

330.

COUNTY AUDITORS—PUBLICATION OF DELINQUENT TAX LIST—TWO NEWSPAPERS.

SYLLABUS:

The publication requirements set forth in Section 5694, General Code, do not permit the county auditor to publish the list to be advertised in more than two papers meeting the requirements of that section.

COLUMBUS, OHIO, March 25, 1937.

HON. R. E. SNEDDEN, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR: I acknowledge receipt of your recent communication which reads as follows:

“Inquiry has been made in this office regarding General Code, Section 5694.

The question is: ‘Would it be permissible for the County Auditor to advertise the delinquent tax list and notice in a newspaper of a known political affiliation, and then the list and notice which is to be advertised in the other paper of opposite political affiliation, be split up and advertised in two papers of the latter class, whose circulation covered different areas in the County and the list as advertised in each of these papers covered the land that the circulation of each paper covered?’

I recognize that the statute specifies two newspapers of opposite politics wherever a designation appears regarding where the advertising is to take place.”

Although the facts set forth in your letter concern delinquent real estate tax lists, your questions have specifically requested an interpretation of General Code, Section 5694. Accordingly this opinion will be confined to that section (G. C. Sec. 5694) which reads as follows:

“It shall be mandatory upon the county auditor to cause a copy of such delinquent personal and classified property tax list and duplicate, herein provided for, to be published twice, within sixty days after delivery of such list and duplicate to the county treasurer, in two newspapers of opposite politics in the English language published in the county and of general circulation therein; provided, however, that before such publication it shall also be mandatory upon the county auditor to cause a

display notice of the forthcoming publication, of such delinquent personal and classified property tax list and duplicate, to be inserted 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. Copy for such display notice shall be furnished by the county auditor to the newspapers selected to publish such delinquent tax lists simultaneously with the delivery of the lists to the county treasurer. If there is only one newspaper of a designated political affiliation published in the county and of general circulation therein, such display notice and delinquent personal and classified property tax lists shall be published in it and also in a newspaper independent in politics published and of general circulation in such county. Where there is no newspaper of designated political affiliation published in such county then publication of such notice and delinquent personal and classified property tax lists shall be made in two newspapers independent in politics published in such county and of general circulation therein. Publication of the delinquent lists may be made by a newspaper in installments, providing the complete publication thereof is made twice during said sixty day period. Payment for the publication of such lists shall be at the rate provided for the publication of the delinquent land lists in Section 5706 of the General Code."

You will note that the words "shall" and "mandatory" are both used in the above quoted section. The ordinary construction of "shall" is that it creates a mandate requiring something to be done. There are occasions, however, when the rule of statutory construction permits "shall" to be construed as "may." Such construction is permissible only when it is necessary to give effect to other language in a section and to carry out the clear intent of the legislature. A clear statement as to this sort of interpretation was given in *Devine vs. The State ex rel. Tucker, Jr.* 105 O. S. 288, where the following appears:

"An act of the general assembly will not be regarded as directory or discretionary as to those upon whom it is intended to operate, unless such directory or discretionary character clearly appears from the entire terms of the act."

An examination of the section before us reveals that the legislature has not only set forth certain requisites, but has specifically provided that these requisites "shall be mandatory." As further evidence that

there was to be no discretion as to the carrying out of these requirements, it has provided for certain contingencies such as where there is only one political newspaper, one independent newspaper, or where publication is to be made in installments, etc. There can be no doubt that the only instance where discretion may be exercised in Section 5694, *supra*, is in the choice between newspapers meeting the requirements imposed by the statute.

In interpreting the language hereinabove quoted, all the provisions of Section 5694, *supra*, must be taken into consideration and such interpretation must be made so that every separate essential will be complied with. (*Doster vs. Cleveland*, 20 O. D., 548).

If this rule which has been well established in Ohio is followed, the provision for "two newspapers" as set forth in this section makes a definite requirement which is in no way ambiguous. Moreover, it does not appear that there is any basis for giving this language so liberal a construction that "two" could mean more than two.

It is therefore my opinion that the publication requirements set forth in Section 5694, General Code, do not permit the county auditor to publish the list to be advertised in more than two papers meeting the requirements of that section.

Respectfully,

HERBERT S. DUFFY,
Attorney General

331.

APPROVAL — ARTICLES OF INCORPORATION OF THE
PIONEER MUTUAL CASUALTY COMPANY OF OHIO.

COLUMBUS, OHIO, March 25, 1937.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I have examined the articles of incorporation of The Pioneer Mutual Casualty Company of Ohio which you have submitted for my examination.

Finding the same not to be inconsistent with the Constitution or laws of the United States or of the State of Ohio, I have endorsed my approval thereon, and return the same to you herewith.

Respectfully,

HERBERT S. DUFFY,
Attorney General