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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 85-2420

June 6, 1986

SUBJECT: Taxation & Revenue - Advertisement for sale of property.

SYLLABUS: The newspaper advertisement of the sale of property for nonpayment of taxes should be published in the pages of the newspaper and not included as an advertising insert.

TO: Honorable Elrid M. Moody
Beaufort County Treasurer

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: May the requirement for newspaper advertisements for the sale of property for nonpayment of taxes be satisfied with an advertising insert?

APPLICABLE LAW: Sections 12-51-40 and 15-39-660, South Carolina Code of Laws, 1976.

DISCUSSION:

Section 12-51-40, prior to amendment in 1985, provided that the property and sale be advertised as otherwise provided by law. Section 12-39-660 is to the effect that a publication was to be made in some gazette . . . if the sale is to be made in a county in which a newspaper may be printed. Section 12-51-40, after amendment, provides that the advertisement must be in a newspaper of general circulation within the county or municipality, if applicable.

The question is whether the insert would constitute an advertisement in the newspaper. Under some authority, the insert would satisfy the requirement.

"The advertising pages of a newspaper are part of the paper. And when an advertisement is distributed to all buyers of a paper, as a supplement thereto, it is an advertisement in the newspaper. . . ." 58 Am.Jur.2d, Newspaper, Periodicals, Etc., § 4, p. 132.

Honorable Elrid M. Moody
Page Two

June 6, 1986

Notwithstanding, a strict compliance with the advertising requirement is mandatory.

"Statutes requiring publications of a notice of a tax sale are regarded as mandatory and, unless there is a full or substantial compliance with their provision, a sale will not be valid." 85 C.J.S., Taxation, § 792, p. 112.

Such is the rule in this State.

"This Court has consistently held the enforcing agencies of government to strict compliance with all the legal requirements surrounding tax sales. Dickson v. Burckmyer, 67 S.C. 526, 46 S.E. 343 (1903); Osborne v. Vallentine, 196 S.C. 90, 12 S.E.2d 856 (1941); Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (1977)." Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980).

In cases where the issue of the publication in a newspaper was involved, the publication was apparently a legal advertisement "in" the actual pages of the newspaper. Osbourne v. Vallentine, supra; Alexander v. Messervey, 35 S.C. 409, 14 S.E. 854; Cleveland v. Calvert, 54 S.C. 83, 31 S.E. 871. These cases do not involve the present issue, however, relate to the established tradition of placing the advertisement in the pages of the newspaper.

Legislative intent that such be done is evidenced by Chapter 29 of Title 15 of our Code of Laws. Section 15-29-80 provides the amount the newspapers may charge for the advertisement and § 15-29-100 provides for the method of advertising when the newspapers fail to publish at the prescribed rate.

In the absence of an action to conclusively settle the issue, the legal advertisement in our view should be in the actual pages of the newspaper and not included as an advertising insert.

The advertisement in this manner clearly satisfies the statute. There is doubt, however, of whether the advertisement by the insert satisfies the requirements and because of such, the same should be avoided until the issue is judicially settled.

Honorable Elrid M. Moody
Page Three

June 6, 1986

CONCLUSION:

The newspaper advertisement of the sale of property for nonpayment of taxes should be published in the pages of the newspaper and not included as an advertising insert.

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