

4170.

NEWSPAPER—PUBLICATION OF DELINQUENT LANDS UNDER SECTION 5718-2, GENERAL CODE, ENTITLED TO RATES FIXED BY SECTION 6251, GENERAL CODE WHEN.

SYLLABUS:

The publisher of a newspaper having a circulation of less than twenty-five thousand and in a county containing over three hundred thousand population, who publishes the list of delinquent lands, lots, or parts of lots omitted from the delinquent land list, in accordance with section 5718-2, General Code, is entitled to receive the rates fixed by section 6251, General Code, for publishing such list.

COLUMBUS, OHIO, April 20, 1935.

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

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 5718-1, General Code, provides that a board, composed of the president of the board of county commissioners, the county auditor and the county treasurer, may order certain items of real estate omitted from foreclosure proceedings as provided in Section 5718, General Code.

Section 5718-2, General Code, provides that in the event any property is so omitted from foreclosure proceedings, the county auditor shall cause a list of the land, lots or parts of lots so omitted to be published, and upon completion of such publication, such lands, lots and parts of lots so omitted shall be forfeited to the state, unless the taxes, assessments, penalties and interest charged shall have been paid.

Section 5706, General Code, provides the rates which newspapers may charge for advertising the delinquent and forfeited lands. Section 6251, General Code, provides the rates which publishers may charge for the publication of advertisements, notices and proclamations, except where the rate is otherwise fixed by law.

QUESTION: Is the publisher of a newspaper having a circulation of less than 25,000, who publishes advertisements provided for in Section 5718-2, General Code, entitled to receive the rate fixed by section 5706, General Code, or the rates fixed under section 6251, General Code?”

Your question evidently involves the publication of the list of delinquent lands, lots or parts of lots, lying in counties having a population in excess of three hundred thousand population, which lands and lots have been omitted from the delinquent land list provided for by section 5718, General Code, because the board mentioned in section 5718-1, General Code, was of the opinion that the said lands and lots would not bring upon a foreclosure sale of the delinquent lands a sufficient amount of money to pay all taxes, assessments and penalties thereon in arrears, together with costs of foreclosure.

Sections 5706, 5707, 5718, 5718-1, 5718-2 and 5718-3, General Code, under the chapter heading “Delinquent Lands”, section 5744, General Code, under the chapter

heading "Forfeited Lands" and section 6251, General Code, under the chapter heading "Legal Advertising", are necessary to consider in connection with your question, reading as follows:

Sec. 5706. "The publishers of newspapers, for advertising the delinquent and forfeited list of the several counties, and the notice of sale, shall be entitled to receive a sum not exceeding the following rates: For the notice of sale, ten dollars; for designating the several school districts, townships, villages and cities, and the several wards in a city, fifty cents each; and for each tract of land, city or town lot, or part of lot, contained in each such lists, thirty cents. A greater sum than one-half of the taxes and penalties, due on any tract, lot or part of lot, shall not be allowed for advertising such tract, lot or part of lot. Providing, however, newspapers having a circulation of over twenty-five thousand shall charge and receive for such advertisements, notices and proclamations, rates charged by them on annual contracts for like amount of space to other advertisers in its general display advertising columns; and the publishers shall make and file with this bill before its payment, an affidavit that the newspaper had a bona fide circulation of more than twenty-five thousand at the time of the advertisement, notice or proclamation was published, and that the price charged in the bill for same did not exceed the rates herein provided for such advertisement, notice or proclamation."

Sec. 5707. "Such notice shall be in substance as follows:

DELINQUENT LAND SALE NOTICE

The lands, lots and parts of lots returned delinquent by the treasurer ofcounty, with the taxes, penalties and interest charged thereon agreeably to law, are contained and described in the following list, viz.: (Here insert the list with the name or names of the owner or owners of such respective tracts of land, or town lots, as designated on the duplicate and notice is hereby given that the whole of such several tracts, lots or parts of lots, will be certified for foreclosure by the county auditor pursuant to law, or forfeited to the state, unless the taxes, assessments, penalties and interest are paid."

