

5209.

DELINQUENT TAX—NEWSPAPER ADVERTISING TO EXPLAIN PLANS OF PAYING DELINQUENT TAXES AUTHORIZED.

SYLLABUS:

A county treasurer has discretionary authority under section 6252, General Code, to enter into a contract to publish a display advertisement explaining the three different plans of payment of real estate taxes and requesting the payment of real estate taxes which are delinquent, providing such advertisement is published in two newspapers of opposite politics at the county seat, if there are such.

COLUMBUS, OHIO, March 3, 1936.

HON. SAM L. SUMMERS, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication of recent date, which reads as follows:

“I request your opinion on the following stated facts:

The county treasurer of Portage County is desirous of entering into a contract with a newspaper of general circulation in this county to run a series of display advertisements, explaining to the taxpayers, the three different plans of payment of taxes and requesting the payment of those taxes which are delinquent. The treasurer has requested my opinion as to the validity of the payment for the charges made by the newspaper under this contract.

I have searched the statutes, taking into consideration all those sections dealing with the publication and sale of property under tax sales and I have been unable to find any direct authority for the payment of such advertising.

I am therefore desirous of your informal opinion on the question.”

The powers with which public officers are clothed to make contracts obligatory on the county are conferred upon them by statute, and unless the statute expressly, or by implication, gives them the power to make a particular contract for and on behalf of the county, the authority to do so obviously does not exist. This principle is so universally recognized by the courts that any citation of authority is rendered unnecessary.

From your communication, I presume that the main subject matter

of the proposed display advertisement is the three different plans of payment of real property taxes and assessments and public utility property taxes, set forth in section 2653, General Code, as amended in Amended Senate Bill No. 221 (116 O. L., 199), namely, first payment of full amount due by virtue of such taxes, in cash, at each semi-annual tax payment period; second, payment of half of such full amount due at a semi-annual tax payment period, and the other half at the next ensuing semi-annual tax paying period; and, third, payment of such taxes in ten equal monthly installments.

With the foregoing explanation of the three different plans of payment of the real estate taxes, it is proposed to also advertise request for the payment of delinquent taxes.

A careful examination of the statutes seems to reveal but one section of the General Code that might be held to give the county treasurer authority to enter into a contract for the publication in a newspaper of such a type of advertisement.

Section 6252, General Code, reads as follows:

“A proclamation for an election, an order fixing the times of holding court, notice of the rates of taxation, bridge and pike notices, notice to contractors and such other advertisements of general interest to the taxpayers as the auditor, treasurer, probate judge or commissioners may deem proper, shall be published in two newspapers of opposite politics at the county seat, if there be such newspapers published thereat. In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of such notices shall be made in two newspapers of opposite politics in such city. This chapter shall not apply to the publication of notices of delinquent tax and forfeited land sales.”

The foregoing statute is a very old one. The general subject matter now contained therein was first enacted on March 25, 1876 (73 O. L., 75), as a portion of Section 2 of an act entitled “To fix the price of legal advertising.” The general subject matter of Section 1 of the act is now incorporated in Section 6251, General Code.

The portion of the subject matter of Section 2 of the act of 1876, now incorporated in Section 6252, General Code, was carried into the Revised Statutes of 1880 as Section 4367 of the Revised Statutes. Such Revised Statute, Section 4367, was then amended on April 12, 1889 (86 O. L., 258), and as so amended, carried almost identically into the present General Code of 1910, as Section 6252, General Code.

The question first arises, in connection with this Section 6252, Gen-

eral Code, whether or not the legislature intended by the language "and such other advertisements of general interest to the taxpayers as the auditor, treasurer, probate judge or commissioners may deem proper, shall be published", etc., to confer independent permissive power upon the public officials enumerated, to contract in their discretion for the publication of advertisements which were considered by them to be of general interest to the taxpayers, regardless of the existence of other statutes which conferred power to publish certain specifically defined types of advertisements.

The Supreme Court of Ohio, in the case of *The Vindicator Printing Co. v. The State of Ohio*, 68 O. S., 362, had occasion to comment upon this section of the General Code as it read at the time of rendition of the opinion on May 19, 1903. As pointed out already, Section 4367, Revised Statutes, contained in 1903 almost the identical language of Section 6252, General Code. The court was considering the legality of certain types of public advertisements made by county officials. At page 366 the Court stated:

"Publication of the sheriff's proclamation is authorized by Section 2977, Revised Statutes (G. C. 4827). It is to 'be inserted in some newspaper published in the county, if any is published therein.' This is supplemented by Section 4367, which requires publication in two newspapers of opposite politics, but taken together the meaning is one insertion in each newspaper. Publication of the commissioners' financial report together with that of the examiners is provided for by Section 917, Revised Statutes. They are to be published 'for one week in two weekly newspapers of opposite politics.' Publication of the report of the examiners of the county treasury, etc., appointed by the probate judge is authorized by Section 1129, Revised Statutes (G. C. 2699). It is to be published 'one week in two newspapers of opposite politics, of general circulation in the county.' Section 4367 (G. C. 6252) also authorizes the publication of certain notices of general interest to the taxpayers as the auditor, treasurer, probate judge, or commissioners may deem proper in two newspapers of opposite politics. This does not in terms limit the number of publications, but it does not give those officers discretion to fix the number of publications where the number is fixed by other sections." (Words in parenthesis and italics mine.)

