

1235

1. TAXES—COUNTY OFFICERS NAMED IN SECTION 6252⁴ G.C.—HAVE AUTHORITY TO PUBLISH CERTAIN ADVERTISEMENTS—DELINQUENT REAL ESTATE TAXES—FORFEITED LANDS—SALE—ADVERTISEMENTS SUPPLEMENTARY TO FORMAL LISTS AND NOTICES—SECTIONS 5704, 5751 G.C.—O.A.G. 5209, 1936, PAGE 267, APPROVED AND FOLLOWED.
2. ADDITIONAL ADVERTISEMENTS—REQUIRED TO BE PUBLISHED IN TWO NEWSPAPERS, PUBLISHED IN COUNTY SEAT—ADVERTISEMENTS NOT REQUIRED TO BE PUBLISHED IN NEWSPAPERS PUBLISHED OUTSIDE COUNTY SEAT.

SYLLABUS:

1. Under the provisions of Section 6252, General Code, the county officers named therein, have authority to publish such advertisements as they deem proper, designed to encourage the payment of delinquent real estate taxes, and to stimulate interest in pending sales of delinquent and forfeited lands; such advertisements not to include, but to be supplementary to the formal lists and notices required to be published by Sections 5704 and 5751, General Code. Opinion No. 5209, Opinions of the Attorney General for 1936, page 267, approved and followed.

2. When additional advertisements relative to the payment of delinquent taxes or to impending sales of delinquent and forfeited lands are ordered as provided in Section 6252, General Code, such advertisements are required to be published in two newspapers published in the county seat, but are not required to be published in any newspapers published outside the county seat.

Columbus, Ohio, March 1, 1952

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“At the request of our County Auditor I am submitting for your written opinion the question of whether he, the Clerk of Courts, or the County Commissioners may publish additional notices of ‘general interest’ under the provisions of G. C. 6252 in the form of warning notices and sale schedules in the large daily papers and other suburban papers in view of the fact that notices

of delinquent and forfeited land sales are published in compliance with law in smaller weekly papers; and if publication of such additional notices of general interest is permissible in the county seat, is it mandatory that they be published also in each city in the county having eight thousand or more inhabitants?

“The questions were first submitted to the State Examiner’s office and at their suggestion the matter is being submitted to you.

“Copies of a letter by the Auditor dated January 15, 1952, and a letter by W.D.N. dated January 29, 1952 are enclosed.”

In order that we may have the problem clearly before us, I think it well to quote also a portion of the letter from your Auditor to the State Examiner:

“In order to minimize the costs of sale to be deducted from the proceeds, the Clerk of Courts and County Auditor of this county have always placed these notices in two weekly newspapers published in two suburban cities, rather than in the big daily newspapers in the City of Cleveland which have high advertising rates because of their county-wide circulation. Since the Forfeiture and Sale notices need be placed only in newspapers ‘published in the County and of general circulation therein,’ not necessarily published at ‘the county seat’, as required of other legal advertising by Sec. 6252 quoted above, the two papers used by the county officials in the past have qualified and been approved for this purpose by our Common Pleas Court. Their total circulation is probably no greater than 15,000 compared to the 200,000 of the Cleveland papers.

“Because wider circulation of the notices of forfeiture and of sale than that afforded by the smaller papers seems desirable, our question is whether the County Commissioners, on behalf of the Clerk of Courts, and the County Auditor, may publish additional notices of ‘general interest’ under the provisions of Sec. 6252, in the form of warning notices and sale schedules in the large daily papers and other suburban papers, as long as the forfeiture and sale notices are being published in qualified but smaller weekly papers in the manner prescribed by the Delinquent Lands and Forfeited Lands Chapters of the General Code.

“In other words, is the concluding sentence of Sec. 6252, ‘This chapter shall not apply to the publication of notices of delinquent and forfeited lands’ merely intended to guard against the substitution of the legal requirements for proper newspaper publication as set up in the chapter on legal advertising for those somewhat stiffer requirements set up in the chapters pertaining to Delinquent and Forfeited Lands, or is it a definite prohibi-

tion of the publication of any further notices on the entire subject, even though the county officials might deem such additional notices 'of general interest to the taxpayers' advantageous in that higher bids at the sale might be obtained if the facts pertaining to the sale are brought to the attention of more people than can be reached by the weekly suburban newspapers?

