

a statute providing for the publication of ordinances, it has been held that the insertion of an ordinance in an extra edition of a newspaper consisting of a limited number of copies issued late at night, and not mailed to subscribers or otherwise distributed, except as sold by persons directly interested, did not comply with the statute."

Attention is also directed to Volume 7, Permanent Supplement of Ruling Case Law, page 4861, wherein it is stated:

"It is the general rule that a publication in a single or extra edition of a newspaper is a sufficient publication providing the single or extra edition contains substantially the same general news as the other editions, and is distributed generally among the subscribers of the newspaper." *People v. Snow*, 279 Ill. 289, 116 N. E. 670, Ann. Cas. 1917 E. 992 and note.

It therefore would appear that the publication of an advertisement in any regular edition of a newspaper which contains substantially the same general news as the other editions, and is delivered to its subscribers generally, would sufficiently comply with the law. In specific answer to your inquiries, in the order presented, it is my opinion that:

First, in advertising for bids for the construction of a tuberculosis hospital, the provisions of Sections 2352, 6251 and 6252 of the General Code, require that publication be made in two of the principal newspapers in the county having the largest circulation therein, and also in two newspapers of opposite politics at the county seat; and accordingly, where the two newspapers having the largest circulation are not of opposite politics it is necessary to make publication in a third newspaper of opposite politics to one of the two newspapers having the largest circulation.

Second, whether or not newspapers are of opposite politics is a question of fact to be determined from all the pertinent circumstances by the public official charged with the duty of having publication made, and the decision of such question of fact is final, in the absence of fraud or gross abuse of discretion.

Third, advertisements need not be published in every edition of a newspaper, provided that they are published in an edition which contains substantially the same general news as the other edition and is distributed generally among the subscribers of the newspaper.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3395.

MIAMI AND ERIE CANAL LANDS—ABANDONED FOR CANAL AND HYDRAULIC PURPOSES BY AMENDED SENATE BILL NO. 39, 87TH G. A.—MUST BE MAINTAINED BY SUPERINTENDENT OF PUBLIC WORKS UNTIL ESTABLISHED AS PUBLIC HIGHWAY BY STATE HIGHWAY DIRECTOR.

*SYLLABUS:*

*Miami and Erie Canal lands abandoned for canal and hydraulic purposes by the act of the 87th General Assembly, passed April 21, 1927, 112 O. L. 388, remain*

*a part of the public works of the state with respect to the matter of maintenance and repair until such canal lands are set off and established as a public highway by the director of highways under the provisions of said act, and until such time such canal lands should be maintained and kept in repair by the superintendent of public works as required by the provisions of section 412, General Code.*

COLUMBUS, OHIO, July 3, 1931.

HON. O. W. MERRELL, *Director of Highways*, HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

GENTLEMEN:—This is to acknowledge receipt of your recent communication requesting my opinion upon the question stated therein as follows:

“In accordance with the provisions of Amended Senate Bill No. 39, as passed by the 87th General Assembly of Ohio, abandoning for canal and hydraulic purposes, that portion of the Miami and Erie Canal land from a point 500 feet north of the State Dam near the corporation line of the City of Middletown, Butler County, Ohio, to St. Bernard, in the City of Cincinnati, Hamilton County, Ohio, the Department of Public Works terminated all leases for hydraulic purposes as of November 1st, 1929.

Since that time no new land leases have been granted, but the rental on all canal land leases now in force, is being collected by the Department of Public Works and turned into the General Revenue Fund, although the State Highway Department, under the provisions of the above act, now has control of this portion of the Miami and Erie Canal.

The question has now arisen as to whether the State Highway Department is to have the expense of maintaining this stretch of canal land and if so, how this fund is to be provided, or whether the Department of Public Works is to have this cost of maintenance, inasmuch as the rentals are being collected as above stated.”

The question here presented is whether the act of the 87th General Assembly, referred to in your communication, has the effect of transferring to the director of highways the authority and duty of maintaining and keeping in repair that part of the Miami and Erie Canal affected by said act, or whether, notwithstanding said act, the superintendent of public works is authorized and required to maintain and keep in repair the section of said canal here in question. Section 411, General Code, provides in part as follows:

“The public works shall be divided into two grand divisions, as follows: The Miami and Erie Canal, with Lake St. Mary's reservoir, Indian Lake reservoir, the Loramie reservoir, with all of the feeders and parts thereof, and the various river dams which impound water for the purpose of supplying water for the Miami and Erie canal shall be styled division one.”

