

Westlaw Download Summary Report for PAPENFUSE,EDWARD 5140691

| | |
|-----------------------|---|
| Your Search: | TI(MAYOR & CITY COUNCIL & BALTIMORE) & DA(AFT 1899 & BEF 1/1/1910) |
| Date/Time of Request: | Tuesday, August 23, 2005 12:40:00 Central |
| Client Identifier: | 1000210861 |
| Database: | MD-CS-ALL |
| Citation Text: | 68 A. 14 |
| Lines: | 175 |
| Documents: | 1 |
| Images: | 0 |

The material accompanying this summary is subject to copyright. Usage is governed by contract with Thomson, West and their affiliates.

C

Court of Appeals of Maryland.
 BENNETT et al.

v.

MAYOR, ETC., OF CITY OF BALTIMORE.

Nov. 13, 1907.

Appeal from Circuit Court of Baltimore City;
 Thomas Ireland Elliott, Judge.

Bill by Benjamin F. Bennett and others against the
 mayor and city council of Baltimore. From a
 decree dismissing the bill, complainants appeal.
 Reversed and remanded.

West Headnotes

Municipal Corporations  **993(2)**
[268k993\(2\) Most Cited Cases](#)

Taxpayers may enjoin municipal authorities from
 performing an illegal paving contract, where its
 performance will, if not prevented, require an
 appropriation and expenditure of \$5,000 out of the
 taxpayers' money and where the assessments upon
 their property abutting on the street to be paved
 are onerous and they will be required to bear their
 share of the proportion of the cost of the paving to
 be paid out of the general tax levy.

Notice  **11**
[277k11 Most Cited Cases](#)

Under the general rule that, in the absence of
 direction to the contrary, a notice required by law
 to be published must be given in the English
 language and in a newspaper printed in that
 language, and under Baltimore Charter, § 14,
 Laws 1898, p. 274, c. 123, providing that in
 contracting for public work, unless otherwise
 provided for in that article of the charter,
 proposals for bids shall be advertised in two or
 more daily newspapers published in the city, a
 publication in one German and one English
 newspaper is invalid; that sections 43 and 49,
 pages 294, 297, expressly authorize the

publication in German newspapers of notices of
 the sale of property for taxes, indicating a
 legislative intent to require publication of notices
 under section 14 in English newspapers, rather
 than an intent to embrace a German newspaper
 within the term "daily newspaper."

*14 Argued before BOYD, SCHMUCKER,
 BURKE, and ROGERS, JJ.

George A. Solter and Thomas G. Hayes, for
 appellants.

Edgar Allan Poe, for appellee.

SCHMUCKER, J.

This is an appeal from a decree of the circuit court
 of Baltimore city overruling a demurrer to and
 dismissing a bill filed by the appellants as
 taxpayers and owners of lots abutting on Carroll
 street, *15 in that city, to restrain the city from
 performing a contract which it had made with
 Patrick Reddington for paving the street.

The substantial ground of the bill was that the
 contract with Reddington was void because the
 advertisement for proposals for the paving to
 which it related had not been published in
 conformity with the provisions of section 14 of
 the city charter. Laws 1898, p. 274, c. 123. That
 section requires all proposals for bids for public
 work to cost over \$500 to be advertised in two or
 more daily newspapers published in Baltimore
 city. The proposals for bids for paving Carroll
 street involved an expenditure of over \$500, and
 they were, in fact, advertised in one English and
 one German newspaper published in that city. The
 pivotal question, therefore, in the case is whether
 the publication thus made gratified the
 requirements of the section in that respect. The
 full text of section 14 is as follows: "Sec. 14.
 Hereafter in contracting for any public work or
 the purchase of any supplies or materials
 involving an expenditure of five hundred dollars
 or more for the city or by any of the city

departments, sub-departments or municipal officers not embraced in a department, or special commissions or boards, unless otherwise provided for in this article, proposals for the same shall be first advertised for the same shall be first advertised for in two or more daily newspapers published in Baltimore city, for not less than ten nor more than twenty days, and the contract for doing said work or furnishing said supplies or materials shall be awarded by the board provided for in the next section of this article and in the mode and manner therein prescribed." It is well settled as a general proposition in this country that, in the absence of a direction to the contrary, the publication of a notice required by law to be made must be in the English language and in a newspaper printed in that language. 21 A. & E. Encyc. Law, 308. This proposition has been definitely announced or relied upon by the courts of last resort of many of the states, and no direct decision to the contrary has been cited to us or come to our knowledge. [City of Chicago v. McCoy](#), 136 Ill. 344, 26 N. E. 363, 11 L. R. A. 413; [Goebel v. Chamberlain](#), 99 Wis. 503, 75 N. W. 62, 40 L. R. A. 843; [Schloenbach v. State](#), 53 Ohio St. 345, 41 N. E. 441; [Cincinnati v. Bickett](#), 26 Ohio St. 49; [Schaale v. Wasey](#), 70 Mich. 414, 38 N. W. 317; [Turner v. Hutchinson](#), 113 Mich. 245, 71 N. W. 514; [Graham v. King](#), 50 Mo. 23, 11 Am. Rep. 401; [Road of Upper Hanover](#), 44 Pa. 277. These cases all treat the English language as the official or ordinary language of the country, and hold that a mere direction in a statute that an advertisement be made in a given number of newspapers must be so construed as to require the use for that purpose of newspapers published in the English language. This proposition applies with especial force to a state like Maryland, where from the earliest colonial times the English language has been employed in the official proceedings of all departments of the government. If we turn now to the contents of the section of our law brought under review by the present appeal, we find that they are positive in their