Sec. 5718. "At the expiration of three years after certification, the county auditor shall make, in quadruplicate, a certificate, to be known as a delinquent land tax certificate of each delinquent tract of land, city or town lot, or part of lot contained in the delinquent land list, upon which the taxes, assessments, penalties and interest have not been paid, describing each tract of land, city or town lot the same as it is described on the tax list and the amount of taxes, assessments, penalty and interest thereon due and unpaid, and stating therein, that the same has been certified to the prosecuting attorney of the county as delinquent. Such certificate shall be signed by the county auditor, or his deputy, and the original filed with the prosecuting attorney, one copy with the county treasurer, and one copy sent to the auditor of state.

The county auditor of any county having a population in excess of three hundred thousand, as determined by the last preceding federal census, shall before filing such certificates with the prosecuting attorney, cause a list of said certificates to be published once a week for two consecutive weeks in two daily newspapers of opposite politics in the English language, published in and of general circulation in the county which are devoted to the publication of general news, setting forth therein the name or names of the owner, or own-

ers of such respective tracts of land or town lots, as designated on the duplicate, and attaching thereto a notice that such lands will be certified to the prosecuting attorney for the institution of foreclosure proceedings, unless the taxes, assessments, penalties, interest and costs are paid."

Sec. 5718-1. "Before making the certificates provided for in section 5718 of the General Code, the county auditor shall submit the list of lands on the delinquent list and subject to foreclosure, to a board composed of the president of the board of county commissioners, the county auditor and the county treasurer, and if, after investigation, in their judgment and discretion, such board is of the opinion that such list contains property or properties so certified which will not bring upon a sale a sufficient amount of money to pay all taxes, assessments and penalties thereon in arrears, together with costs of foreclosure, such board may order the same to be omitted from the foreclosure proceedings as herein provided; and as to such land so ordered to be omitted, no delinquent land tax certificate shall be made."

Sec. 5718-2. "In the event that the board so orders omitted from the foreclosure proceedings any of the property in the manner set forth in the preceding section, the county auditor shall cause a list of the lands, lots, or parts of lots, so omitted to be published as herein provided; and upon completion of such publication the lands, lots and parts of lots included in the list so published shall be forfeited to the state and disposed of as provided by chapter fifteen of this title, unless the taxes, assessments, penalties, interests and charges shall have been paid. Such publication shall be made once a week for two consecutive weeks in two newspapers of opposite politics in the English language published in the county and of general circulation therein."

Sec. 5718-3. "It shall be the duty of the prosecuting attorney of the county, upon the delivery to him by the county auditor of a delinquent land tax certificate, to institute a proceeding thereon in the name of the county treasurer to foreclose the lien of the state, in any court of competent jurisdiction within nine months thereafter unless the taxes, assessments, penalty, interest and charges are sooner paid, and to prosecute the same to final judgment and satisfaction. The proceedings for such foreclosure shall be instituted and prosecuted in the same manner as is now or hereafter may be provided by law for the foreclosure of mortgages on land in this state, excepting that if service by publication is necessary, such publication shall be made once instead of as provided by section 11295 of the General Code, and the service shall be complete at the expiration of three weeks after the date of such publication. It shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his petition that the certificate has been duly filed by the county auditor; that the amount of money appearing to be due and unpaid thereby is due and unpaid and a lien against the property therein described, without setting forth in his petition any other or further special matter relating thereto, and the prayer of the petition shall be, that the court make an order that said property be sold by the sheriff of the county, or if the action be in the municipal court, by the bailiff, in the manner provided by law for the sale of real estate on execution excepting as hereinafter otherwise provided. In such proceedings the county treasurer may join in one action all or any number of lots or lands, but the decree shall be rendered severally or separately, and any proceedings may be severed in the discretion of the court for the purpose of trial, error or appeals, where an appeal is allowed, and the court shall make such order for the payment of costs as shall be deemed equitable and proper. The delinquent

land tax certificate filed by the county auditor with the prosecuting attorney, shall be prima facie evidence on the trial of such action, of the amount and validity of the taxes, assessments, penalties, interest and charges appearing due and unpaid thereon and of the non-payment thereof."

