

entitled to record. It follows that the recorder's duty with reference to easements must be found from reading the sections referred to above. It appears that Section 2757 contains the only provision which could have any application to the method of recording instruments creating easements.

In an opinion of this office reported in Opinions of the Attorney General 1928, Volume 4, page 2808, it was held as appears from the syllabus:

"An instrument of writing in which it is stated that the grantor grants, bargains, sells, conveys and warrants to the grantee, its successors and assigns forever, a right of way and easement with the right, privilege and authority to said grantee, its successors, assigns, lessees and tenants, to construct, erect, operate and maintain a line of poles and wires for the purpose of transmitting electric or other power, including telegraph or telephone wires, in, on, along, over, through or across properly described lands for a consideration stated, and containing the statement that the grantee is to have and to hold an interest in said land unto said grantee, its successors and assigns, properly signed and acknowledged in the presence of witnesses, and duly acknowledged before an officer authorized in the premises, is an instrument of writing for the absolute and unconditional sale and conveyance of an interest in lands, tenements or hereditaments and should under the provisions of Section 2757, General Code, be recorded in the record of deeds."

This opinion was approved and followed by my predecessor in an opinion which will be found in Opinions of the Attorney General, 1929, Volume 1, page 481. The instruments creating easements which were before my predecessors, and considered in these two opinions, were identical in form. It appears in the inquiry, answered by the 1929 opinion, that the practice of the recorder there in question, had been to record easements in a "special record." My predecessor considered this practice unauthorized by the statute.

It is clear that when easements are created by "instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements and hereditaments" they should be recorded in the record of deeds and not in a "special record" or "easement record." Thus it appears that easements granted or reserved by deed, the ordinary method of creating easements by act of the parties, are entitled to record in the deed book, under Section 2757, and it further appears that the recorder is without authority to keep a special set of books for recording easements. It follows that the recorder should be advised to discontinue the use of the easement record book. I see no objection to the method outlined by you for changing the record.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

313.

PUBLICATION—ORDINANCES—MUST BE PUBLISHED IN ENTIRETY  
UNLESS OTHERWISE PROVIDED BY CHARTER OF MUNICIPALITY.

*SYLLABUS:*

*Ordinances of a general nature, except in municipalities organized under section 7, article XVIII of the Ohio constitution which have specifically provided*

*otherwise by charter, must be published in their entirety and where published by caption only do not meet with the requirements of section 4228, of the General Code.*

COLUMBUS, OHIO, March 22, 1933.

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

GENTLEMEN:—This will acknowledge receipt of your recent request for my opinion which reads as follows:

“It has come to the attention of this Department that in some cities ordinances of a general nature are being published by caption only, with the following additional insert:

‘A complete copy of the above ordinance is on file and may be seen at the office of the city clerk.’

The question has arisen whether such publication meets with the requirements of Sec. 4228 G. C., and we respectfully request your advice concerning this.”

Section 4227, General Code, relative to ordinances passed by the council of a village or city provides as follows:

“Ordinances, resolutions and by-laws shall be authenticated by the signature of the presiding officer and clerk of the council. Ordinances of a general nature, or providing for improvements shall be published as hereinafter provided before going into operation. No ordinance shall take effect until the expiration of ten days after the first publication of such notice. As soon as a by-law, resolution or ordinance is passed and signed, it shall be recorded by the clerk in a book to be furnished by the council for the purpose.”

The mode of publishing ordinances is prescribed in sections 4228 and 4229, General Code, as follows:

“Sec. 4228. Unless otherwise specifically directed by statute, all municipal ordinances, resolutions, statements, orders, proclamations, notices and reports, required by law or ordinance to be published, shall be published as follows: In two English newspapers of opposite politics published and of general circulation in such municipality, if there be such newspapers; if two English newspapers of opposite politics are not published and of general circulation in such municipality, then in one such political newspaper and one other English newspaper published and of general circulation therein; if no English newspaper is published and of general circulation in such municipality, then in any English newspaper of general circulation therein or by posting as provided in section forty-two hundred and thirty-two of the General Code; at the option of the council. Proof of the publication and required circulation of any newspaper used as a medium of publication hereunder shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of council.”

“Sec. 4229. The publication required in section forty-two hundred and twenty-eight of the General Code, shall be for the following times:

Ordinances, resolutions and proclamations of elections, once a week for two consecutive weeks; notices not less than two or more than four consecutive weeks; all other matters shall be published once."