"Also, if the publication of such notices of general interest is permissible in newspapers published in the county seat, is it mandatory that they also be published in two newspapers in each city in the county, other than the county seat, having eight thousand inhabitants or more, or is publication of such notices in other papers optional?"

The statutes relative to the sale of delinquent lands and forfeited lands are found in Chapters 14 and 15, of Title I, "Taxation", being a part of Part Second, of the General Code, Section 5704, General Code, provides for the preparation by the county auditor of a list of delinquent lands in his county, and for the publication of certain notices relative thereto. In so far as pertinent, that section reads:

"It shall be mandatory upon the county auditor to cause a list of the lands on such delinquent land list and duplicate to be published twice, within sixty days after the delivery of the duplicate to the county treasurer, in two newspapers of opposite politics in the English language published in the county and of general circulation therein; provided, however, that, before such publication, it shall also be mandatory upon the county auditor to cause a display notice of the forthcoming publication of the delinquent land list and duplicate to be inserted 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. The copy for such display notice shall contain the applicable provisions of section 2653 of the General Code, the times and methods of payment of taxes provided by law, together with any other information which the county auditor may deem pertinent to the purpose of the notice, and shall be furnished by the county auditor to the newspapers selected to publish such delinquent land lists at least ten days before the first publication of such delinquent land list.

"A newspaper independent in politics shall be considered to be a newspaper of opposite politics to a newspaper of designated political affiliation.

"Where there is no newspaper of designated political affiliation published in such county then publication of such notice and delinquent land lists shall be made in two newspapers independent in politics published in such county and of general circulation

therein. If there is only one newspaper published in the county and of general circulation therein whether or not such newspaper be of a designated political affiliation, such display notice and delinquent land list shall be published in it. Publication of delinquent land lists may be made by a newspaper in installments, providing the complete publication thereof is made twice during the said sixty day period.

“There shall be attached to the list a notice that the delinquent lands will be entered upon the foreclosure list, as provided by law, unless the taxes, assessments, penalties and interest are paid.”

Section 5707, General Code, prescribes the form of such notice. Section 5718 et seq., General Code, relates to foreclosure proceedings for the sale of delinquent lands. Section 5718-1c, General Code, provides for the forfeiture without foreclosure, of certain delinquent lands after prescribed procedure in court has been had. Section 5750, General Code, provides as follows:

“The county auditor shall maintain a list of forfeited lands and shall offer same for sale annually.”

Section 5751, General Code, makes provision for publication and notice of sale of forfeited lands. That section provides in part, as follows:

“If the taxes, assessments, penalties, interest and costs due on the forfeited lands have not been paid when the auditor fixes the date of his annual sale, the county auditor shall cause notice thereof to be advertised once a week for two consecutive weeks prior to the first day of July in each year, in two newspapers as provided in section 5704 of the General Code. * * *”

Section 5754, General Code, sets out the form of notice of sale which is to be published in accordance with the requirements of Section 5751 supra. The legal fees that may be paid for the publication of the lists of delinquent lands and also of forfeited lands, as provided in the statute above noted are set forth in Section 5706, General Code, which reads as follows:

“The publishers of newspapers, for advertising the delinquent and forfeited lists of the several counties, the omitted list provided for in section 5718-1b of the General Code and the notice of sale, shall be entitled to receive for each insertion 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 such list, 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 the advertisement, notice or proclamation was published, and that the price charged in the bill for same did not exceed the rates therein provided for such advertisement, notice or proclamation.

“The cost of publication of the preliminary display notices as provided for in section 5704 to be published in newspapers of less than 25,000 circulation shall be the commercial rate charged by such newspapers.”

