

"The one year provision of Section 12912, G. C., serves merely as a prohibition against an officer described therein acting as commissioner, architect, superintendent or engineer in work undertaken or prosecuted by such corporation or township within one year after his term had expired.

* * * * *

A former director of public service may act as street inspector within one year after his term of office expires, no matter whether his compensation is paid by the city or the contractor, or paid by the city and afterwards deducted from the estimate allowed the contractor on his contract."

And again, in 1922, this department held:

"Under the provisions of Section 12912, General Code, a member of council of a municipality, may upon the expiration of his term of office as councilman and within the one year limitation prescribed by the section, qualify and act as director of public service of the same city, said section prohibiting said officer only from acting as commissioner, architect, superintendent, or engineer in work undertaken or prosecuted by the corporation during the term for which he was elected or for one year thereafter."

I am not unmindful of the holding of the Circuit Court in the case of *State ex rel Winn vs. Wichgar, Auditor*, 17 O. C. D. 733, which was considered in several of the Attorney General's opinions hereinbefore referred to. This case was decided in 1905. The opinion is a very short per curiam opinion, and reads as follows:

"A member of the board of health of a municipal corporation is an officer of such corporation and under Lan. R. L. 10668 (R. S. 6976) (is ineligible) to the appointment of district physician by such board during the term for which he was appointed, or for one year thereafter and without rendering services under such position can not recover compensation therefor."

Inasmuch as the interpretation given to Section 6976, Revised Statutes, by the attorney general in his opinion of 1910 above cited, has been consistently adhered to by succeeding attorneys general and a like interpretation has been accorded to the language of Section 12912, General Code, in the several rulings of this department above cited, and since, in the light of the history of the statute as reviewed in the opinion of 1910 and succeeding opinions, is obviously correct, I am of the opinion that a member of the village council who resigns from such body may immediately be lawfully appointed street commissioner.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1864.

NEWSPAPER—PAPER PUBLISHED BY STUDENT BODY IS NOT NEWSPAPER WITHIN PURVIEW OF SECTION 291, GENERAL CODE.

SYLLABUS:

A paper or magazine, published by the student body, for the public schools of a county school district, issued monthly during the school year only, and containing

no general news of interest to the reading public, other than news strictly pertaining to the activities of the county schools and the students therein, is not a "newspaper" in the sense that the word is used in Section 291, General Code, requiring the publication of the financial reports of school districts in a "newspaper" published or of general circulation in the district.

COLUMBUS, OHIO, March 19, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

"We are enclosing herewith a copy of a publication called 'The Fairfield', which you will note according to the statement made is the official and authorized publication of the Fairfield County Public Schools, published for the Fairfield County Public Schools by the student body. It is claimed that the paper has a circulation amongst the people of the county in the aggregate of 2000 or more.

Question: May the financial report of the clerk of a board of education be legally published in this paper under the provisions of Section 291 of the General Code, as amended 112 O. L. 355?"

Section 291 of the General Code (112 O. L. 355), provides as follows:

"On or before the thirty-first day of March annually, the chief fiscal officer of each political subdivision or taxing district of each county shall prepare a financial report for the preceding fiscal year, in such form as will comply with the requirements of the bureau of inspection and supervision of public offices, and shall cause same to be published in a newspaper published in the political subdivision or taxing district and if there is no such newspaper, then in a newspaper of general circulation in the district or political subdivision.

Any fiscal officer of any political subdivision or taxing district of any county who fails to comply with the provisions of this section shall forfeit and pay into the treasury of such subdivision or district five dollars for each day, after the said thirty-first day of March, of the period of such failure. Nothing in this section shall be construed so as to apply to a county auditor."

In accordance with the terms of the foregoing statute, the fiscal officer of each school district in Fairfield County is required to cause to be published the annual financial report for his district in a newspaper published in the district, if there be a newspaper published therein, and if not, in some newspaper of general circulation in the district.