Provision is also made for the publication of ordinances in charter cities by Section 3515-55, General Code, which reads as follows:

"All ordinances or resolutions shall be in effect from and after thirty days from the date of their passage except as otherwise provided in this act. Ordinances of a general nature, or providing for public improvements, or assessing property shall, upon passage, be promptly published one time in not more than two newspapers of general circulation in the municipality. Such ordinances shall be printed in the body type of the paper under head lines in eighteen point type, which shall specify the nature of such legislation. For the publication of ordinances no newspaper shall be paid any higher price than its maximum bona fide commercial rate."

When a statute is ambiguous or may be given several meanings, there is a familiar rule which is well stated in *State vs. Brown*, 121 O. S. 73, at page 76, as follows:

"It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.'"

However, there is no ambiguity in any of the sections referred to herein as to whether or not the entire ordinance should be published. The statutes provide that ordinances shall be published and does not state that the ordinances shall be published in part or by title or caption. In *Norwegian Nitrogen Prod. Co. vs. United States*, U. S. Sup. Ct. Advanced Opinions, 77 L. Ed., 1932-1933, page 419, at page 429, it was said:

"True indeed it is that administrative practice does not avail to overcome a statute so plain in its commands as to leave nothing for construction."

There can be no doubt that such a rule would apply to the sections cited, supra. The fact that certain cities have made a practice of endeavoring to comply with section 4228, General Code, by publishing the caption alone of ordinances, will not make them valid nor avail to set aside the plain words of the statute. Ordinance is defined in Bouvier's Law Dictionary as "a law; a statute; a decree. Municipal ordinances are laws passed by the governing body of a municipal corporation for the regulation of the affairs of the corporation. \* \* \*"

When there is a statute which provides that ordinances of municipalities shall be published, it can only be construed to mean the *entire* ordinance or law. In *People vs. Russell*, 74 California 578; 16 Pac. 395, the supreme court of California, in construing a statute requiring ordinances to be published, said:

"We are of the opinion that the intention of the lawmakers in enacting that section of the statute was that the ordinance should not take effect until it was published, and that the publication of the whole ordi-

nance is required, not part of it. The publication of the ordinance, as in this case, where the enacting clause was omitted, was not the publication of the whole ordinance, and was not the publication which the law required."

I have been unable to find any reported cases or opinions in Ohio on this question, but I am of the opinion that the case of *People vs. Russell, supra*, lays down a rule which would be followed in every jurisdiction where ordinances are required by statute to be published.

An exception, however, must be made in the case of municipalities which have adopted a charter as provided in section 7 of article XVIII of the Ohio Constitution. Such municipalities may by charter provide for the publishing of city ordinances in any terms that they may desire and where they have so provided are not required to observe the laws applicable to other municipalities. Section 4676-1, General Code, specifically provides for cities organized under section 7, article XVIII, as follows:

Municipal corporations now or hereafter operating under a special charter adopted in accordance with the constitution of the state of Ohio, which charter provides for or authorizes in whole or in part a method of procedure in the passage and publication of legislation, the making of improvements and the levying of assessments differing from the method prescribed by general law, may pass and publish such legislation, make such improvements and levy such assessments either under the provisions of the general law or in accordance with the procedure so provided for or authorized by such local charter. \* \* \* \*"

In specific answer to your question, I am of the opinion that ordinances of a general nature, except in municipalities organized under section 7, article XVIII of the Ohio Constitution which have specifically provided otherwise by charter, must be published in their entirety and where published by caption only do not meet with the requirements of section 4228 of the General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

314.

MEETING — BOARD OF EDUCATION — VALID WHERE NO NOTICE GIVEN BUT ALL MEMBERS ARE PRESENT—RESIGNATION OF MEMBER, WHEN EFFECTIVE—MEMBER MAY NOT BE ELECTED CLERK WHERE HIS VOTE NECESSARY FOR MAJORITY.

**SYLLABUS:**

1. *A meeting of a board of education at which all the members are present and in which they all participate, is a valid and legal meeting even though it is not held as a regular meeting and no notice was given of the meeting, as is provided by Section 4751, General Code.*

2. *Upon the resignation of the president of a board of education, the duly elected vice-president becomes president.*