

In the case stated in your inquiry, if the boy can be said to be a ward of Mr. V., who is an actual resident of Jackson Township School District, or if the boy supports himself by his own labor in Jackson Township School District, and if the said district does not maintain a high school of the grade to which the boy is entitled to admission, within four miles of the residence of Mr. V., or furnish transportation to such a school within the district, it is liable for the tuition of the pupil in St. Johns district where he has been attending school. If on the other hand the step-parents stand in loco parentis to the boy, retain charge of him and pay his board with Mr. V. merely for the purpose of his attending St. Johns high school, the school district wherein these step-parents are actual residents would be liable for the boy's tuition in St. Johns school and would be liable for his tuition if he attended a high school in Jackson Township School District and resided with Mr. V. under such circumstances, if the district wherein the step-parents reside does not maintain a high school of the grade to which the boy is entitled to admission.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1292.

TAX AND TAXATION—PUBLICATION OF RATES—MANDATORY—HOW PUBLISHED.

SYLLABUS:

1. *By the terms of Section 6252, General Code, the publication of the rates of taxation should be made in two newspapers of opposite politics at the county seat, if there be such newspapers published thereat; and such publication should be made for six successive weeks as provided in Section 2648, General Code. If two newspapers of opposite politics are not published at the county seat, publication should be made in one such newspaper if there be one. There is no authority for the publication of such notice in a newspaper which is not published at the county seat except in cities other than a county seat having a population of eight thousand inhabitants or more as provided in Section 6252, General Code.*

2. *Under the provisions of Sections 2648 and 6252, General Code, it is mandatory upon the county treasurer to publish the rates of taxation.*

COLUMBUS, OHIO, November 25, 1927.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

Under Section 2648 of the General Code of Ohio, construed in connection with Section 6252, General Code, by authority of *State vs. Commissioners*, 7 ONP 239, it has been called to my attention by the treasurer of Brown County, Ohio, together with the editor of the Ripley Bee, a Republican newspaper published at Ripley, Ohio, in said Brown County, that it is necessary to publish the rates of taxation in both the Democratic paper, published at the county seat, and the Republican paper (which is the only Republican newspaper in Brown County) published at Ripley, Brown County.

Referring you to 2648, General Code, it is compulsory to publish such rates of taxation in a newspaper having general circulation in the county. Construing Sections 2648 and 6252 together, in accordance with the above *Nisi Prius* decision, it then appears that it would be necessary for the treasurer to publish in two newspapers of opposite politics, at the county seat, *if there be such newspaper published thereat.*

Inasmuch as there is only one newspaper, to-wit, Democratic, published at the county seat, is it necessary to publish the rates of taxation in a newspaper of opposite politics, to-wit, Republican, if this newspaper be published in Brown County, and yet not at the county seat? If there is but one newspaper published in the county seat, in accordance with the two sections construed, together, is it necessary to publish in either newspaper? Further, is it mandatory or merely permissive, for the treasurer to make said publication of rates of taxation at all?"

Your question involves the consideration of Sections 2648 and 6252 of the General Code. Section 2648 of the General Code reads as follows:

"Upon receiving from the county auditor a duplicate of taxes assessed upon the property of the county, the county treasurer shall immediately cause notice thereof to be posted in three places in each township of the county, one of which shall be at the place of holding elections in such township, and also be inserted for six successive weeks in a newspaper having a general circulation in the county. Such notice shall specify particularly the amount of taxes levied on the duplicate for the support of the state government, the payment of interest and principal of the public debt, the support of state common schools, defraying county expenses, repairing of roads, keeping the poor, building of bridges, township expenses and for each other object for which taxes may be levied on each dollar valuation."

The above section was originally passed March 12, 1831, as Section 13 of an act contained in 29th Ohio Laws, 291. This section read in part as follows:

"The county treasurer shall, between the first and fifteenth days of August annually, receive from the county auditor of his county, a duplicate of the taxes assessed by such auditor; and immediately after receiving said duplicate he shall cause notice to be posted up in three places in each township throughout the county, one of which shall be the place of holding elections in the township and also to be inserted in some newspaper having a general circulation in his county, for six consecutive weeks. * * * "

This section, which was formerly Section 1087, Revised Statutes, was amended May 1, 1854, by an act in 52 Ohio Laws, 124, but the provision with reference to publication in some newspaper was not changed. This provision read the same until the adoption of the General Code in 1910, when the language was changed to its present form, no change being made in the substance. By the terms of this section as it now reads publication is required to be made for six consecutive weeks in some newspaper having general circulation in the county.

