

Lease from Minne M. Renkert, D. J. Renkert and O. W. Renkert, Executors for the Estate of Harry S. Renkert, deceased, for rooms 925-931 inclusive in the Renkert Building, Canton, Ohio. This lease is for a term of two years, beginning on the first day of January, 1933, and ending on the thirty-first day of December, 1934, by the terms of which the State will be required to pay seventy-five dollars (\$75.00) per month on the first day of each and every month in advance.

There has been submitted encumbrance estimate No. 100 which contains the certificate of the Director of Finance to the effect that funds are available for the payment of the rental for the months of January and February, 1933.

In addition, there has been submitted a copy of the will of Harry S. Renkert, deceased, showing authority for the executors, mentioned in the first paragraph, to execute leases of office space in the Renkert Building.

Finding said lease in proper legal form, I hereby approve it as to form and return it herewith, together with all papers submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.

146.

NEWSPAPER — PUBLICATION OF FINANCIAL REPORTS MUST BE
MADE IN NEWSPAPERS OF OPPOSITE POLITICS—MAY NOT PUB-
LISH IN INDEPENDENT NEWSPAPER.

SYLLABUS:

1. *Where there is an English newspaper of a political party casting the largest vote in the state at the last general election, and an English newspaper of the political party casting the second largest vote in the state at the last general election, published in the county and of general circulation in said county, it is the mandatory duty of a county auditor to publish the financial report of the county in such papers, under the terms of section 2508, General Code, and there is no authority for a county auditor to publish said financial report of his county in an English newspaper of the political party casting the largest vote in the state at the last general election and an independent newspaper, published and of general circulation in the county.*

2. *An independent newspaper is not a newspaper of a political party within the meaning of that term as used in section 2508, General Code.*

COLUMBUS, OHIO, February 17, 1933.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“I desire your office to render an opinion construing Section 2508 of the General Code of Ohio, specifically as to how much discretion is vested in the Auditor of the county in publishing this report, especially

as to what is meant by the words "and in one English newspaper of the political party casting the second largest vote in the state at the last general election, published in the county and of general circulation in said county.

That is, may the Auditor select a paper of non-political affiliation or independent, if both it and a paper of political affiliation are of general circulation. Further is it mandatory to publish or is it discretionary with the Auditor to publish in more than one paper."

Section 2508, General Code, reads as follows:

"Upon completing said report (financial report of the county) the county auditor shall submit the same to a judge of the court of common pleas for said county who shall determine whether said report is in conformity to this act, and if not said judge shall direct the said auditor to make specified changes therein so as to make it conform herewith. If the judge certifies that said report is in compliance herewith, or after the auditor shall make changes therein as directed by the judge, said auditor shall cause an exact copy of said report to be immediately published one time in one English newspaper of the political party casting the largest vote in the state at the last general election, and in one English newspaper of the political party casting the second largest vote in the state at the last general election, published in the county and of general circulation in the county, if there are two such papers published; if not, then a publication in one newspaper only is required, provided, however, such report shall be published only in the English language, and if the newspapers have no political affiliation, then in the two newspapers having the largest circulation, and if there are no newspapers in said county, then the newspapers of the adjoining counties having the largest circulation in such county. Political newspapers shall have precedence over non-partisan papers.

In addition to the above the county auditor may cause such report to be published in the newspaper having the largest circulation in each city in which there is a population in excess of 8000, and in which such report is not otherwise published." (Words in parenthesis the writer's.)

Under the terms of the above statute, it is evident that the county auditor *shall* cause the financial report of the county to be published "in one English newspaper of the political party casting the largest vote in the state at the last general election, and in one English newspaper of the political party casting the second largest vote in the state at the last general election, published in the county and of general circulation in said county, if there are two such papers published; *if not, then* a publication in one newspaper only is required." (Italics the writer's.)

It will be noted that the word "shall" is used in the statute. The ordinary meaning of the word "shall" is that it creates a mandate that something be done.

In my opinion No. 133, rendered February 13, 1933, addressed to Prosecuting Attorney Howard D. Barnes of Clinton County, I held, as disclosed by the syllabus:

"The provision contained in section 5704, General Code, is *mandatory* in its requirement that the county auditor in counties having a population of less than three hundred thousand, shall cause a list of the

delinquent lands to be published once each week for two consecutive weeks in two newspapers of opposite politics in the English language." (Italics the writer's.)

In said opinion the legal authorities were cited to show that the legislature by using the word "shall" in such statute (section 5704), intended to make the duty to publish in the manner indicated, mandatory. I feel the same reasoning is applicable to this statute (section 2508).

As I understand your situation, there is a newspaper of the political party casting the largest vote in the state at the last general election and a newspaper of the political party casting the second largest vote in the state at the last general election, published in your county, and of general circulation therein.

You desire to know whether or not the county auditor may publish the notice in an independent newspaper of general circulation in the county, rather than in the newspaper of the political party casting the second largest vote in the state.

As I have indicated above, the provisions for publication in the two newspapers of the political parties casting the largest and second largest vote in the state at the last general election, are mandatory, and it is to be noted that the publication can not be made otherwise, unless there are *no* such newspapers.

It has been held in the cases of *Ohio State Journal vs. Brown*, 19 C. C. 325, 10 C. D. 470, and *Columbus vs. Barr*, 6 C. C. (N. S.) 151, 17 C. D. 264, that an independent paper can not be regarded as a paper having any politics. In the first mentioned case, the statute there under consideration (section 1536-619, Revised Statutes) provided that "all ordinances and resolutions requiring publication shall be published in two newspapers of opposite politics, published and of general circulation in such municipality." It was held that such statute did not permit of an award of advertising to an independent newspaper which acknowledged allegiance to no political party. In the latter case, section 917, Revised Statutes, provided that the county commissioners publish their annual report "in two weekly newspapers of different political parties." It was held that an independent newspaper was not a paper of a political party within the meaning of this statute.

In view of the above considerations, I am of the opinion that where there is an English newspaper of a political party casting the largest vote in the state at the last general election, and an English newspaper of the political party casting the second largest vote in the state at the last general election, published in the county and of general circulation in said county, there is no authority for the county auditor to publish the financial report in an English newspaper of the political party casting the largest vote in the state at the last general election and an independent newspaper. I am further of the opinion that it is mandatory for the auditor to publish the report in the English newspaper of the political party casting the largest vote in the state at the last general election, and in the English newspaper of the political party casting the second largest vote in the state at the last general election, published and of general circulation in Brown County.

Respectfully,

JOHN W. BRICKER,
Attorney General.