

3742.

WHOLESALE CIGARETTE LICENSE—WHOLESALE GROCERY—SEPARATE LICENSES FOR SALE OF CIGARETTES AT DIFFERENT BUILDINGS.

SYLLABUS:

Where a wholesale grocery company delivers cigarettes from its warehouse in a city to two separate buildings in the county, which buildings become points for the wholesale sale of cigarettes, and no sales are made from said warehouse, such company must take out two wholesale cigarette licenses.

COLUMBUS, OHIO, November 9, 1931.

HON. DON ISHAM, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication over the signature of W. A. Spenser, Assistant Prosecuting Attorney, which reads as follows:

“A wholesale grocery company, in addition to selling other articles, is in the wholesale business of trafficking in cigarettes. The main office and warehouse of the company is in the city of ‘A,’ and all goods are shipped and handled from the main building. For convenience sake, the company maintains two other buildings in different parts of the county, these buildings being used as distributing points. Goods of the company, including cigarettes, are trucked from the main building to these other distributing points, and are there sold by the company instead of at the main building.

Question: Under the circumstances as above quoted, is the company required to take out more than one wholesale license for trafficking in cigarettes?”

Section 1 of Amended Senate Bill No. 324 of the 89th General Assembly (known as the Cigarette Tax Bill) was codified by the Attorney General as Section 5894-1, General Code, and provides in part as follows:

“Section 1. As used in this act:

‘Person’ includes firms and corporations;

‘Wholesale dealer’ includes only those persons who sell cigarettes to licensed retail dealers or for purposes of resale only; * * *

‘Sale’ includes exchange, barter, gift, *offer for sale and distribution*, and excludes transactions in interstate or foreign commerce; * * *”

Section 5 of the same act, codified as Section 5894-5, General Code, reads in part as follows:

“No person shall engage in the wholesale or retail business of trafficking in cigarettes within this state without having a license therefor * * *. Each applicant for such license shall, within thirty days after this act shall take effect, and, thereafter annually, on or before the fourth Monday of May, make out and deliver to the auditor of the county wherein he desires to engage in such business, upon a blank to be fur-

nished by such auditor for that purpose, a statement showing the name of the applicant, *each place in the county where the applicant's business is to be conducted*, the kind or nature of such business, and such other information as the commission may require in the form of statement prescribed by it. At the time of making such application, *each such person desiring to engage in the wholesale business of trafficking in cigarettes shall pay* into the county treasury a license tax in the sum of one hundred dollars, * * * *for each place where he proposes to carry on such business*. Upon receipt of such application and exhibition of the county treasurer's receipt showing the payment of such tax, the county auditor shall issue to the applicant *a license for each place of business designated in the application* authorizing the applicant to engage in such business at such place for and during the year commencing on the fourth Monday of May. * * * (Italics the writer's.)

Analyzing the above statutory provisions, it is quite evident that the wholesale grocery company involved in your communication is a "person" within the meaning of Section 5 of the act. It is also apparent that the wholesale company or person offers cigarettes for sale or distribution to retailers at the two buildings used as distributing points. It is to be observed from the first sentence of Section 5 that "no person shall engage in the wholesale * * * business of trafficking in cigarettes * * * without having a license therefor."

In the case of *The Kroger Grocery & Baking Co. vs. Schwer, Aud., et al.*, 36 O. App. 512, the court considered former Section 5894, General Code, and it was stated in the second paragraph of the syllabus:

"2. * * *; to 'traffic' meaning to pass goods and commodities from one person to another for an equivalent in goods or money."

It is evident that the wholesale company under the facts stated by you is passing goods and commodities from one person to another for an equivalent in goods or money at two places of business. In other words, the corporation is conducting the wholesale business of *trafficking* in cigarettes in two places.

In the Kroger case, *supra*, the court was interpreting former Section 5984, General Code, as I stated above, which section provided that a corporation engaged in the wholesale business of trafficking in cigarettes shall annually be assessed the sum of two hundred dollars "for each place where such business is carried on" by or for such corporation. Section 5894-5 now contains very similar language to that contained in former Section 5894.

At Page 514 of the foregoing volume, the court stated:

"* * * Since, under the statute, each of the stores of plaintiff must be considered a separate place of business, we have before us four actions rather than one, because the question of whether any one of them is 'engaged in the wholesale business of trafficking in cigarettes' must be determined by the character of the business conducted in each store and not by the aggregate of the business carried on in all of them, since the statute provides that the assessment to be paid is 'for each place where such business is carried on.'"

A motion to certify the record to the Supreme Court in this case was overruled on December 24, 1929, and re-hearing denied on February 10, 1930.

From your communication, I assume that no sales of cigarettes are made

by the wholesale grocery company at its warehouse. Therefore, this opinion is based on that assumption.

In view of the foregoing, I am of the opinion that the wholesale grocery company, under the facts disclosed by you in your communication, must take out two wholesale cigarette licenses.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

3743.

SOLDIERS' RELIEF COMMISSION—UNAUTHORIZED TO EMPLOY CLERKS, STENOGRAPHERS, INVESTIGATORS—EXCEPTION.

SYLLABUS:

1. *Where the duties of an individual member of a soldiers' relief commission are such as to require temporary stenographic or clerical assistance, the cost of the same may be included as an actual expense of such member and allowed by the county commissioners, but no authority exists by virtue of which a soldiers' relief commission may employ clerks and stenographers to assist it in the performance of its duties.*

2. *A soldiers' relief commission may not employ and compensate persons for making investigations of the applications for soldiers' relief.*

COLUMBUS, OHIO, November 9, 1931.

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

DEAR SIRs:—This will acknowledge receipt of your request for my opinion which reads:

"Section 2931 of the General Code provides for the organization of the Soldiers' Relief Commission, and for designating one of its number Secretary. Section 2932, G. C., provides that, on the presentation of an itemized statement thereof, county commissioners shall allow the persons composing the Soldiers' Relief Commission their actual expenses incurred in performing their duties, and a fair compensation for their services.

Question 1. May a Soldiers' Relief Commission, under these sections, employ clerks and stenographers to assist them in the performance of their official duties in any county other than a county containing a National Soldiers' Home?

Question 2. May the Soldiers' Relief Commission employ and compensate persons for making investigations of applications for relief in view of the provisions of Section 2937, G. C.?"

Section 2932, General Code, which is pertinent to your inquiry, reads as follows:

"On the presentation of an itemized statement thereof, the county commissioners shall allow the persons composing the soldiers' relief commission, their actual expenses incurred in the performance of their duties, and a fair compensation for their services. The county auditor shall issue his warrant upon the county treasurer for the amount so allowed."