I am advised that "The Fairfield" is published in the city of Lancaster and I assume from your statement that it has a general circulation in all the school districts of the county. I am not advised, however, whether or not there is a newspaper published in any of the districts of the county other than the Lancaster city school district. If there be any, of course the fiscal officer of the district in which the newspaper is published would necessarily be required to publish the report for his district in the newspaper published in the district. If none be published and "The Fairfield" be in fact a newspaper, then the fiscal officer of each of the

school districts of the county might lawfully publish his fiscal report in that publication.

The chief question for our determination is whether or not "The Fairfielder" is a "newspaper." If it be a newspaper, publication may be made in it of the fiscal report of the school district in which it is published and of all the school districts in which it has a general circulation, except those in which some newspaper is published.

The question of what constitutes a "newspaper" is of considerable difficulty. In R. C. L. Vol. 20, page 201, it is stated:

"Newspapers are of so many varieties that it would be unsafe to attempt to give any definition of the term except the very general one that, according to the usage of the business world and in the ordinary understanding, a newspaper is a publication appearing at a regular, or almost regular, intervals, at short periods of time, as daily or weekly, usually in sheet form, and containing news; that is, reports of happenings of recent occurrence of a varied character, such as political, social, moral, religious, and other subjects of a similar nature, local or foreign, intended for the information of the general reader. * * *

It is difficult, if not impossible, to determine with clearness and exactness where the lines of demarcation should be drawn between a newspaper, in a legal and common acceptance of the term, and the numerous publications devoted to some special purpose, and which circulate only among a certain class of the people, and which are not within the purview of statutes requiring publication of legal notices in some newspaper. There are many publications, such as literary, scientific, religious, medical, and legal journals, that are obviously for but one class of the people, and that class always but a small part of the entire public, which are clearly not newspapers, within the legal and ordinary meaning of the word; and it would be manifestly unjust, as well as against the letter and spirit of the law, to recognize such publications as proper for the advertisement of legal notices—the object in all cases being to give wide and general publicity regarding the subject of which notice is required to be published. But the fact that a publication may be devoted especially to some particular object, calling or profession, or the dissemination of information of a special kind will not deprive it of its general classification as a newspaper if it also possesses the general characteristic of a newspaper as already defined. * * * But if it gives the general current news of the day it still comes within the definition of a newspaper. * * * "

In Cyc., Vol. 29, page 693, it is said:

"A newspaper in the ordinary acceptance of the term is a publication in sheet form intended for general circulation published regularly at short intervals and containing intelligence of current events of general interest. It follows from this definition that if a publication contains the general current news of the day, it is none the less a newspaper because it is devoted primarily to special interests such as legal, religious, political, mercantile or sporting."

The only reported decision of an Ohio court dealing directly with this question is the opinion in the case of *Bigalke et al. vs. Bigalke*, 19 O. C. C. 331, in which

it was held that the "Cleveland Daily Reporter" was a "newspaper" within the meaning of the statutes requiring publication of legal notices in a newspaper.

The Cleveland Daily Recorder was a publication that was devoted primarily and principally to the proceedings of the courts, in the county of Cuyahoga, and to transactions relating to the County Recorder's office and the various other county and city offices in the county. It was what is generally termed a "legal publication", of interest primarily to lawyers, and public officials. However, the court said in its decision that while the publication was devoted primarily to the proceedings of the courts and the transactions relating to the various county and city offices, it contained other matters as well. The court stated:

"We find there articles on religion; we find the political news of the day; we find notices of and comments upon conventions; we find marine news, and the news of fires; news pertaining to robberies, news pertaining to the progress of the war in the Philippines, and, almost if not quite, a column of miscellaneous news, and notices of all sales and mortgages made and decds recorded and all assignments made. * * * And then it contains the decisions of the supreme and other courts, both federal and state courts, and the assignments as made for trial in the different court rooms—given as the court proceedings, the opinions of the supreme court and other courts quite in full; and then there are contributions of a literary character, and contributions of poetry—which certainly ought to go far towards making it a newspaper. And it contains the time-table notifying parties of the time of the arrival and departure of trains upon the different railroads in the city of Cleveland; and also contains a great many legal notices and, perhaps quite as important, the notices of attorneys, of where their shingles are found, and the city news generally.
* * * "

You have submitted with your inquiry copies of two issues of "The Fairfield", viz., the November, 1927, and February, 1928, issues. It appears from the statement of the publishers, set out on the title page of the publication, that it is issued monthly during the school year, beginning with October 15th, and is entered as second-class mail matter at the postoffice in Lancaster, Ohio. It is further stated that it is "published for the Fairfield County Public Schools by the student body—The Fairfield is the only official and authorized publication of Fairfield County Public Schools.