The foregoing language seems to show that the court considered the language of section 6252, General Code, indicated, as conferring permissive power, independent of other statutes, upon the officials enumerated to publish notices of the type of general interest to the taxpayers.

Furthermore, language of the Court of Appeals of the Fourth District in the case of *Grooms v. Board of Commissioners of Adams County, et al.*, 36 O. App., 455; 7 Ohio Law Abstract, 714, decided October 28, 1929, seems to be in harmony with the Supreme Court, with reference to the foregoing interpretation of the language of section 6252, General Code, in question. The court, in this case, stated at page 458:

“Section 6252 further provides generally that such other advertisements of general interest to the taxpayers as the officers may deem proper shall be published in two newspapers, but the officers themselves are the judges of what notices are of such interest as shall require publication in two newspapers. Not only are the officials named to be the judges of what advertisements shall be published, but such advertisements must be of ‘general interest to taxpayers.’ That means of great or extensive interest affecting a majority, a great number. *Platt v. Craig*, 66 Ohio St., 75, 63 N. E., 594. There is no proof that the improvement in question costing less than \$1,000 was one of general interest to the taxpayers affected by it, and for the foregoing reasons Section 6252 no way changes the provision of Section 6864, as applied to the advertisement involved here.”

Several opinions of former attorneys general, rendered many years ago, likewise seem to serve to show that the legislature by the language under discussion intended to confer permissive authority to the officials enumerated to publish advertisements of general interest to the taxpayers, independent of whether or not other statutes conferred power to advertise the given subject matter.

For instance, in Annual Report of the Attorney General for 1912, Vol. II, page 1056, the question was presented as to whether or not county commissioners possessed authority to publish the annual report of the work of the juvenile court of the county.

In the opinion, it is stated at pages 1056 and 1057:

“Coming to the question of the power of the county commissioners in this connection, there is presented a question of some difficulty. The problem becomes difficult in view of the principle that the statutes conferring powers upon the officers must be strictly construed to the end that no functions are permitted which are not authorized or directed by necessary implication. The only measure which seems material is Section 6252 of the General Code providing generally for the publications of the county. That section is as follows:

* * * * *

Under the above quoted section, all the notices, orders, etc., provided for therein have an element of notice in their intentment to get them before the public, but the report of the juvenile court referred to in your letter does not, in my opinion, come within that class specified in the said section authorizing the county commissioners and other officers to publish the same.

I am, therefore, of the opinion that the authorization of Section 6252 of the General Code does not extend to the publication of the annual report of the juvenile court proceedings, and there being no legislative provision for the publishing of the annual report is indicative of the intent that none should be published."

While the foregoing opinion did not hold that there was authority for county commissioners under Section 6252, General Code, to publish the report in question, yet it is obvious from the language employed that the then attorney general considered such language of Section 6252, General Code, under discussion, at least conferred independent power to make publications providing the advertisement was "of general interest to the taxpayers."

In Annual Report of the Attorney General for 1906-1907, page 89, the then attorney general was called upon to interpret Section 4367 of the Revised Statutes, which, as stated previously, is now almost identically Section 6252, General Code. The question of the Bureau of Inspection and Supervision of Public Offices was as to what notices, proclamations or advertisements shall be published in two newspapers of opposite politics in cities of 8,000 inhabitants or more outside of the county seat under Section 4367, Revised Statutes. It was stated therein, at page 89:

"Section 4367 as originally enacted (73 O. L., 75), provided that,

'Such other advertisements or notices as the auditor, probate judge, treasurer and commissioners may deem proper shall be published.'

As amended (86 O. L., 258), the words 'or notices' are omitted and the word 'or' is substituted for 'and.' Each of the enumerated officers may therefore publish such 'advertisements of general interest to the taxpayers' as he deems proper in two newspapers of opposite politics at the county seat only or he may, in his discretion, publish them also in two newspapers of other cities within the county having more than 8,000 inhabitants.

It is impracticable to attempt to define what advertisements properly come within the scope of the words 'such other adver-

tisements of general interest to the taxpayers as the auditor, probate judge or commissioners may deem proper.' The statute vested a large discretion in the officers enumerated, the only limitations being that the publication must be an advertisement within the common meaning of the word, and must be a matter of general interest to the taxpayers. It is not within my province to attempt to mark the bounds of the discretion vested in these officers more definitely than does the statute itself."

