

4041.

APPROVAL, LEASES TO LAND IN SHAWNEE TOWNSHIP, ALLEN COUNTY, OHIO, FOR STATE GAME REFUGE—CLARENCE N. BREESE AND SHAWNEE COUNTRY CLUB.

COLUMBUS, OHIO, March 13, 1935.

HON. WILLIAM H. REINHART, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval two leases executed to the state of Ohio by property owners in Shawnee Township, Allen County, Ohio, leasing and demising to the State for the purpose therein stated tracts of land in said township and county.

The leases here in question, designated with respect to the number of the lease, the owner of the property and the acreage of land covered by the respective leases, are as follows:

Number	Name	Acreage
2266	Clarence N. Breese	286
2267	Shawnee Country Club	147

Each and both of these leases are for a term of five years and in each instance the property described is leased to the state for the sole purpose of a state game refuge. And, in this connection, it is noted that as to each of these leases the Conservation Council, acting through you as Conservation Commissioner, has made an order setting aside the lands described in the lease for the purpose of a state game and bird refuge, as provided for in section 1435-1, General Code.

Upon examination of these leases, I find that the same have been executed and acknowledged by the respective lessors in the manner provided by law. I also find upon examination of the provisions of these leases and of the conditions and restrictions therein contained, that the same are in conformity with statutory provisions relating to the execution of leases of this kind.

I am accordingly approving these leases as to legality and form, as is evidenced by my approval endorsed upon the leases and upon the duplicate copies thereof, all of which are herewith returned.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4042.

SHERIFF—"PUBLIC AGENCY" AS DEFINED IN H. B. NO. 102, SECOND SPECIAL SESSION OF 90TH GENERAL ASSEMBLY—CONTRACT FOR LEGAL ADVERTISING IN NEWSPAPER NOT "PUBLIC CONTRACT" AS DEFINED IN H. B. NO. 102.

SYLLABUS:

1. *The sheriff is an officer such as is contemplated in House Bill No. 102 of the*

second special session of the 90th General Assembly, under the paragraph defining "public agency."

2. A sheriff may lawfully contract with a newspaper for legal advertising, such as foreclosure sales, even though that particular newspaper may not be able to furnish the affidavits provided for by section 2 of House Bill No. 102, as enacted by the 90th General Assembly, second special session.

3. A contract for legal advertising in a newspaper does not come under the contemplation of such statute defining "public contracts."

COLUMBUS, OHIO, March 14, 1935.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Receipt of your communication of recent date is acknowledged, which reads as follows:

"House Bill No. 102, which was passed by the General Assembly during the November 1934 session provides first that:

'Public agency includes every officer * * * holding office under authority or color of authority in this state or of any political subdivision thereof.'

And also that:

'Public contract means an agreement for the construction, alteration or repair of any public works or for the purchase of materials or supplies for any public use * * *.'

Our questions are as follows:

Would a contract for legal advertising in a newspaper come under the contemplation of this part of the statute defining 'public contract'?

Is the sheriff such an officer as contemplated under the paragraph defining 'public agency'?

Finally, can a sheriff contract with a newspaper for legal advertising such as foreclosure sales if that particular newspaper cannot furnish the affidavit as provided for in this act?"

Without quoting the definition of "public agency" which you embody in your letter, there would seem to be no good reason to doubt that, under its terms, the sheriff is a public agency.

"Public contract" is likewise defined by the Act concerning which you inquire, and you have set forth the pertinent definitive words.

From an examination of the purpose clause of House Bill No. 102, it will be noticed that it recites the means of its objectives as follows:

"* * * by requiring persons, firms and corporations desiring to perform public works under contract with the state or any subdivision thereof to show compliance with such laws."

The legislature must be presumed to have used words in their clear, unambiguous and generally accepted meaning, unless there appears something in the context or surrounding circumstances clearly justifying a different use or meaning. (*Kiefer vs. State*, 106 O. S. 285, 289). A contract for legal advertising is manifestly not an agreement for the construction, alteration, or repair of any public works within the purview of the statute.

Whether the situation about which you inquire involves a contract for the pur-

chase of materials or supplies for any public use, calls for an examination of the meaning of the words employed. Both Bouvier's and Black's Law Dictionaries define "materials" as matter which is intended to be used in the creation of mechanical structure, and as the physical part of that which has a physical existence.

The word "supplies" has a broader and more extensive meaning. In a general sense, it comprises anything yielded or afforded to meet a want. (*Farmers' Loan and Trust Company vs. New York*, 17 N. Y. Sup. Ct. (Bosw.) 80, 89). But the word as used in the statute must be fairly construed and restricted to mean that which may be purchased for the uses set forth in the paragraph defining public contracts, applying the reasonable and ordinary rules of interpretation to statutes of this character. Its meaning must be measured and controlled by the connection in which the word is employed, the evident purpose of the act, and the subject to which it relates.

