

OPINION NO. 69-047

Syllabus:

The requirements for publication of the annual financial report of a county are to be found in Section 319.11, Revised Code, rather than Section 117.06, Revised Code.

**To: Robert Webb, Ashtabula County Pros. Atty., Jefferson, Ohio
By: Paul W. Brown, Attorney General, May 19, 1969**

I am in receipt of your request for my opinion relative to the financial report required to be prepared by a county auditor for the preceding fiscal year. You ask whether the requirements for publication of said report are to be found in Section 319.11, Revised Code, or Section 117.06, Revised Code. You point out that one of the essential differences is whether said report should be published in two newspapers in the county or one.

Section 319.11, Revised Code, became effective in its present form September 18, 1961, and provides as follows:

"The county auditor shall, on or before the thirty-first day of March of each year, prepare a financial report of the county for the preceding fiscal year in such form as prescribed by the bureau of inspection and

supervision of public offices. The auditor shall publish such report once in two newspapers of general circulation published in the county, except in cases where only one newspaper is published in a county then only one publication is required, and if there are no newspapers in such county, then in the newspaper of an adjoining county having the largest circulation in such county.

"No county auditor shall fail or neglect to make or publish the report as required of him by this section. The prosecuting attorney of any such county shall prosecute any auditor who so neglects or refuses to make or publish the required report." (Emphasis added)

Section 319.99, Revised Code, provides for a fine of not more than one hundred dollars for violation of Section 319.11, supra.

Section 117.06, Revised Code, became effective in its present form November 21, 1967, and provides as follows:

"A financial report of each public institution or taxing district for each fiscal year shall be made in accordance with forms prescribed by the chief inspector and supervisor of public offices.'

"The report shall be certified by the proper officer or board and filed with the bureau of inspection and supervision of public offices within sixty days after the close of the fiscal year. At the time of filing of the report with the bureau of inspection and supervision, the chief fiscal officer shall publish such report in a newspaper published in the political subdivision or taxing district and if there is no such newspaper, then in a newspaper of general circulation in the political subdivision or taxing district.

"The report shall contain the following:

"(A) Amount of collections and receipts, and accounts due from each source;

"(B) Amount of expenditures for each purpose;

"(C) Income of each public service industry owned or operated by a municipal corporation and the cost of such ownership or operation;

"(D) Amount of public debt of each taxing district, the purpose for which each item of such debt was created, and the provision made for the payment thereof. The substance of the report shall be published at the expense of the state in an annual volume of statistics, which shall be submitted to the governor. The auditor

of state shall transmit the report to the general assembly at its next session."
(Emphasis added)

It will be noted that the reports required by both statutes, supra, are to be on such forms as are prescribed by the Bureau of Inspection and Supervision of Public Offices. The Bureau of Inspection and Supervision of Public Offices is an entity created pursuant to the provisions of Chapter 117, Revised Code, and has as its principal function the inspection and supervision of the accounts and reports of all state offices, as provided in said Chapter, including every state educational, benevolent, penal, and reformatory institution, and the offices of each taxing district or public institution in the state. The Auditor of State is by statute the Chief Inspector and Supervisor of Public Offices. Section 117.01, Revised Code.

Present Section 319.11, supra, resulted from the repeal of former Sections 319.09 and 319.10, Revised Code, which latter statutes formerly established the requirements of a financial report to be prepared by the county auditor and established the requirements for publication of said report. Section 319.11, supra, as it existed prior to the incorporation of some of the provisions of Sections 319.09 and 319.10, supra, into same, contained only the provision requiring the county prosecutor to prosecute a county auditor who neglected or refused to make or publish the required report.

The emphasized portion of present Section 117.06, supra, resulted from the repeal of former Section 117.19, Revised Code, the publication requirements of said letter statute being incorporated into the then existing Section 117.06 to form present Section 117.06, Revised Code.

Section 117.19, Revised Code, as it existed prior to repeal, specifically stated in its last sentence that said section (and therefore the publication requirement contained therein) did not apply to a county auditor.

The clear intention of the General Assembly prior to November 21, 1967, therefore, was to exempt the county auditor from the publication requirements of Chapter 117, Revised Code, realizing that the Auditor was subject to the requirements of Sections 319.09 and 319.10, Revised Code. When Section 117.19 became, in part, present Section 117.06, supra, the punitive provisions of the former statute were not carried over into the new law, nor was the exemption as to the county auditor.

The legislative history of the present statutes under consideration indicates a desire on the part of the General Assembly to combine some of the former statutes for purposes of clarification. The fact that the exemption contained in former Section 117.19, Revised Code, was not carried over into present Section 117.06, supra, does not, in my opinion, imply that the legislative intent was to place the reporting and publication obligations of the county auditor under said section, which holding would result in a repeal of present Section 319.11, supra, by implication. Rather, the two statutes involved can be construed in pari materia.

Section 117.06, supra, deals with financial reports

from "public institutions" or "taxing districts". Research has failed to disclose any authority in Ohio for the proposition that a county could be considered a "public institution". The statutory definition of a "taxing district" is contained in Section 5711.01 (E), Revised Code, and reads as follows:

"'Taxing District' means, in the case of property assessable on the classified tax list and duplicate, a municipal corporation of the territory in a county outside the limits of all municipal corporations therein; in the case of property assessable on the general tax list and duplicate, a municipal corporation or township, or part thereof, in which the aggregate rate of taxation is uniform."

It is clear that a county, as such, is not a "taxing district" within the above definition and therefore is not within the meaning or intent of Section 117.06, supra.

In connection with this subject, I note two Opinions issued by predecessors of mine in office; Opinion No. 1758, Opinions of the Attorney General for 1928, and Opinion No. 120, Opinions of the Attorney General for 1957. Both Opinions noted concerned themselves with special statutes regarding annual reports vis a vis the general requirements of Section 117.06, Revised Code, or the General Code predecessor to said statute. The former Opinion held that the general statute controlled because of language in the special statute relating to publication of notices and reports by municipal corporations to the effect that publication was to be made in accordance with said special statute "unless otherwise specifically directed by statute," the predecessor to Section 117.06, Revised Code, relating to financial reports being held to "otherwise direct." The latter Opinion held that Section 507.07, Revised Code, relating to reports by township clerks, had been rendered obsolete in light of certain other sections of the Code and that therefore Section 507.07, supra, should be regarded as being repealed by implication and Section 117.06, supra, should be regarded as controlling as far as the financial report of townships was concerned. Neither of these Opinions affects the rationale or holding of this Opinion, since it is possible to give full effect to Section 319.11, Revised Code, without doing violence to either the letter or spirit of Section 117.06, Revised Code.

It is therefore my opinion, and you are hereby advised that the requirements for publication of the annual financial report of a county are to be found in Section 319.11, Revised Code, rather than Section 117.06, Revised Code.