Section 412, General Code, provides as follows:

“The superintendent of public works shall have the care and control of the public works of the state and shall protect, maintain and keep them in repair. The superintendent shall have the power to remove obstructions therein or thereto and shall make such alterations or changes thereof,

and shall construct such feeders, dikes, reservoirs, dams, locks or other works, devices or improvements as he may deem proper in the discharge of his duties. Subject to the approval of the governor, the superintendent of public works may purchase on behalf of the state such real or personal property, rights or privileges as it may be necessary, in his judgment, to acquire in the maintenance of the public works or their improvement subject to the approval of the governor."

Sections 411 and 412, General Code, were enacted in their present form by way of amendment to then existing sections of the General Code with the same numbers, by an act of the legislature passed March 6, 1913, shortly after the adoption of section 12, article VIII of the constitution of the state creating the office of superintendent of public works and providing for his appointment and term of office. This constitutional amendment, which went into effect January 1, 1913, reads as follows:

"So long as the state shall have public works which require superintendence, a superintendent of public works shall be appointed by the governor for the term of one year, with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law."

However, ever since the construction of the canals by the state they have been a part of the public works of the state, and at the time of the adoption of the constitutional amendment, above quoted, the duty of maintaining the canals and keeping the same in repair as a part of the public works of the state was imposed upon the board of public works, by the provisions of section 218-20, Revised Statutes, which was carried into the General Code as section 412.

Clearly, therefore, the duty of maintaining and keeping in the proper state of repair the Miami and Erie Canal and the particular section thereof here in question is a duty imposed upon the superintendent of public works, unless the act of the 87th General Assembly, above referred to, is effective to take from the superintendent of public works such power and duty with respect to that part of the Miami and Erie Canal covered by said act.

The act of the 87th General Assembly, above mentioned, is an act passed April 21, 1927, providing for the abandonment for canal and hydraulic purposes of that portion of the Miami and Erie Canal from a point five hundred feet north of the state dam near the corporation line of the city of Middletown to the terminus of said canal at St. Bernard, in the City of Cincinnati, Ohio. 112 O. L. 388. The provisions of this act were carried into the General Code by designation of the Attorney General as sections 14153-1 to 14153-10, inclusive.

The provisions of the first seven sections of said act are material in the consideration of the question here presented. These sections of the act, under their respective General Code section numbers, are as follows:

Sec. 14153-1.

"That the portion of the Miami and Erie canal lying between a point, five hundred feet north of the state dam, near the corporation line of the city of Middletown, Butler county, Ohio, to St. Bernard, in the city of Cincinnati, Hamilton county, Ohio, be and the same is hereby abandoned for canal and hydraulic purposes."

## Sec. 14153-2.

"The state of Ohio reserves unto itself, the title to all lands and waters to which it is entitled under the various acts providing for the construction of the Miami and Erie canal and all lands now occupied by any part of the said Miami and Erie canal, including all lands used for lock houses, waste ways or for any other purposes, and now the property of the state of Ohio."

## Sec. 14153-3.

"So much of said lands as were used and occupied by the Miami and Erie canal shall be forever held for the state of Ohio in fee simple, and held by the state for the purpose of constructing upon the said lands, a highway, to be erected, constructed and improved at such time or times as the state of Ohio may hereafter either by legislative enactment, or otherwise, find proper and convenient."

## Sec. 14153-4.

"All leases heretofore granted to any person, firm or corporation, and for which the rental has not been paid, shall, by the superintendent of public works, be declared null and void, and all other leases, either for the use of water or lands or other purposes, shall be annulled as soon as the same can be done legally, provided that no such leases shall be annulled prior to January 1, 1929, except by agreement of all parties concerned, and all leases expiring prior to such date may be renewed to expire on January 1, 1929."

## Sec. 14153-5.

"As soon as practicable, after this act goes into effect, the director of highways of the state of Ohio, shall cause surveys to be made of the canal property herein abandoned, together with maps and plats of the same, and of all lands used in connection with that portion of the Miami and Erie canal, hereby abandoned, belonging to the state of Ohio adjacent thereto, and file a copy thereof with the governor."

## Sec. 14153-6.

"The director of highways is further directed to make a plat or plan, showing the highway, its length, grades and width of so much of the canal property as may be used for such highway purposes, and all other lands adjacent thereof that may be leased for other purposes."

## Sec. 14153-7.

"Until said highway shall be constructed and improved, no portion of the lands within the plat or plan showing such highway shall be leased for any purpose whatever, except as hereinafter provided, but until the state of Ohio shall construct and improve said lands for a highway, all municipal corporations through which said highway shall pass when completed shall be permitted to use said canal lands for public purposes only,

without compensation. Lands reserved for highway purposes as shown on said plat may be leased to municipalities, individuals, firms or corporations under the direction of the director of highways in the same manner as provided in the following sections, except that all such leases shall be subject to cancellation by the state, whenever construction of such highway is begun."

