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ADVERTISEMENT—DISPLAY — PUBLICATION IN NEWSPAPER HAVING LESS THAN 25,000 CIRCULATION OF METHODS OF PAYMENTS OF REAL ESTATE TAXES, ETC.—HOW LEGAL RATE DETERMINED.

SYLLABUS:

When a display advertisement explaining the three plans of payment of real estate taxes, and requesting payment of real estate taxes which are delinquent, is inserted by a county treasurer in a newspaper having less than twenty-five thousand circulation, in order to determine the number of squares used, each line of such advertisement shall be calculated as to the number of ems it contains in accordance with the size of type employed and then the number of lines of each type shall be determined in accordance with the number of ems contained in each line of the type in which the said line is set.

COLUMBUS, OHIO, May 22, 1936.

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

GENTLEMEN: This will acknowledge receipt of your recent inquiry, which reads as follows:

“In your opinion No. 5209, you held that a county treasurer has discretionary authority, under Section 6252, General Code, to enter into a contract to publish a display advertisement explaining three plans of payment of real estate taxes, and request payment of real estate taxes which are delinquent, provided such advertisement is published in two newspapers of opposite politics at the county seat, if there are such.

We respectfully request your written opinion upon the following:

When such display advertisement is printed in a newspaper, is it required to be measured in accordance with Section 6254, General Code, which provides that a square shall be the space occupied by 240 ems of the type used in printing such advertisement?

In display advertisements, different kinds of type are ordinarily used—larger type for the headlines, and smaller type for other lines.

Our question is whether each line shall be calculated as to the number of ems it contains in accordance with the size of

type, and calculate the number of lines of each type in accordance with the number of ems contained in each line of the type in which the line is set, and thereby determine how many squares are contained in the advertisement.

We do not understand by your opinion that a contract can be made in accordance with the space occupied by the advertisement, but upon the basis of 240 ems composing the square of the type in which the advertisement is set."

In the opinion to which you refer, the question was not presented as to the legal rate that might be agreed upon in connection with a contract to publish a display advertisement of the nature described therein. All that was to be determined in such opinion was whether or not there was statutory authority for the county treasurer to publish a display advertisement of the type described therein, and it was held that said county treasurer had such authority under the provisions of Section 6252, General Code.

In Opinions of the Attorney General for 1916, Vol. I, page 511, it was held, as disclosed by the syllabus:

"Advertisements deemed by the county auditor, treasurer, probate judge or commissioners to be of general interest to taxpayers under Section 6252, General Code, and ordered published, are to be paid for at the rate fixed in Section 6251, General Code."

In Annual Report of the Attorney General for 1913, Vol. I, page 358, is to be found the only opinion of this office giving consideration to the matter of display advertisements. The first two paragraphs of the syllabus of this opinion are:

"Legal advertising shall be done according to Section 6254, General Code, which provides that advertising shall be set up in compact form. *Display ads* not complying with this section are unlawful.

The rates for advertising as provided in Section 6251, General Code, are the maximum rates, and work may be contracted for at a lower rate." (Italics the writer's)

In Opinions of the Attorney General for 1928, Vol. II, page 1263, it was held, as disclosed by the syllabus:

"The rates prescribed by Section 6251, General Code., that may be charged and received by publishers of newspapers for

the publication of advertisements, notices and proclamations required to be published by a public officer of a city or other political subdivision are maximum rates only, and a city through its public officers may enter into a contract with the publisher of a newspaper therein for the publication of the financial report of the chief fiscal officer of such city, provided for by Section 291, General Code (112 v. 355), at rates less than those provided for by Section 6251, General Code, and in such case the publisher of the newspaper publishing such report is entitled to recover only the amount provided for in said contract."

In such opinion the then Attorney General cited the Supreme Court case of *McCormick v. The City of Niles* 81 O. S., 246, which held that the rates prescribed by Section 6251, General Code, providing for the amount that newspapers may charge and receive for publications of the matters referred to in said section are maximum rates only and do not have the effect of preventing contracts for publications at rates less than those provided for by said section.

He also cited the Supreme Court case of *The City of Cleveland v. The Legal News Publishing Company*, 110 O. S., 360, in which it was concluded that the provisions of Section 6251, General Code, did not permit public authorities and a newspaper publisher entering into an agreement for the payment of a greater rate for the publication of advertisements than that therein fixed.

With this in mind, the provisions of Sections 6251 and 6254, General Code, should now be examined. Such sections read:

"Section 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."