The publication is bound in magazine form and contains a large amount of local advertising matter. The November, 1927, number, designated as Vol. II, No. 2, contains forty-two pages of two columns each. Ten and one-fourth columns and one-fourth page of this is advertising matter. The first four pages contain short articles relating to Thanksgiving. Then follow three pages headed "Miscellaneous", seven pages, "light from the County Offices," six pages, "light on Organizations," (having reference to social and literary organizations within the schools), two pages on "Athletic Activities", (within the county schools), two pages, "Curriculum Activities", two pages, "Social", twelve pages, "Literary Effort" (consisting of short articles and poems contributed by the students in the county schools and signed by the writers,) one page on "School Exhibits at the Fair" and three more pages of "Miscellaneous".

The February, 1928, issue contains fifty-two pages, five pages of which are devoted exclusively to advertising matter. Thirty-five pages of this number are devoted to the activities of the several basket-ball teams connected with the public

schools of the county. Three pages under the heading "Health", eight pages, "Literary Effort", one page, "Social" and one page "Miscellaneous". Practically all the articles appear to have been contributed by the students or teachers in the public schools of the county, and the writers are given credit for their articles.

The only portion of the publication that might be designated as "news" is that published under the headings "Social" and "Miscellaneous"; and this news consists entirely of such news as is incident to the activities of the schools, such as school parties, banquets and similar student activities. Neither of the issues of "The Fairfield" submitted with your inquiry, contains any news which might be described as general news or information for the general reading public. In fact the entire makeup of the publication is such that, in my opinion, it can not be classed as a "newspaper" in the sense that the term is used in statutes requiring the publication of legal notices in a "newspaper".

I find that the authorities are of one accord in holding that to constitute a publication a newspaper in a legal sense, it must contain at least some general news of interest to the general reading public. Just what is general news or how much of this sort of news it takes to make it a newspaper, is difficult of statement. There is a border-line where, as stated in Ruling Case Law, it is difficult, if not impossible, to draw the line of demarcation between publications that are "newspapers" and those that are not.

There is, however, another consideration, aside from the attempts of courts and textwriters to define a "newspaper" that leads me to conclude that "The Fairfield" can not be classed as such a newspaper as was contemplated by the Legislature in the enactment of Section 291, General Code. It is well settled that in construing statutes, such interpretation should be placed upon any words or phrases appearing therein as to conform to the manifest intent of the Legislature. The fundamental rule of construction of a statute is to arrive at the intention of the law-making body which enacted it, and when the language of the statute is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for resorting to technical rules of statutory construction. The statute must be given its plain and obvious meaning.

When words of everyday use are used in a statute, they should be accorded their commonly accepted and popularly understood meaning, unless to do so would defeat the manifest intent of the Legislature, or the context points to a different use of the word. In other words, the Legislature must be considered as having meant what it said. The members thereof being of the people they cannot be supposed to have used language in any other sense than in its popular sense unless they make such different use apparent. The word "newspaper" has come to have an established popularly understood meaning, easier to comprehend perhaps than to describe, and I feel satisfied that if the direct question were put to a cross section of the people, not one person in a hundred would say that he considered a publication, such as "The Fairfield", a newspaper.

Keeping in mind that the manifest purpose of requiring the publication of financial reports is to give them publicity among all classes of people, and nothing appearing in the statute to the contrary, we must consider that the Legislature meant the word "newspaper" to mean a publication of a different character than are publications such as "The Fairfield".

I am therefore of the opinion that the publication of financial reports of school districts in "The Fairfield" would not be legal.

Respectfully,
EDWARD C. TURNER,
Attorney General.