Sec. 5744. "Every tract of land and town lot offered for sale in foreclosure proceedings, as provided in the next preceding chapter, and not sold for want of bidders, and every tract of land and town lot omitted from foreclosure proceedings and duly advertised as provided in this chapter shall be forfeited to the state. Thenceforth all the right, title claim and interest of the former owner or owners thereof, shall be considered as transferred to, and vested in, the state, to be disposed of as the General Assembly may direct."

Sec. 6251. "Publishers of newspapers may charge and receive for the publication of advertisements, notices and proclamations required to be published by a public officer of the state, county, city, village, township, school, benevolent or other public institution, or by a trustee, assignee, executor or administrator, the following sums, except where the rate is otherwise fixed by law, to-wit: For the first insertion, one dollar for each square, and for each additional insertion authorized by law or the person ordering the insertion, fifty cents for each square. Fractional squares shall be estimated at a like rate for space occupied. In advertisements containing tabular or rule work fifty per cent may be charged in addition to the foregoing rates. Providing, however, newspapers having a circulation of over twenty-five thousand shall charge and receive for such advertisements, notices and proclamations, rates charged on annual contracts by them for like amount of space to other advertisers who advertise in its general display advertising columns; and the publisher shall make and file with his bill before its payment, an affidavit, that the newspaper had a bona fide circulation of more than twenty-five thousand at the time the advertisement, notice or proclamation was published, and that the price charged in the bill for same did not exceed the rates herein provided for such advertisement, notice or proclamation."

Before the enactment of sections 5718-1 and 5718-2, General Code, supra, in 1931, by Amended Senate Bill No. 326 of the 89th General Assembly, and the general revision of the statutes relating to delinquent and forfeited lands in such bill, there were but two lists of lands to be published by a county auditor. These two lists prior to 1931, were known as the delinquent and forfeited land lists.

When the legislature revised statutes generally relating to delinquent and forfeited lands in 1931 by Amended Senate Bill No. 326 (114 O. L. 825-843), a new list was provided for, which list contains lands, lots, or parts of lots that, as stated in the first paragraph of this opinion, have been omitted from the delinquent list for the reasons stated in such paragraph. Such list is neither the delinquent nor the forfeited list set forth in section 5706, General Code, supra. In making the general revision of the sections 5704 et seq., General Code in 1931, as heretofore mentioned, the legislature did not see fit, in amending section 5706, General Code, to change the wording of the first sentence of such section, despite the fact that another list was provided for by other parts of the act, namely, sections 5718-1 and 5718-2, General Code.

It seems clear, therefore, that the legislature did not intend that the fees set forth in section 5706, General Code, supra, should be charged for publishing the list of omitted lands, set forth in section 5718-2, General Code.

A reference to the history of Amended Senate Bill No. 326, as disclosed by the journals of the Ohio Senate and House for 1931, clearly shows such was the intention.

Senate Bill No. 326 was reprinted as Re-Amended Senate Bill No. 326 by the order of the Standing Committee on Taxation of the House of Representatives on June 15, 1931. See Ohio House Journal for 1931, pages 894 to 896. Section 5706, General Code, as it appeared in such reprinted bill read exactly as passed finally by the legislature, and as quoted above. Also the words "or forfeited to the state" now contained in the next to the last line of section 5707, General Code, were not at that time contained therein.

The subject-matter now contained in sections 5718-1 and 5718-2, General Code, was not at the time of reprinting contained in the act, and such sections were not listed in the title of the act. Moreover, the matter now contained in section 5718-3, General Code, was at the time of reprinting designated as section 5718-1, General Code, and the words "and every tract of land and town lot omitted from foreclosure proceedings and duly advertised as provided in this chapter (15)" now contained in section 5744, General Code, were not in such section as it appeared in the reprinted bill.