Section 8 of said act (sec. 14153-8, G. C.) provides that all such canal lands not used for highway purposes shall be appraised and leased under the direction of the director of highways in the manner and for the terms therein provided.

In an opinion of this office directed to the then director of highways under date of May 17, 1928, Opinions of the Attorney General, 1928, Vol. II, page 1191, it was held that in carrying out the provisions of sections 14153-5 and 14153-6 of the General Code, above quoted, relating to the survey and plat of said canal lands to be made by the director of highways for highway purposes, such director is authorized to use the general appropriations made to the department of highways for the purpose of employing engineers, clerks and other employes, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections. An opinion of this office addressed to the then superintendent of public works under date of May 18, 1928, more closely touches the question presented in your communication. The syllabus of this opinion, which is found in Opinions of the Attorney General, 1928, Vol. II, page 1206, reads as follows:

"Under the provisions of the act of April 21, 1927, 112 O. L. 388, providing for the abandonment of that portion of the Miami and Erie Canal from a point 500 feet north of the state dam near the corporation line of the city of Middletown, Butler County, Ohio, to the terminus of said canal at St. Bernard in the city of Cincinnati, Hamilton County, Ohio, for highway purposes, the Director of Highways is invested with the custody and control, for the purposes of said act, of not only the canal property abandoned by said act, but also all lands of the State of Ohio adjacent thereto, and used in connection with said portion of the Miami and Erie canal abandoned by said act."

It appears, however, that the syllabus of the opinion of the Attorney General, above quoted, is somewhat broader both in its language and the implications that may be drawn therefrom than the question considered and decided by the Attorney General in said opinion. At the time of the enactment of the act of the General Assembly, referred to above, the director of highways, by statutory enactment, was likewise performing the duties of superintendent of public works as director of the department of highways and public works. After the segregation of said departments of the state government by the amendment of section 154-3, General Code, enacted as a part of the Norton Edwards Act by the same General Assembly, the question arose as to whether various tracts of land adjacent to the Miami and Erie Canal property abandoned by the act here in question, but which tracts of land were not a part of the canal lands proper, should be leased by the director of highways or by the superintendent of public works as director of said department, in case such tracts of land were not needed for highways. In the opinion above referred to, the then Attorney General, among other things, said:

"It appears from the consideration of this act that the main purpose in the enactment of the same was to provide for the construction of a

highway on and over that part of the Miami and Erie Canal, the abandonment of which is effected by the enactment of said act. This circumstance is in accord with the view that it was the intent of the Legislature to vest in the Director of Highways as such, the control and custody of the canal property so abandoned for the purposes of said act."

The Attorney General, in said opinion, stated his conclusion with respect to the question which he had in mind, as follows:

"Arriving at this conclusion with respect to the operation of sections 14153-5 and 14153-6, General Code, with respect to the lands to be shown in the maps and plats therein provided for, it follows that section 14153-8, General Code, authorizes the Director of Highways as such to lease not only such of the abandoned canal property as may not be used for highway purposes but also lands of the State of Ohio, adjacent thereto, which formerly have been used in connection with that part of the Miami and Erie Canal abandoned by said act."

I am inclined to the view that assuming the constitutionality of the statutory provisions authorizing an officer of the state, other than the superintendent of public works, to execute leases on canal lands, the former opinion of the Attorney General, above referred to, should be limited to the precise question decided in said opinion as indicated in the language above quoted as the conclusion reached in and by said opinion.

Although the constitutional provisions above quoted, relating to the superintendence of the public works of the state by a superintendent of public works to be appointed by the governor, contemplate that properties of the state constituting a part of its public works might thereafter by a change in the use of such property, or otherwise, cease to be a part of the public works of the state as in the case of such part of the canal lands here in question as may be set off and used for such highway purposes, I am of the opinion that until this is done under the authority of the act here in question the Miami and Erie Canal lands covered by this act still remain a part of the public works of the state and are under the control and supervision of the superintendent of public works, with respect to the matters of maintenance and repair of such properties.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3396.

HIGHWAY DIRECTOR—PURCHASES OF MACHINERY, EQUIPMENT AND SUPPLIES EXCEEDING \$500. SUBJECT TO COMPETITIVE BIDDING—EXCEPTION NOTED—WHEN DEFINITE SPECIFICATIONS UNPREPARABLE AWARD MAY BE MADE TO BIDDER TENDERING MOST SUITABLE ARTICLE.

**SYLLABUS:**

*Under the provisions of sections 1226-1 and 1226-2, General Code, the Director of Highways is required to advertise for, and receive competitive bids on all purchases of machinery, equipment or supplies involving an expenditure in excess of \$500.00 except purchases made to repair roads or bridges destroyed by flood or*