I come now to a consideration of the provisions of Section 6252, General Code, referred to in your letter. This section is a part of Chapter 18 of Title II, the subject of such title being “Police Regulations.” This title is also a part of Part II of the General Code, but as will be noted, is wholly independent of and separate from Title I relating to taxation. Chapter 18, Title II, above referred to, relates solely to legal advertising. It comprises Sections 6251 to 6256, General Code, inclusive. Section 6251 prescribes rates for legal advertising, “except where the rate is otherwise fixed by law.” Section 6251-1, General Code, refers to the same subject, particularly as to rates that may be charged for advertisements, notices and proclamations required to be published by courts of record. Section 6252, General Code, reads as follows:

“A proclamation for an election, an order fixing the time 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 of general circulation as defined in section 5704-2 of the General Code at the county seat if there be such newspapers published thereat. Provided, however, that if there be not two newspapers of opposite politics of general circulation published in said county seat, such publication shall be made in one newspaper published in said county

seat and in any other newspaper of general circulation in said county as defined in said section 5704-2 of the General Code, wherever published, without regard to the politics of such other newspaper. In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, *additional publication of such notice shall be made* in two newspapers of opposite politics of general circulation in such city as defined in said above-mentioned section. For purposes of this section a newspaper independent in politics shall be considered to be a newspaper of opposite politics to a newspaper of designated political affiliation. *This chapter shall not apply to the publication of notices of delinquent and forfeited land sales.*"

(Emphasis added.)

The scope of this section in its allowance of additional publication at the behest of the officers named, has been discussed and applied in several opinions of former Attorneys General. In Opinion 1566, Opinions of the Attorney General for 1928, page 94, it was held:

"2. County commissioners may, if they so deem proper, further advertise the sale of county bonds in accordance with the provisions of Section 6252 of the General Code, provided that such additional publications shall not be in excess of the three weeks provided by Section 2293-28 of the General Code."

In Opinion No. 5209, Opinions of the Attorney General for 1936, page 267, it was held:

"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."

This opinion reviews a number of earlier opinions of the Attorney General pointing to the conclusion that the legislature by the language used in Section 6252 supra, intended to confer authority and a considerable discretion upon the officers named to publish advertisements of general interest to taxpayers, independent of other statutory requirements as to publication of certain notices and orders.

There was also cited the case of *Grooms v. Board of Commissioners of Adams County, et al.*, 36 Ohio App., 455, where the court said:

"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."

The language of Section 6252 supra, would appear to open the way for the exercise of a very wide discretion by the auditor, treasurer, probate judge or county commissioners in publishing advertisements, in addition to those prescribed by law, which are deemed by them to be of general interest to the taxpayers. We are confronted, however, with the very plain and unequivocal statement contained in the last sentence of this section, to wit:

"This chapter shall not apply to the publication of notice of delinquent or forfeited land sales."

Since the General Assembly has provided a different schedule of fees for legal advertising involved in the publication of the formal notices prescribed by the statute for the sale of delinquent and forfeited lands, it is obvious that those rates will prevail over the general rates for legal advertising set out in Section 6251 supra. It also appears quite clear that the officers named in Section 6252 would be forbidden to provide for additional publication of those formal notices of delinquent and forfeited land sales for which specific procedure is provided, as already pointed out. The question remains whether or not those officers could lawfully order additional advertisements relating in a general way to the impending sale of these lands and urging the taxpayers to pay their taxes. It will be noted that the 1936 Opinion to which I have referred, did sanction an advertisement explaining the three different plans of payment of real estate taxes and also including a "request for the payment of real estate taxes which are delinquent."

Although that opinion does not elaborate on the possible conflict with the limitation contained in the last sentence of Section 6252, I agree with the opinion expressed.

Having in mind the character of the usual formal notices containing page after page of the lists of lots and parcels to be sold as delinquent or forfeited lands, it seems evident that they are not well calculated either to induce payment of the overdue taxes, or to attract buyers to the sale.

Furthermore, the publication of these notices for economy's sake, in newspapers in the smaller towns tends to keep the public in the larger cities from becoming aware of their contents. It is notorious that in many cases such lots are sold for a mere trifle—less than the tax and expense of sale, and that in very many cases these lots are not sold at all, and so remain for many years. The futility and inadequacy of the publication of the delinquent list as provided in Section 5704 supra, is further emphasized by another provision contained in that section, to wit:

“Lands which have been included in a previously published list shall not be included in the list herein provided for. * * * In subsequent years such list shall contain only those lands which become delinquent during the year preceding such publication. In any list there may be included lands which have been omitted from a prior list.”