In another opinion, reported in Opinions of the Attorney General for 1900-1904, Vol. V, page 371, rendered January 28, 1901, the question was under discussion as to what section of the Revised Statutes governed the publication of the commissioners' report. After referring to 917, Revised Statutes, and stating that such statute made complete provision for the publication of the commissioners' report, and quoting section 4367, Revised Statutes, the then attorney general stated at pages 372 and 373:

"I understand, however, that it is sometimes claimed that the phrase 'and such other advertisements of general interest to the taxpayers as the auditor, treasurer, probate judge, or county commissioners, may deem proper,' would include the publication of the commissioners' report. To give this phrase the most liberal construction, it would, at least, leave it to the discretion of the commissioners whether or not this report should be published in two newspapers of opposite politics at the county seat, and also two newspapers of opposite politics published in a city of eight thousand inhabitants or more outside of the county seat. I do not think, however, that this section will even bear that construction. Section 4366 of the Revised Statutes enumerates three classes of publications: 'advertisements, notices and proclamations.' Section 4367 of the Revised Statutes enumerates only that class of publications which may be denominated 'advertisements.' And the phrase above quoted expressly limits the authority of the auditor, treasurer, probate judge and commissioners to publish, in two newspapers of opposite politics, at the county seat, and in two newspapers published outside of the county seat in a city containing eight thousand or more, to that class of notices denominated 'advertisements.' An advertisement is commonly understood to be a notice of something which is to transpire in the future, while the commissioners' report is a notice of something that has already transpired. An advertisement is published in a newspaper to notify the public in order that all persons who are interested may take such action as they deem

proper for their own interest; e. g., proclamation of an election is made so that the electors may have notice, and thus have the privilege of exercising their privileges as voters; notice of the rates of taxation is made so that the taxpayers may examine and determine whether there has been an illegal levy, and thus give him an opportunity to protect himself against its payment, while the publication of the commissioners' report is a notice of something that has been completely accomplished. Hence, in my opinion this publication would not come under the head of an 'advertisement,' but rather, under that of 'notice.'"

Section 4366, Revised Statutes, in so far as the quotation from it made in the foregoing language, is now Section 6251, General Code, identically.

In addition to the language of these older opinions, language in Opinions of the Attorney General for 1918, Vol. II, page 1359, and Opinions of the Attorney General for 1928, Vol. I, page 95, clearly tends to show that the intention of the legislature in the enactment of the provision of Section 6252, General Code, was to confer the independent discretionary power indicated.

Having decided the first question arising in connection with this section, it remains to be determined whether or not the advertisement of the subject matter indicated in your communication would constitute "an advertisement of general interest to the taxpayers." As noted in the language of the last quoted opinion of the Attorney General, an advertisement is commonly understood to be a notice of something which is to transpire in the future. The subject matter which you indicate would undoubtedly fall within this meaning of the word "advertisement", as used in Section 6252, General Code. The taxes to be paid in the future are the subject matter of the advertisement. There can be no doubt that the subject matter of the proposed advertisement is "of general interest to the taxpayers."

Consequently, I am of the opinion that Section 6252, General Code, confers permissive power upon the county treasurer to enter into a contract to publish in a newspaper the display advertisement referred to in your communication. However, it would seem from the opinions of the Attorney General that if the county treasurer, in his discretion, decides to publish an advertisement, he must publish same in two newspapers of opposite politics at the county seat, if there are two such newspapers, and the only authority to publish such advertisement in a newspaper published in the county outside of the county seat, is in newspapers of opposite politics published in cities of over 8,000 population in such county. Of

course, he need not advertise in newspapers published outside of the county seat.

In conclusion, it should be stated that the discretion reposed by the statute in the officials enumerated is not to be abused. Courts have frequently and unanimously held that where the legislature has conferred discretion on public officers, such discretionary authority is to be exercised within reasonable bounds, and where circumstances indicate the discretion has been abused, such a remedy as injunction will lie in the courts to prevent such abuse of discretion. The statute under construction herein, as shown by the Supreme Court case cited, does not undertake to limit the number of publications that may be made of the advertisement, nor does such statute place any limits on the size or length of the subject-matter of the advertisement. However, the number of publications, the size or length of the subject-matter of the advertisement must not be unreasonable; otherwise, a court might be inclined to grant injunctive relief on the ground of abuse of discretion.

In view of the foregoing, and in specific answer to your question, I am of the opinion that a county treasurer has authority, under Section 6252, General Code, to enter into a contract to publish a display advertisement explaining the three different plans of payment of real estate taxes and requesting the payment of those real estate taxes which are delinquent, providing such advertisement is published in two newspapers of opposite politics in the county, at the county seat, if there are such.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5210.

SUPERINTENDENT OF SCHOOLS—EXEMPTED VILLAGE
SCHOOL DISTRICT—TERM OF CONTRACT—MUST COM-
MENCE DURING TERM OF PRESENT MEMBERS OF
BOARD.

SYLLABUS:

1. *A superintendent of schools in an exempted village school district should be employed.*
2. *The length of term for which a superintendent of schools may be employed in an exempted village school district is left by the law to the discretion of the board of education of the district, which discretion of course must not be abused.*
3. *The term for which a superintendent of schools in an exempted village school district may be employed may be for any reasonable length:*