

397.

PUBLICATION—DELINQUENT LAND LIST AND DISPLAY—  
REQUIREMENT PUBLICATION IN TWO NEWSPAPERS—  
SUFFICIENTLY MET BY PUBLICATION IN ONE QUALI-  
FIED PAPER, WHERE NO OTHER NEWSPAPERS EXISTS  
—TAX—SECTIONS 5704, 5704-2 G. C.

*SYLLABUS:*

1. *A county auditor may only publish the delinquent land list and display notice under the provisions of section 5704, General Code, in those papers which are included within the definitive provisions of section 5704-2, General Code.*

2. *The requirement set forth in section 5704, General Code, that the*

*delinquent land list and display notice be published in two newspapers is sufficiently met by a publication in only one qualified newspaper under the provisions of section 5704-2, General Code, where no other qualified newspaper exists.*

COLUMBUS, OHIO, April 5, 1939.

HON CHARLES J. SCHWART, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR: This will acknowledge receipt of your recent request for my opinion which reads as follows:

“The Auditor of Fayette County is about to publish the display notices of the forthcoming publication of the delinquent land list and duplicate, which will be followed by publication of said delinquent land list, each pursuant to Section 5704 of the General Code. This section provides for publication in two newspapers in the county and of general circulation therein. Section 5704-2 of the General Code defines ‘newspapers’ as used in Section 5704. There is but one newspaper in Fayette County within the definition set out in 5704-2; and it is independent in politics and of general circulation in the County.

There is only one other ‘newspaper of general circulation in the county’, taking the expression in its popular sense; but it does not conform in a legal sense within the definitions of 5704-2, G. C. It does, I believe meet all the requirements set out in 5704-2, G. C., except that it has not been ‘published at regular intervals continuously during a period of at least twenty-four months or as a direct legal successor of such publication issued during the immediate prior period of at least two years’. With but this one exception it would qualify. It is a partisan paper, *published* in Washington C. H., Fayette County, but *printed* in Greenfield, Highland County.

Section 6255 of the General Code prescribes the necessary qualifications in which legal notices or legal advertising, generally, may be made. The second sentence of this section provides ‘Where there are not two or more newspapers published and printed \* \* \* in any county \* \* \* in the manner defined by the provisions of this act, then any legal publication required by law to be made in a newspaper or newspapers published or printed in a \* \* \* county \* \* \* may be made in any newspaper or newspapers regularly issued at stated intervals from a known office of publication located within the \* \* \* county \* \* \*.’

Section 5704 of the General Code requiring the county auditor to publish delinquent land lists, etc. in two newspapers, and there being but one newspaper in the county meeting all the

requirements of Section 5704-2, G. C., the auditor will, of course, advertise in it as one of the required two newspapers. *The Question on which your opinion is sought is, 'May the county auditor properly advertise in the newspaper mentioned second above which meets all of the requirements of Section 5704-2 with the one exception above mentioned, as the second required newspaper, or should the county auditor advertise only in the one newspaper which meets all of the requirements of Section 5704-2.'*"

Under the provisions of section 5704, General Code, immediately after each August settlement, the county auditor is required to make and certify a list in duplicate thereof of all delinquent lands in his county and deliver the duplicate to the county treasurer. Said section further provides that it shall be mandatory upon the county auditor to cause said list and duplicate to be published twice within sixty days after 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. The statute then provides for the publication of the display notice 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. It is further provided that in the event there is only one newspaper of a designated political affiliation published in the county and of general circulation therein, the display notice and the delinquent land list shall be published in it and also a newspaper independent in politics published and of general circulation in such county.

Pertinent to your inquiry, section 5704 further provides as follows:

"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."

The terms "newspaper" and "general circulation" as used in section 5704, General Code, are defined in section 5704-2, General Code, which provides as follows:

"As used in sections 5694 and 5704, as amended by this act, and in any other sections of the General Code, to which the same are applicable unless otherwise specifically defined therein, the term 'newspaper' shall be held to mean a publication bearing a title or name, published at a fixed place of business, regularly issued at fixed intervals as frequently as once a week and having a second-class mailing privilege, being not less than four pages of

five columns or more each; the primary function of such publication shall be to inform, instruct, enlighten and entertain, to which the general public as a whole will and does resort for intelligence of passing events of a political, religious, commercial and social nature, local and general current happenings, editorial comment, announcements, miscellaneous reading matter, advertisements and other notices, provided such a publication to be a newspaper of general circulation shall have been published at regular intervals continuously during a period of at least twenty-four months or as a direct legal successor of such publication issued during the immediate prior period of at least two years; circulated and distributed from an established place of business to subscribers or readers generally of all classes in the county or counties in which it is circulated, for a definite price or consideration for each copy at a fixed price per annum the circulation of which is proven bona fide at least fifty per cent thereof being paid for by regular subscribers or through recognized news dealers; and must publish an average of forty per cent news matters which has sufficient merit to have created a following of paid readers, to be a newspaper of general circulation."

You state in your letter that Fayette County has no partisan newspaper and only one independent newspaper of general circulation as defined in section 5704-2, supra. You state further that there is a newspaper, partisan in politics, which is printed in Highland County and published in Fayette County. You note, however, that the latter newspaper has not been published at regular intervals continuously during a period of at least twenty-four months or as a direct legal successor of such publication issued during the immediate prior period of at least two years and therein fails to be a newspaper of general circulation as defined in section 5704-2, supra.

