

quently, the assessment in question was not in violation of the constitution of the United States."

The flaxseed in question here is not held by the importer for sale. It must be conceded that even if it were for sale in order to be protected from state taxation it would have to be sold in the entire bulk and could not be sold piecemeal. This flaxseed was imported for use and it has reached its destination and is now being used.

Having no direct decision of a Supreme Court upon a situation involving property imported in bulk in this manner, we must necessarily depend upon analogies drawn from other decisions.

In view of these decisions, I am of the opinion that the flaxseed in question has lost its distinctive character as an import and is subject to taxation by the State of Ohio.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1598.

NEWSPAPER—MEMBER OF VILLAGE COUNCIL OWNER OF ONLY ENGLISH NEWSPAPER IN VILLAGE—MAY BE PAID LEGAL RATE FOR PUBLICATION OF VILLAGE NOTICES, ETC.

**SYLLABUS:**

*A member of a village council who owns the only English newspaper published and of general circulation in the village may legally be paid the legal rate for publication of the village ordinances, resolutions, statements, orders, proclamations, notices and reports which are required by law or ordinance to be published.*

COLUMBUS, OHIO, January 18, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication, as follows:

"Sections 3808, 4218 and 12910, G. C., prohibit an officer of a municipal corporation from being interested in a contract with the corporation of which he is an officer.

QUESTION: May a village legally pay to a newspaper publisher who is also a member of council the rates fixed by statute for advertising ordinances, etc.? The newspaper owned by the member of council is the only one published in the municipality.

Opinion No. 1159 found at page 5 of the Opinions for 1916 may be pertinent."

Sections 3808, 4218 and 12910, General Code, referred to in your letter, read as follows:

Sec. 3808. "No member of the council, board, officer or commissioner of the corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation. A violation of

any provision of this or the preceding two sections shall disqualify the party violating it from holding any office of trust or profit in the corporation, and shall render him liable to the corporation for all sums of money or other thing he may receive contrary to the provisions of such sections, and if in office he shall be dismissed therefrom."

Sec. 4218. "Each member of council shall have resided in the village one year next preceding his election, and shall be an elector thereof. No member of the council shall hold any other public office or employment, except that of notary public or member of the state militia, or be interested in any contract with the village. Any member who ceases to possess any of the qualifications herein required or removes from the village shall forfeit his office."

Sec. 12910. "Whoever, holding an office of trust or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in the penitentiary not less than one year nor more than ten years."

Your attention is also directed to Section 12912, General Code, which provides:

"Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work or services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, or becomes the employe of the contractor of such contract, job, work, or services while in office, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office."

In the opinion of 1916 referred to in your letter, which opinion is reported in Opinions, Attorney General, 1916, Vol. I, page 6, it was held:

"When but one newspaper is printed in a municipality in which said newspaper, under the provisions of Section 4228, G. C., as amended 106 O. L. 493, the publication of ordinances and other matters therein specified is required to be made, the fact that an officer of the municipality is interested in said newspaper does not disqualify it from making said publication nor does said publication make said officer liable under Sections 3808 and 12912, G. C."

In the course of the opinion, it was said:

"As it is expressly stated in connection with your foregoing inquiries that an opinion is requested for your future guidance we are, therefore, concerned only with the law now in force, which is found in Sections, 4228, 4229, 4232, 4676 and 6255, G. C., as amended 106 O. L., 493, and also Section 4233, G. C. Without attempting to quote these various sections in full it is sufficient to say that they provide a plan or scheme for the publication of all ordinances, resolutions, statements, orders, proclamations, notices, and re-

ports required by law or ordinance to be published. The plan provided by said sections requires:

(1) That such publication shall be in two newspapers of opposite politics published and of general circulation in the municipality.

(2) If two such newspapers are not printed and of general circulation in said municipality, then said publication may be made in any newspaper printed and of general circulation in said municipality.

(3) If no newspaper is printed and of general circulation in said municipality, then said publication may be made in any newspaper of general circulation therein, or by posting."

None of the sections of the Code referred to in the above opinion have since been changed, except Section 4228, General Code, which was amended by the 87th General Assembly, to read as follows:

"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 thirty-two of the General Code; at the option of council. Proof of 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."

While you do not state in your inquiry whether or not the newspaper, which is owned by the member of council and is the only newspaper published in the village, is a partisan or non-partisan paper, it is my opinion that to comply with the terms of Section 4228, supra, publication should be made in that paper. The statute provides that:

"\* \* \* 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; \* \* \*"

In Opinion No. 1322 rendered by me under date of December 2, 1927, and addressed to your bureau, it was held:

"In a municipality in which there is only one English newspaper published and of general circulation, and that of a non-partisan character the publication in that paper of such ordinances, resolutions, statements, orders, proclamations, notices and reports required by law or ordinance to be published in the manner and for the period required by law is a compliance with the requirements of Section 4228, General Code."

It is my opinion that where but one English newspaper is published in the municipality, whether it be a political paper or not, publication of municipal ordinances, resolutions, statements, orders, proclamations, notices and reports required by law or ordinance to be published should be published in that paper. In fact if we do not so interpret the law, there is no provision which directs how publication shall be made under such circumstances, as it is only when *no* English paper is published and of general circulation in the municipality that permission is given by the terms of either Section 4228, supra, or Section 4232, General Code, to make publication in any English newspaper of general circulation, or by posting.

Upon reviewing the Opinion of 1916 above referred to, I see no reason to question the reasoning thereof, and inasmuch as the law with respect to publication, where but one English newspaper is printed and of general circulation in the municipality, is the same at the present as it was at that time, I am of the opinion that the conclusions reached in said opinion are applicable at the present time.

It will be observed that the Opinion of 1916 gave no consideration to the terms of Section 4218, supra. The opinion dealt with municipal officers generally, and made no reference to the forfeiture of office by councilmen who became interested in any contract with the village. It did, however, consider the penal provisions of Section 3808, supra, and 12912, General Code, in their applicability to situations of this kind. In so far as the question here involved is concerned, there can be no difference in principle between the forfeiture of office imposed as a penalty by Section 4218, supra, and disqualification to hold office or a fine and imprisonment imposed by Section 3808 or Section 12912, General Code. In either case, a penalty is imposed for the doing of certain acts and if these acts do not constitute a violation of one section they do not of the other.

I am, therefore, of the opinion that a village may legally pay to the publishers of a newspaper the legal rates for publication of its ordinances, resolutions, statements, orders, proclamations, notices and reports required by law or ordinance to be published, if it is the only newspaper published and of general circulation in the village even though the owner of the paper is a member of the village council.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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1599.

#### BOND—PUBLIC OFFICER—PAYMENT OF PREMIUM DISCUSSED.

##### SYLLABUS:

1. *The provisions of House Bill No. 40, 112 O. L. 111, amending certain sections of the General Code, relating to the bonds to be given by county officers, and providing that the premiums on surety company bonds given by such county officers shall be paid by the county commissioners out of the general county fund, are applicable to the payment of premiums on surety company bonds given by such county officers after said provisions became effective, although such officers were elected before the enactment and effective date of said statutory provisions.*

2. *A like construction should be given to the provisions of Section 9573-1, General Code, as enacted in 112 O. L. 135; and the premium of any duly licensed surety company on the bond of any public officer, deputy or employe executed and given after the effective date of said statute, should be allowed and paid by the state, county, township,*