Section 6252, General Code, which was formerly Section 4367, Revised Statutes, provides as follows:

"A proclamation for an election, an order fixing the times of holding court, notice of the rates of taxation, bridge and pike notices, notice to con-

tractors 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 at the county seat, if there be such newspapers published thereat. In counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of such notices shall be made in two newspapers of opposite politics in such city. This chapter shall not apply to the publication of notices of delinquent tax and forfeited land sales."

The town of Ripley to which you refer is a village according to the census of 1920, and therefore the provisions of Section 6252, supra, as to population in cities of eight thousand inhabitants or more, does not apply to the case cited by you.

The provisions of said Section 6252, General Code, were first enacted by an act passed May 25, 1876, (73, O. L. 75). Section 2 of said act read in part as follows:

"That hereafter all proclamations by sheriffs for elections; orders fixing times for holding courts; treasurers' notice of rates of taxation; * * * shall be published in two newspapers, one of each political party, if there be two papers of different political principles printed within said county in each of the several counties of the state."

It will be observed that this section, as it then read, provided for the publication in two papers printed within said county but did not require such papers to be published at the county seat.

This section was amended by an act passed April 12, 1899, (86 O. L. 258) so as to read in part as follows:

"Every proclamation for an election, order fixing the times of holding court, notice of the rates of taxation, * * * shall be published in two newspapers of opposite politics, at the county seat, if there be such published at the county seat, * * * ."

The above amendment provides that the matters therein specified "shall be published in two newspapers of opposite politics, at the county seat, if there be such published at the county seat." This is the first restriction found in the statutes which requires such publication to be made in newspapers at the county seat, and this provision is now found in the present form of Section 6252, General Code.

In the case of *State of Ohio vs. The Board of Commissioners of Defiance County*, 7 O. N. P. 239, the first and second headnotes read as follows:

"1. Section 1087 R. S. requires notices of the rates of taxation, and abstracts of the valuation of property, and the levies of taxes for various purposes, in the several towns and townships of each county of the state, to be published by the county treasurer in newspapers having a general circulation throughout the county.

2. The abstracts of valuation and levies above mentioned are of such general interest to the taxpayer that they should be published in two newspapers of opposite politics published at the county seat, as provided in Section 4327, of the Revised Statutes. Section 4367, of the Revised Statutes, so far as it requires this publication to be in newspapers published at the county seat, is mandatory."

As above stated, Sections 2648 and 6252, General Code, were formerly Sections 1087 and 4367, Revised Statutes, respectively. With reference to the sections the court at pages 240 and 243 said:

"Section 4367 is wholly silent as to who shall cause the notice to be published, when it shall be published, or how long it shall be published. Surely it cannot be claimed that the whole of Section 1087 is thus, by implication, repealed, while none of these provisions are incorporated in Section 4367. But again: All laws in *pari materia*—that is, laws on the same subject, must be construed with reference to each other. This is a principle of construction too familiar to need citations. Sections 1087 and 4367 are laws upon the same subject. Another rule equally familiar to all lawyers is, repeals by implication are not favored, and a subsequent enactment will not be held to repeal a prior one except to the extent that the latter is inconsistent with the former. Taking these rules as our guide, and bearing in mind the object the legislature had in view in requiring the publication of notice, was, to bring knowledge home to the taxpayer of the rate of taxation and the amount of taxes proposed to be collected—the inevitable conclusion is that Section 1087 is not repealed by implication, and that Sections 4367 and 1087 are to be construed together. It is clear then, that publication of notice provided for in these two sections must be in papers having a general circulation within the county.

* * * * *

The treasurer's duties are plainly statutory, and he has no power to go beyond the terms of the statute, and all persons dealing with him must take notice of the extent of his powers.

Suppose the treasurer, considering that the only object to be accomplished by publication was to give the taxpayer notice, should conclude that the notice ought to be published in a German newspaper, or that notice would be more effectually served, and would be just as economical, to send a copy of the rates and amount of taxes proposed to be collected to each taxpayer through the mails; surely nobody would claim that expenses thus incurred by publishing notice in a German newspaper, or by sending notice directly to the taxpayer, could be legally paid out of the county treasury.

The law does not authorize the treasurer to provide for the publication of notice in any papers except such as are mentioned in Section 4367, and as the Hicksville Independent does not fall within its provisions, it follows that this contract with that paper for the publication of the rates of taxation and an abstract of the amounts of taxes proposed to be collected, is void, and it would be a misapplication out of the public funds."

It was held in an opinion of this department, reported in the Annual Report of the Attorney General, 1910, page 815, as follows:

"You point out the fact that Section 2648 provides simply that such notice 'shall be inserted for six consecutive weeks in a newspaper having general circulation in the county.' However, Section 6252 of the General Code is to be read in connection with Section 2648 of the General Code. * * *

The notice provided in Section 2648 of the General Code is required to 'specify particularly the amount of taxes levied on the duplicate' for the various purposes for which taxes are to be levied, and, in my judgment, is such a notice as is contemplated by Section 6252 of the General Code. From all the foregoing it follows that said notice should be published in two newspapers of opposite politics at the county seat, if such there are."

