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NEWSPAPER—CHANGE IN OWNERSHIP—SUSPENSION OF PUBLICATION, APPROXIMATELY TWO MONTHS—CHARACTER AS “NEWSPAPER OF GENERAL CIRCULATION” NOT LOST—SECTIONS 6255, 5704-2 G. C.

SYLLABUS:

A change in ownership and a suspension of publication for a period of approximately two months does not cause a newspaper to lose its character as a “newspaper of general circulation” as that phrase is defined in Sections 6255 and 5704-2 of the General Code of Ohio.

Columbus, Ohio, March 23, 1946

Hon. Leo E. Carter, Prosecuting Attorney
Caldwell, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Where a weekly newspaper of general circulation suspends operation or publication on January 24, 1946, and is later sold to new owners who will start operation and publication on the week of March 25, 1946, is there any limitation or restriction under G. C. 6255 or 5704-2 which will bar or prohibit this newspaper from publishing certain notices from political subdivisions.

Your opinion on this question will be highly appreciated.”

From the manner in which you have limited the facts presented to me in your communication it is my understanding that you are concerned solely with the effect of a change in ownership and a suspension of publication for a period of approximately two months on the eligibility of the newspaper which is the subject of your inquiry for the publication of legal notices affected by the requirements of Sections 6255 and 5704-2, General Code. In the absence of anything to the contrary and in view of your reference to this newspaper as “a weekly newspaper of general circulation” I assume that at the time publication of this newspaper was suspended it was, under the provisions of Sections 6255 and 5704-2, General Code, a proper vehicle for the publication of the type of notices with which you are concerned. With this the question resolves itself into whether or not a change in ownership and a suspension of publication

for a period of approximately two months has caused this newspaper to lose its character as a "newspaper of general circulation" as that phrase is defined in the above mentioned sections of the General Code of Ohio.

Section 6255, General Code, reads 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."

This section sets forth certain legal requirements which apply to legal advertising generally. It is concerned with any legal publication required to be made "in a newspaper * * * published or printed in a municipality, county, or other political subdivision" and any legal publication "required by law to be made in a newspaper * * * 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". This section establishes certain requirements with reference to the place of printing such newspaper and provides alternative requirements in cases where the existing newspaper facilities of a municipality, county, or other political subdivision do not permit the fulfillment of the first

requirements. It does not include, however, the aspects of the definition of "a newspaper of general circulation" which relate to the essence of your inquiry. For this I must turn to Section 5704-2, General Code.

Section 5704-2, General Code, reads 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 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 or at a fixed price per annum, the circulation of which is proven bona fide by 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 matter which has sufficient merit to have created a following of paid readers, to be a newspaper of general circulation."

This section by its own terms is limited in its application to the publication of delinquent land lists as required by Section 5704, General Code, and delinquent personal and classified tax lists as required by Section 5694, General Code. In an opinion rendered by my immediate predecessor, Section 5704-2, General Code, was held to apply also to the publication of the list of lands omitted from foreclosure proceedings as required by Section 5718-2, General Code, and the notice of sale of forfeited lands as required by Section 5751, General Code, (1940 Opinions Attorney General, page 45).

That portion of Section 5704-2, General Code, which relates specifically to the essence of your inquiry is as follows:

“* * * 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; * * *”
(Emphasis added.)

It will be noted that the word “or” separates two distinct classes of publications. The one is a newspaper of established standing which is relying on its own publication for a period of at least twenty-four months to bring itself within the requirements of the legislative definition of the phrase “a newspaper of general circulation”. The other is a new publication which can not on its own record meet the requirement of publication for a twenty-four month period and is compelled to rely on the record of its predecessor. For newspapers in this second class publication by the predecessor newspaper for the “immediate prior” two year period is required. For newspapers of the first class all that is required is publication “at regular intervals continuously during a period of at least twenty-four months”. The statute does not provide that this twenty-four month period must be an immediately preceding period.

It is my opinion that the newspaper about which you are concerned falls within the first classification. It can not be considered the successor of another publication for it is the same publication that suspended operation on January 24, 1946. The new owners of the newspaper certainly would be considered the successors of the previous owners, but the change in ownership did not affect the identity of the newspaper itself.

Nor would a suspension of publication for a period of approximately two months cause this newspaper to become a successor publication. A successor in order to be a successor must have a predecessor. When an “immediate predecessor” and the “successor” are identical there is no succession and the words “successor” and “immediate predecessors” are not properly used. The newspaper which is published after the period of suspended publication is the same newspaper that was published before that period. There has been a change of ownership, but there has been no change in the name or identity of the newspaper itself.

Since the newspaper which is the subject of your inquiry falls within the first of the two classifications I have outlined and since a change in ownership and a suspension of publication for a period of approximately two months do not render it ineligible under the requirements pertaining to that classification, it is my opinion that this newspaper is a proper and legal vehicle for the publication of legal notices affected by the provisions of Sections 6255 and 5704-2, General Code.

In rendering this opinion I am not unmindful of the ruling of the Supreme Court of Ohio in *State, ex rel. Harris, et al. v. Quigley, County Auditor*, reported in 134 O. S. at page 466. A reading of the opinion rendered by the court in that case will disclose that the court was there concerned with a newspaper that had changed its name and was relying on the record of its predecessor to bring it within the requirements of Section 5704-2, General Code. That is not the case with respect to the newspaper which is the subject of this opinion.

Specifically answering your inquiry, it is my opinion that a change in ownership and a suspension of publication for a period of approximately two months does not cause a newspaper to lose its character as a "newspaper of general circulation" as that phrase is defined in Sections 6255 and 5704-2 of the General Code of Ohio.

Respectfully,

HUGH S. JENKINS,
Attorney General