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NEWSPAPERS — PUBLISHERS WHO ADVERTISE DISPLAY NOTICE, SECTION 5704 G. C., ENTITLED TO BE PAID RATE ESTABLISHED BY SECTION 6251 G. C.—WHERE NOTICE REQUIRED TO BE ATTACHED TO LIST OF DELINQUENT LANDS IS PRINTED, SECTION 5704 G. C., PUBLISHER COMPENSATED AT RATE PRESCRIBED, SECTION 6251 G. C.

SYLLABUS:

1. *Publishers of newspapers who advertise the display notice provided in Section 5704, General Code, pursuant to the provisions thereof, are entitled to be paid therefor at the rate established by Section 6251, General Code.*

2. *The publisher of a newspaper who prints the notice required to be attached to the list of delinquent lands pursuant to the provisions of Section 5704, General Code, is entitled to be compensated therefor at the rate prescribed by Section 6251, General Code.*

Columbus, Ohio, October 23, 1940.

Hon. Hubert D. Lappen, Prosecuting Attorney,
Logan, Ohio.

Dear Sir:

Your recent request for my opinion propounds two questions, viz., (1)

are publishers of newspapers entitled to be paid for printing the display notice pursuant to Section 5704, General Code, at the rate established by Section 6251, General Code, and (2) where the list of delinquent lands and the notice required to be attached thereto by Section 5704, General Code, are printed in a newspaper pursuant to the provisions of such section, may the publisher of such newspaper be compensated for printing the notice attached to such list at the rate prescribed in Section 6251, General Code, or does Section 5706, General Code, limit his compensation therefor to the sums set forth therein.

Sections 5704 and 5706, General Code, respectively, provide as follows:

Sec. 5704.

“Immediately after each August settlement, the county auditor shall make and certify a list and duplicate thereof of all the delinquent lands in his county. The first of such delinquent land lists so to be made by the county auditor shall also contain all lands theretofore certified as delinquent to the auditor of state and not redeemed, or with respect to which an action to foreclose the tax lien thereon has not been filed. Such delinquent land list and duplicate shall contain the description of the property as it appears on the tax list, the name of the person in whose name it is listed and the amount of taxes, assessments, and penalty thereon due and unpaid, together with the amount of interest, if any, accrued thereon to the date of such August settlement. The original land list shall be kept in the office of the county auditor and the duplicate shall be delivered to the county treasurer. Interest at the rate of eight percent per annum on the total amount of taxes and assessments due and unpaid with respect to each tract or lot, or part of lot entered upon such delinquent tax list and duplicate, shall be charged thereon from the date of such settlement.

It shall be mandatory upon the county auditor to cause a list of the lands on such delinquent land list and duplicate to be published twice, within sixty days after the delivery of the 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 the delinquent land 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. The copy for such display notice shall contain the applicable provisions of section 2653 of the General Code, the times and methods of payment of taxes provided by law, together with any other information which the county auditor may deem pertinent to the purpose of the notice, and shall be furnished by the county auditor to the newspapers se-

lected to publish such delinquent land lists simultaneously with the certification 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 land 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 land lists shall be made in two newspapers independent in politics published in such county and of general circulation therein. Publication of the delinquent land lists may be made by a newspaper in installments, providing the complete publication thereof is made twice during said sixty day period.

There shall be attached to the list a notice that the delinquent lands will be entered upon the foreclosure list, as provided by law, unless the taxes, assessments, penalties and interest are paid."

Sec. 5706.

"The publishers of newspapers, for advertising the delinquent and forfeited list of the several counties, and the notice of sale, shall be entitled to receive a sum not exceeding the following rates: For the notice of sale, ten dollars; for designating the several school districts, townships, villages and cities, and the several wards in a city, fifty cents each; and for each tract of land, city or town lot, or part of lot, contained in each such lists, thirty cents. A greater sum than one-half of the taxes and penalties, due on any tract, lot or part of lot, shall not be allowed for advertising such tract, lot or part of lot. Providing, however, newspapers having a circulation of over twenty-five thousand shall charge and receive for such advertisements, notices and proclamations, rates charged by them on annual contracts for like amount of space to other advertisers in its general display advertising columns; and the publishers shall make and file with this 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."

You will note that Section 5706, General Code, does not provide the compensation to be paid publishers of newspapers for printing the display notice provided for in Section 5704, General Code, and there is no other statute making specific provision therefor. The compensation for publishing such display notice must therefore be governed by the provisions of Section 6251, General Code, which provides in part as follows:

"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 * * *."

It will also be noted that while Section 5706, General Code, provides in detail the sums which shall be paid to publishers of newspapers for advertising the list of delinquent lands, no provision is made with respect to the notice attached thereto. It is provided in such section that such publishers shall be entitled to receive ten dollars for advertising the notice of sale but no such provision is contained therein with respect to advertising the notice attached to the list of delinquent lands. I have been unable to find any other statute making specific provision for the compensation to be paid for advertising such notice to be attached to the list of delinquent lands.

Since the General Assembly has not made any specific provision with reference to the compensation to be paid publishers of newspapers for advertising such notice, the sums to be paid therefor cannot be regarded as "otherwise fixed by law" within the meaning of Section 6251, General Code, and such section would therefore control as to the rate to be paid for publishing such notice.

You are therefore advised, in specific answer to your questions, that:

1. Publishers of newspapers who advertise the display notice provided in Section 5704, General Code, pursuant to the provisions thereof, are entitled to be paid therefor at the rate established by Section 6251, General Code.

2. The publisher of a newspaper who prints the notice required to be attached to the list of delinquent lands pursuant to the provisions of Section 5704, General Code, is entitled to be compensated therefor at the rate prescribed by Section 6251, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.