In view of the fact that the newspaper printed in Highland County is not such a newspaper of general circulation as is contemplated by the express terms of section 5704, supra, as defined and explained by section 5704-2, supra, we are now called upon to determine whether or not that newspaper may be furnished the delinquent land list and display notice by the county auditor by virtue of another section of the General Code, Chapter 18, Title 2, Part Second of the General Code, is headed "Legal Advertising" and contains general provisions applicable to such advertising. Section 6255, General Code, under said Chapter, provides as follows:

"Whenever any legal publication is required by law to be made in a newspaper or newspapers published or printed in a municipality, county, or other political subdivision, the newspaper or newspapers used shall have at least one side thereof printed in

such municipality, county, or other political subdivision; and whenever any legal publication is required by law to be made in a newspaper or newspapers of general circulation in a municipality, county, or other political subdivision, *without further restriction or limitation upon a selection of the newspaper to be used*, such publication shall be made in a newspaper or newspapers at least one side of which is printed in such municipality, county, or other political subdivision, unless there be no such newspaper or newspapers so printed, in which event, only, such publication shall be made in any newspaper or newspapers of general circulation therein. Where there are not two or more newspapers published and printed in any municipality, county, or other political subdivision in the manner defined by the provisions of this act, then any legal publication required by law to be made in a newspaper or newspapers published or printed in a municipality, county, or other political subdivision may be made in any newspaper or newspapers regularly issued at stated intervals from a known office of publication located within the municipality, county, or other political subdivision. For the purpose of this act a known office of publication is a public office where the business of the newspaper is transacted during the usual business hours, and such office shall be shown by the publication itself." (Italics the writer's.)

It would seem apparent that the Legislature intended that the above provisions be applied to legal publications required to be made in newspapers of general circulation only in such cases where there are no further restrictions or limitations placed upon the selection of such newspapers. In the instant case, the required publications must be made in "two newspapers of opposite politics in the English language published in the county and of general circulation therein." The additional restrictions, obviously, make the provisions of the above quoted section inapplicable to the publications required by section 5704, supra.

The question now arises whether or not the provisions of section 6255, supra, should be applied to section 5704, supra, irrespective of the definitive provisions of section 5704-2, supra. Applying this question to the facts stated in your inquiry, we are called upon to determine whether under section 5704, supra, the delinquent land list and display notice may be published in the newspaper printed in Highland County by reason of section 6255, supra, even though said newspaper is not one of general circulation as defined in section 5704-2, supra.

The provisions of statutes are construed to give full force and effect to each and not to abrogate, defeat or nullify one by the interpretation of another. Too, a particular statute, e. g., section 6255, General Code, is ordinarily construed in connection with other statutes, e. g., sections 5704

and 5704-2, *supra*, unless a contrary construction is manifestly required. Section 6255, *supra*, sets forth certain rules applicable to general legal advertising, whereas section 5704-2, *supra*, deals with a particular type of legal advertising, to-wit, the publication of delinquent land and delinquent personal and classified property tax lists. The applicability of its provisions was discussed in Opinion No. 6348 of the Opinions of the Attorney General for 1936, the syllabus of which reads as follows:

“The provisions of Section 3 of Amended Senate Bill No. 466, of the first special session of the 91st General Assembly (Section 5704-2, General Code) which provisions define the term ‘newspaper’, have reference only to the publication of notices involving the subject matter set forth in Sections 5694 and 5704 of the General Code.”

As was stated by the Supreme Court of Ohio in the recent case of *State, ex rel., v. Quigley*, 134 O. S. 466:

“The purpose of the statute (section 5704-2, General Code) is to insure the publication of such delinquent land list *in periodicals having the specified requirements for an immediate prior period of at least two years*. The two sections of the statute are to be construed together. The requirements and qualifications must coexist, with the newspaper for such prior two-year period. The qualifications and requirements set forth must not only attach to the particular newspaper at the time of publication but also to its direct legal predecessor, if any, during the required period. To construe the two sections of the statute otherwise would render them ineffective in respect to political affiliation requirements.” (Words and figures in parenthesis the writer’s.)

It seems that a selection of newspapers can usually be made which will satisfy both general and specific statutes, but where such a selection is not possible the provisions of the statutes relating specifically to the publication in question should prevail.

In light of what our Supreme Court has said, it would defeat the purpose of section 5704, *supra*, if publications were made in those newspapers which come within the purview of section 6255, but fail to meet the requirements of section 5704-2, *supra*.

Therefore, in specific answer to your inquiry, I am of the opinion that under section 5704, General Code, the county auditor of Fayette County may not publish the delinquent land list and display notice in that newspaper which is printed in Highland County and published in Fayette County, because said newspaper is not included within the definition set forth in section 5704-2, General Code. Such publications may only be

made in the one newspaper of general circulation in Fayette County, as defined in section 5704-2, General Code.

In arriving at this conclusion, I am not unmindful of the fact that section 5704, *supra*, requires a publication of the delinquent land list and display notice in two newspapers. The Legislature, however, has set up certain requirements which newspapers must meet in order to qualify. If, as in the instant case, there are not two newspapers which qualify, the legislative mandate is sufficiently met by a publication in the only newspaper which so qualifies.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*