Section. 6254. A square shall be a space occupied by two hundred and forty ems of the type used in printing such advertisements. Legal advertising shall be set up in a compact form, without unnecessary spaces, blanks or headlines and printed in type not smaller than nonpareil. The type of whatever size used must be of such proportions that the body of the capital letter M be no wider than it is high and all other letters and characters in proportion. Except as may be done under Sections 1695 to 1697, inclusive, of the General Code, all legal advertisements or notices shall be printed in newspapers published in the English language only."

I presume your question involves the rates that may be charged by newspapers having a circulation of less than twenty-five thousand.

Section 6251, General Code, provides that the maximum rates shall be for the first insertion "one dollar for each square, and for each additional insertion, * * * fifty cents for each square."

Section 6254, General Code, defines the term "square" as used in Section 6251, General Code, to be "a space occupied by two hundred and forty ems of the *type* used in printing such advertisements."

In Opinions of the Attorney General for 1915, Vol. I, page 758, it is stated, after quoting the first sentence of Section 6254, General Code, *supra*:

"An 'em' is defined by the Standard Dictionary as follows:

'(2) Print—The square of the body of any size of type, used as a unit of measurement in computing the cost of composition.'

'Em' as defined by Webster's Dictionary means:

'(Print)—The portion of a line formerly occupied by the letter 'm', when a square, used as a unit for measuring printed matter.'

An 'em' defined in a work called 'Proof Reading and Punctuation' by Adele Millicent Smith, as follows:

'Em—the square of the body of a type. The amount of matter composed is estimated by ems.'

The New English Dictionary defines 'em' as follows:

'In printing the square, formerly of the type "m" used in typography as the unit for measuring and estimating the amount of printed matter in a line, page, etc.'

In 'The Americana,' in an article on 'Printing,' the writer states what constitutes a font of type, and after giving a list of one hundred and twenty-nine characters, further states:

'Besides this, there are required for filling the blanks between words, at the end of lines, etc., four sizes of spaces and four of quadrats. (The former and the smallest of the latter being subdivisions of the em (m) or square of the size of the type, one equal to it and the other two multiples of it) making altogether 137 sorts.'

In the New International Encyclopedia under the heading 'Printing', it is stated as follows:

'The printer's unit of measurement by which the compositor is paid is the em in America and the en in Great Britain. The em is the square of the body of the type selected; the number of ems that fill a line multiplied by the number of lines in a page gives the total number of ems of the type in the page.'

In a book entitled 'The Practice of Typography', by Theodore Low Devinnie, at page 113, it is stated:

'An em of any type is the square body of that type. As it is impracticable to count all of the bits of metal in a page the e is made a unit of superficial measure. The space that can be covered by one thousand em quadrats is reckoned as one thousand ems.'

From the above it can readily be seen that the em referred to in Section 6254 is what is familiarly known by the printers as the 'em quad', which, of course, is the square of the body of the type.

A 'square' is defined by the Standard Dictionary as follows:

“Square”—a given space in the column of newspapers or the like, considered as a unit of measurement for advertisements and ranging in depth from column width down to an inch; now mostly superseded by the inch or line as a unit.

Webster's Dictionary defines 'square':

'(Print)—a certain number of lines forming a portion of a column nearly square; used chiefly in reckoning the prices of advertisements in newspapers.'

However, Section 6254 itself defines what the square shall be in that it states that it shall be a space occupied by 240 ems.

With the above definitions in mind it can be readily seen that the unit of measurement of advertisements under Section 6254 is the em of the type used in printing the advertisement in question, and has been so held by this department in an opinion to your department under date of January 19, 1915."

From the foregoing analysis of the meaning of the first sentence of Section 6254, General Code, *supra*, it would appear that the method of calculation as suggested in the next to the last paragraph of your letter is the proper method of calculation to conform to the meaning of the first sentence of Section 6254, General Code.

I am therefore of the opinion, in specific answer to your question, that when a display advertisement, explaining the three plans of payment of real estate taxes, and requesting payment of real estate taxes which are delinquent, is inserted by a county treasurer in a newspaper having less than twenty-five thousand circulation, in order to determine the number of squares used, each line of such advertisement shall be calculated as to the number of ems it contains in accordance with the size of type employed and then the number of lines of each type shall be determined in accordance with the number of ems contained in each line of the type in which the said line is set.

Respectfully,

JOHN W. BRICKER,
Attorney General.