On June 17, 1931, Mr. Creesy moved to amend the bill as reprinted as follows:

"In line two (in the title), after the figures '5718-1' strike out 'and' and insert a comma and the figures '5718-2, 5718-3.'

"In line 320, after the first comma insert the words 'or forfeited to the state.'

Between lines 402 and 403 insert the following: (the matter now contained in sections 5718-1 and 5718-2, General Code)

In line 403, change the figures '5718-1' to '5718-3.'

In line 503, after the comma insert the words 'and every tract of land and town lot omitted from foreclosure proceedings and duly advertised as provided in this chapter.'

The motion was agreed to and the bill was so amended. See Ohio House Journal, 1931, pages 904, 905.

From the fact that the subject-matter of sections 5718-1 and 5718-2, General Code, was not in existence at the time Senate Bill 326 was reprinted by the House, the list of omitted lands could not have been contemplated as being included in the language of section 5706, General Code, "delinquent and forfeited list", which language was the same at that time as now. Section 5706, General Code, was not amended at the time of Mr. Creesy's amendment, to provide rates for publishing the list of lands omitted from the delinquent land list, and there was no provision inserted in section 5718-2, General Code, to provide that the rates set forth in section 5706, General Code, would be applicable. Also it will be seen that at the time of the addition of sections 5718-1 and 5718-2, General Code, the legislature amended sections 5707 and 5744, General Code, to conform to the new set-up caused by the addition of new subject-matter of sections 5718-1 and 5718-2. Hence, it would seem that the legislature realized that there was in existence a section of the General Code providing generally for rates of advertising, namely, section 6251, General Code, which would be applicable, since the language of section 5706 was not amended as was that of sections 5707 and 5744 to conform to the new set-up. It must have been cognizant of the fact that the language of such section stating that such rates should be charged, "except where the rate is otherwise fixed by law", would apply if the language of section 5706 were not amended, or a provision inserted in the language of section 5718-2, General Code, to make the rates set forth in section 5706, General Code, applicable.

I am therefore of the opinion, in specific answer to your question, that the publisher of a newspaper having a circulation of less than twenty-five thousand in a county con-

taining over three hundred thousand population, who publishes the list of delinquent lands, lots, or parts of lots omitted from the delinquent land list, in accordance with section 5718-2, General Code, is entitled to receive the rates fixed by section 6251, General Code, for publishing such list.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4171.

TOWNSHIP—CLERK MAY NOT SELL GASOLINE TO TOWNSHIP TRUSTEES
 WHEN.

SYLLABUS:

A township clerk violates section 12910, General Code, if he sells gasoline to the township trustees of the township with which he is connected, for the use of such township.

COLUMBUS, OHIO, April 20, 1935.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This acknowledges receipt of a communication over the signature of your assistant, George J. McDonald, as follows:

“This office has been asked the following question. May one who is clerk of the Township Trustees sell gasoline to such Board from time to time in small quantities, where such purchases do not exceed \$50.00 a month?

In this particular case the Clerk of the Board of Township Trustees operates and owns a small store in the same township, which store is the only place in the township gasoline may be purchased. Occasionally small purchases are made for which the Board of Township Trustees is billed at the end of the month. The question has been raised as to the legality of such purchases.

We have examined the statutes 12910, 12911, 12912, etc., of the General Code as well as several previous opinions of the Attorney General's office in this connection, but we are unable to come to a definite conclusion. Your information on this subject will be appreciated.”

Sections 12910, 12911 and 12912, General Code, mentioned in your communication, are penal statutes and therefore, under the well recognized principle of statutory construction, must be strictly construed.

An examination of sections 12911 and 12912, General Code, clearly shows such sections can have no application to the facts you present. Section 12911 has application only where an officer or employe of such officer is interested in a contract for the purchase of property, supplies or fire insurance for the use of a political subdivision with which he is *not* connected, which is not the case here, and section 12912 applies to municipal officers, including councilmen and township trustees only, not including a township clerk.