In an opinion to the Bureau of Inspection and Supervision of Public Offices, Opinions of the Attorney General for 1915, page 1925, the first branch of the syllabus reads:

"The provisions of Section 6252, General Code, requiring the publication of the 'times for holding courts' to be made in two newspapers of 'opposite politics' as therein specified, are supplementary to and control the provisions of the special statutes requiring such publication to be made in two or more newspapers of general circulation."

In an opinion reported at page 1771, Opinions of the Attorney General for 1916, it is stated:

"Section 6252, General Code, provides that if there are two newspapers of opposite politics at the county seat publication shall be made there. And if there are one or more newspapers of opposite politics of a city of eight thousand inhabitants or more not a county seat in the county, such publication should be made there. There is nothing in the statute as to the number of insertions to be made. It may be possible that in certain county seats there are not two newspapers of opposite politics published, and if such is the case then the publication would be made in only one newspaper."

It appears from the decisions and opinions above cited, that the provisions of Section 6252, General Code, are to be held as supplementary to the provisions of Section 2648, General Code. It is clear also, that the two sections are in *pari materia* as to the question now under consideration and that they are to be read and construed together. A newspaper meeting the requirements of Section 6252, General Code, as being published at the county seat, would also almost universally meet the requirements contained in Section 2648, General Code, that such publication shall be made in a newspaper having a general circulation in the county.

It follows, therefore, that the provisions of Section 6252, General Code, are supplementary to Section 2648, General Code, and that they limit the publication to newspapers which are published at the county seat.

In an opinion found in Opinions of the Attorney General, 1918, at page 307, the first paragraph of the syllabus reads as follows:

"Publication of the rates of taxation shall be made in two newspapers of opposite politics at the county seat, if there be such newspaper published thereat as provided in Section 6252, General Code, and such publication shall be made for six successive weeks as provided in Section 2648, General Code. There is no authority therefore for the publication of such notice in a newspaper which is not published at the county seat, except in cities other than a county seat having a population of eight thousand inhabitants or more, as provided in the last sentence of Section 6252, General Code."

It is my opinion, therefore, that as provided in Section 6252, General Code, the publication of the rates of taxation should be made in two newspapers of opposite politics at the county seat, if there be such newspapers published thereat and that such publication shall be made for six successive weeks as provided in Section 2648, General Code. If two newspapers of opposite politics are not published at the county seat, publication should be made in one such newspaper if there be one. There is no authority for the publication of such notice in a newspaper which is not published at

the county seat except in cities other than a county seat having a population of eight thousand inhabitants or more as provided in Section 6252, General Code.

You also inquire as to whether it is "mandatory or merely permissive for the treasurer to make said publication of rates of taxation." It will be noted that Section 2648, General Code, provides in part that:

"Upon receiving from the county auditor a duplicate of taxes assessed upon the property of the county, the county treasurer shall immediately cause notice thereof to be posted * * * and also be inserted for six successive weeks in a newspaper having a general circulation in the county."

This language is mandatory and it was so held in the case of *State of Ohio vs. The Board of Commissioners of Defiance County*, supra. In an opinion of this department, Opinions of the Attorney General, 1918, page 1611, the syllabus reads as follows:

"The county treasurer may be compelled by mandamus to make the publication of the tax rate in two newspapers as provided in Sections 2648 and 6252, G. C."

It is stated in said opinion that:

"It will be seen from a reading of these decisions and opinions that Section 6252 is supplemental to Section 2648 and that the two sections are in *pari materia* and are to be read and construed together. This being so a mandamus proceeding to compel the county treasurer to publish the tax rate would not be brought under either one of the sections separately, but by virtue of the provisions of both sections, since the two sections must be read and construed together to determine the treasurer's duty.

* * * * *

All the authorities are agreed that mandamus will lie to compel the publication."

In Opinion No. 194 of this department, rendered March 16, 1927, to Hon. D. A. Baird, Prosecuting Attorney, Elyria, Ohio, after quoting Section 2648 of the General Code, it was stated as follows:

"It is noted that this section specifically commands the county treasurer to publish the rates of taxation in a newspaper having general circulation in the county. Section 6252, General Code, provides that notice of the rates of taxation shall be published in two newspapers of opposite political parties at the county seat, if there be such newspapers published thereat. It is evident that under the provisions of these two sections it is mandatory upon the county treasurer to publish the rates of taxation."

It is therefore my opinion that under the provisions of Sections 2648 and 6252, General Code, it is mandatory upon the county treasurer to publish the rates of taxation.

Respectfully,
EDWARD C. TURNER,
Attorney General.