newspapers in Franklin County, each of which has a circulation of from 50,000 to 150,000 daily, and that one has declared itself to be Republican in politics, whereas, the other two have declared themselves independent newspapers. You do not state whether any of these weekly or daily newspapers are printed in Franklin County, although you state that



all of them are published therein. The test of what constitutes a newspaper of general circulation, in so far as the publications required by Sections 5704, 5718-2 and 5751, General Code, are concerned, has been fixed by the General Assembly in Section 5704-2, supra. These requirements are:

1. It 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.

2. It must be 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.

3. The circulation must be proven bona fide by at least fifty per cent thereof being paid for by regular subscribers or through recognized news dealers.

4. It must publish an average of forty per cent news matter which has sufficient merit to have created a following of paid readers.

You will note that at no place in these requirements fixed by the legislature is any mention made of a complete coverage of the county as opposed to minor circulation. If any of the weekly newspapers mentioned in your letter have been designated to be Democratic in politics and meet the above requirements, the publication required by Section 5704, General Code, could then be had in two newspapers of opposite politics and consequently may not be made in a newspaper independent in politics, even though such independent newspaper might cover the county more completely than the newspaper of declared political affiliation. However, if such weekly newspapers do not meet the requirements of the statute with respect to circulation, publication must then be made in an independent newspaper published in the county and of general circulation therein. Such determination involves a question of fact which can only be answered by resorting to the definite and specified requirements of the statute. In connection therewith, your attention is called to the provisions of Section 5704, supra, where it is stated 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 delivery of the duplicate to the county treasurer, \*\*." The question therefore being one of fact and the duty of caus-

ing publication to be made being enjoined upon the county auditor, it would appear that the determination must be made in each instance by such officer.

In making such determination, however, it should be borne in mind that the statute in question is to be given a reasonable construction in conformity to its general purpose in order that such purpose may be effectuated. Obviously, the paramount purpose of the statute is to apprise the paid subscribers and readers generally, of all classes throughout the county, of the contents of such publication. In other words, the tests as set out in the statute should at all times be applied so that the purpose thereof will be accomplished.

With this in mind, the determination whether or not the newspapers in question meet the requirements of the statute should, in view of the specific provisions contained therein, present no great difficulty.

I am therefore of the opinion that:

1. That the definition of "newspaper" in Section 5704-2, General Code, applies also to the term "newspaper" as used in Sections 5718-2 and 5751, General Code.

2. Section 5718-2, General Code, requires the list of lands omitted from foreclosure proceedings to be published in two newspapers of opposite politics published and of general circulation in the county, and if there is only one newspaper meeting these requirements, such publication may be made only in such newspaper, and may not be made in a newspaper independent in politics, even though it may be published and of general circulation in the county.

3. Section 5751, General Code, requires the notice of sale of forfeited lands to be published in two newspapers of opposite politics printed and of general circulation in the county, and if there is only one newspaper meeting these requirements, such notice may not be published in a newspaper independent in politics, even though such newspaper may be printed and of general circulation in the county.

4. The publication of the list of delinquent lands and the display notice, required by Section 5704, General Code, may be made in a newspaper independent in politics published and of general circulation in the county if there are not two newspapers of opposite politics published and of general circulation in the county.

5. What constitutes a newspaper of general circulation within the meaning of the term as used in Sections 5704, 5718-2 and 5751, General Code, is a question of fact to be determined by the county auditor.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.