terms and comprehensive in their scope, and are plainly declared to be applicable to all advertisements of proposals for public work or materials, except such as may be "otherwise provided for" in the article of the Code of which section 14 forms a part. Turning to the other sections of the article relating to the same or kindred subjects, it appears that in some of them the other provision contemplated by section 14 is found, and that they contain express authority to insert in a German newspaper the advertisements which they direct to be made. Such a provision is found in section 43, relating to the publication of notice of the proposed sale of lands for the nonpayment of taxes, and section 49, relating to notices by the city collector of sale of goods and chattels distrained or levied on for nonpayment of taxes.

Counsel for the city contended in argument before us that the presence in sections 43 and 49 (pages 294, 297) of the expression, "one of which shall be in the German language," in connection with the direction to publish a notice in a given number of daily newspapers published in Baltimore city, must be regarded as a legislative recognition of the fact that a daily newspaper published in the German language is included in and embraced by the term "daily newspaper published in Baltimore city." That claim is too broad. It is undoubtedly sound as applied to the construction of sections 43 and 49, where the two expressions referred to are found in juxtaposition, but it is unsound as applied to the construction of section 14, in which no expression relating to a German newspaper is found. It is unsound as applied to section 14, for the further reason that the language there used recognized as excepted from its operation those cases which should be "otherwise provided for" in other sections of the article. Even without the exception contained in section 14 of cases otherwise provided for, the three sections, when considered side by side, come within the operation of the proposition, "Expressio unius

exclusio alterius," and the absence from section 14 of the authority found in the other two sections to advertise in a German newspaper must be held to show that in the cases falling within the operation of section 14 a German newspaper could not be employed to publish the notices. In [Baltimore v. Johnson, 62 Md. 227, 228](#), the bill was filed by owners of ground bounding on Covington street to restrain the city from enforcing the collection of a tax imposed for *16 grading and paving that street, upon the ground that the ordinance under which the work had been done required the advertisement for proposals to do the work to be published in three newspapers, and the publication had, in fact, been made in but one paper. This court held the objection to be fatal to the validity of the tax, saying in the opinion filed in the case: "Nothing can be plainer than that advertising in one newspaper only is not a substantial compliance with this requirement. It is also obvious that this is not a mere formal or immaterial provision, but a substantial and important one, and, in fact, one in which the property owners who are required to pay for the work are deeply interested. The contract to be thus awarded to the lowest bidder determines the cost of the work, and, therefore, the amount of the tax to be imposed, for it is only after the contract has been thus awarded, whereby the cost can be ascertained, that the commission is required by the eighth section of the same ordinance to impose a tax upon the owners of adjacent property 'equal in amount to the whole expense of the work.' The object of advertising for these proposals is to attract bidders and induce competition, in order that the work may be done at the lowest attainable price, and this is all in the interest and for the protection of the taxpayers."

The bill further alleges, and the demurrer admits, that the performance of the contract with Reddington will, if not prevented by injunction, require an appropriation and expenditure by the city, out of the taxpayers' money, of \$5,000 for

the grading and paving of the street, and that the assessment made by the city for that purpose upon the appellants' property abutting on the street to be paved are onerous, and that, in addition thereto, they will as taxpayers have to bear their share of the proportion of the cost of the paving to be paid out of the general tax levy. Nor is there any question as to the appellants' right to relief by injunction. The right of property holders and taxpayers under similar circumstances to enjoin the performance by the public authorities of illegal contracts of this character has been so often upheld by us that it is only necessary to refer to some of the cases in which it has been done without further discussion on the subject. Among such cases are [Holland v. Baltimore, 11 Md. 197, 69 Am. Dec. 195](#); [Baltimore v. Porter, 18 Md. 301, 79 Am. Dec. 686](#); [Baltimore v. Grand Lodge, 44 Md. 445](#); [Baltimore v. Gill, 31 Md. 394](#); [Baltimore v. Johnson, supra](#); [Baltimore v. Keyser, 72 Md. 106, 19 Atl. 706](#); [St. Mary's Industrial School v. Brown, 45 Md. 310](#).

The decree appealed from will be reversed, and the case remanded for further proceedings in conformity with this opinion.

Decree reversed, with costs, and case remanded for further proceedings in conformity with this opinion.

106 Md. 484, 68 A. 14, 14 Am. Ann. Cas. 419

END OF DOCUMENT