Some of these formerly published lists may have been published several years previously.

This appears to me clearly to call for the exercise of the discretion conferred on the county officials to provide additional advertising designed to awaken the public to a matter which is certainly of great public interest. It is my opinion that an advertisement calling attention to these matters would be quite within the contemplation of Section 6252 supra. Furthermore, it would not be a re-advertisement of the lists and notices of sale referred to in the concluding sentence of that section, and therefore not within its inhibition. It is to be noted that the last sentence of said Section 6252 makes that section and the chapter of which it is a part inapplicable only to “the publication of notices of delinquent tax and forfeited land sales,” and it is my opinion that what the legislature was seeking to prevent was the waste of money that would result from a re-publication of those lists.

I realize that said Section 6252 gives a wide discretion to the officers named, and opens the way to possible abuse of discretion, but officers vested with discretion in any matter must use it reasonably, and are subject at all times to be stayed by the hand of the court if they abuse that discretion. And I do not deem it within my province to attempt to lay down any measure of reasonableness.

Accordingly, it is my opinion that under the provisions of Section 6252 General Code, the county officers named therein have authority to

publish such advertisements as they deem proper, designed to encourage the payment of delinquent real estate taxes, and to stimulate interest in pending sales of forfeited lands; such advertisements not to include, but to be supplementary to the formal lists and notices required to be published by Sections 5704 and 5751, General Code.

Coming to your second question as to the manner and length of publication of such additional advertisements relating to the matters under consideration, I again direct attention to the notices of the delinquent lists required to be published by Section 5704, General Code, and the notice of forfeited land sales required by Section 5751, General Code. Those sections require those notices to be published twice in two newspapers of opposite politics in the English language, published in the county and of general circulation therein, with certain exceptions where there are not such newspapers.

When, however, we come to Section 6252, General Code, which deals with certain required notices and also with the "other advertisements" which are discretionary with the officers named, we find other requirements as to publication. Here the statute makes exactly the same requirements at least in its first sentence, as to the required notices and the optional advertisements:

"A proclamation for an election, an order fixing the time of holding court, notice of the rates of taxation, bridge and pike notices, notice to contractors and such other advertisements of general interest as the auditor * * * may deem proper, shall be published in two newspapers of opposite politics * * * at the county seat * * *."

Then the statute proceeds to make additional requirements as to "such notices", to wit:

"In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of *such notice* shall be made in two newspapers of opposite politics of general circulation in such city * * *." (Emphasis added.)

Having in mind that all of the notices referred to in the above quotation are matters which are required by other statutes to be published, whereas the "advertisements" which we are considering are purely optional with the officers named, I conclude that the requirements of the law are sufficiently complied with by publishing these "other advertisements of

general interest" in two newspapers published at the county seat, and that the further requirement of publication in other cities of over eight thousand is intended only to apply to the notices which are required by law.

I am confirmed in my conclusion that the "notices" referred to embrace only those required by law, and differ from the permitted advertisements, by the fact that in the original act by which the section in question was enacted, 73 Ohio Laws, 75, the provision as to discretionary additional publications read: "such other *advertisements or notices* of general interest" etc. In 86 Ohio Laws, 258, this clause was amended by dropping out the words "or notices", so as to read as it now reads "such other *advertisements* of general interest" etc.

The 1936 opinion to which I have referred, supports this view, but passes it very casually. At page 273 of the opinion, after stating the conclusion embodied in the syllabus which I have quoted, it is said:

"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.*"

(Emphasis added.)

It is accordingly my opinion and you are advised that when additional advertisements relative to the payment of delinquent taxes or to impending sales of delinquent and forfeited lands are ordered as provided in Section 6252, General Code, such advertisements are required to be published in two newspapers published in the county seat, but are not required to be published in any newspapers published outside the county seat.

Respectfully,

C. WILLIAM O'NEILL
Attorney General