Materials and supplies are limited by House Bill No. 102 to those purchased for public use. It would seem, therefore, that a contract for legal advertising cannot be a "public contract" in the sense in which the term is used in House Bill No. 102, if it is not an agreement for the purchase of materials or supplies for any *public use*. The italics term, so far as I am able to find, has never been defined in the sense of furnishing a rule applicable to all cases. However, in the sense here employed, it may well mean the buying of materials or supplies for public usefulness, utility or advantage. It would therefore appear that advertising cannot properly be classed in that category.

The character of legal advertising or publication is set forth more fully in judicial definitions, of which it seems necessary to quote but briefly. It is stated in *Montford vs. Allen*, 111 Ga. 18, as follows:

"'Advertisement' is 'notice given in a manner designed to attract public attention; information communicated to the public or to an individual concerned, by means of hand bills or the newspaper, etc.'"

See also *Haffner vs. Barnard*, 123 Ind. 429.

In the case of *LeRoy vs. Jamison*, U. S. 15 Fed. Cases, 373-376, the word "publication" is defined as the act by which a thing is made public. See also *State vs. Gray*, 32 Pac. 190, 191 (19 L. R. A. 134).

The Supreme Court of South Dakota, in the case of *Dowell vs. Board of Commissioners*, 66 N. W. 1079, 1080, passed upon an analogous question involving a statute of that state containing the following:

"The provisions of this section shall apply to all contracts for fuel, stationery, and all other articles for the use of said county * * *."

Plaintiff in error claimed that this legislative enactment embraced the printing of public notice of the sale of real property for taxes. The court, denying his contention, said:

"Certainly, printing legal notices cannot be covered by the terms, fuel, stationery, or other articles for the use of the county. We find nothing in the statutes demanding or even suggesting that a more extended meaning should be given the word than is ordinarily attached to it. Had the legislature intended to include the printing of legal notices—in itself an item of considerable expense and importance—it would certainly have made use of more definite and appropriate language than is employed in the amendment."

Whatever may be the power of the General Assembly to prescribe rules and regulations regarding the public works of the state, and for work for which its funds are to be expended, there is neither expressed nor implied in the act in question any legislative intention to amend or modify the statutes dealing with legal advertising, under which the publication of such advertisements, required by law, is allowed as a part of the costs in the case or proceeding.

In view of the foregoing, and specifically answering your questions, I am of the opinion that:

1. The sheriff is an officer such as is contemplated in House Bill No. 102 of the second special session of the 90th General Assembly, under the paragraph defining "public agency."

2. A sheriff may lawfully contract with a newspaper for legal advertising, such as foreclosure sales, even though that particular newspaper may not be able to furnish the affidavits provided for by section 2 of House Bill No. 102, as enacted by the 90th General Assembly, second special session.

3. A contract for legal advertising in a newspaper does not come under the contemplation of such statute defining "public contracts."

Respectfully,

JOHN W. BRICKER,
Attorney General.

4043.

BUDGET—TAXING AUTHORITY MAY NOT FILE AMENDED OR SUPPLEMENTARY BUDGET WITH COUNTY AUDITOR—BUDGET COMMISSION UNAUTHORIZED TO LEVY TAX IN EXCESS OF REQUEST BY TAXING AUTHORITY.

SYLLABUS:

1. *No authority exists for the taxing authority of a subdivision or other taxing unit, after adopting a budget as provided for by Section 5625-20, General Code, and submitting the same to the county auditor in pursuance of Section 5625-22, General Code, to file an amended or supplementary budget so far as the current needs of the subdivision or taxing unit for expenditures during the ensuing fiscal year are concerned, so as to affect tax levies to be made to meet those needs, and it is not within the power of a county budget commission or the Tax Commission of Ohio on appeal, to consider any needs of the subdivision or other taxing unit in fixing or adjusting tax levies for the subdivision or other taxing unit other than those set out in the original budget as it was filed with the auditor in pursuance of Section 5625-22, General Code.*

2. *The tax levying authority of a subdivision or other taxing unit is not authorized by law to levy taxes at a rate greater than is necessary to provide the necessary funds for the estimated needs of the subdivision or taxing unit during the ensuing fiscal year and it is the duty of a county budget commission and a county auditor in performing their duties as prescribed by Section 5625-24 and Section 5625-25, General Code to take this lack of authority into consideration.*

3. *It is the duty of the fiscal officer in each subdivision or other taxing unit to certify to the county auditor of the proper county on or before the first day of each fiscal year, the total amount from all sources available for expenditure from each fund set up in the tax budget of the subdivision or taxing unit, so that the actual balances*