

under ordinary circumstances by the *School Board* for school purposes, and not to those levies which can only be made by a vote of the people.'

In addition to the bond retirement levies made by vote of the people, the Board of Education is enjoying a 3 mill levy outside of the 15 mill limitation, by authorization of a vote of the people and a 1/10 mill levy for recreation purposes authorized by vote of the people. It would seem to be under this opinion that we would not have to pay our percentage into the Custodians' Pension Fund of the proceeds of these levies.

In past years the Board also has issued bonds without a vote of the people as it still has the right to do. I am unable to determine from the reading of the opinion whether or not the Attorney General holds that the proceeds of the levies necessary to carry these bonds would be exempt from the percentage contribution to the Custodians' Pension Fund. He specifically exempts the voted levies but the language of the bonds without a vote of the people leads me to the conclusion that the levy necessary to carry these bonds ought to be as sacred as the voted bonds."

The previous opinion referred to dealt with the amount to be appropriated by a board of education to a Custodian's Pension Fund theretofore established.

The language used in the prior opinion No. 1829, dated March 9, 1928, and quoted in the letter of the clerk of the board is dispositive of your second and third questions. The distinction made in that opinion between levies made by the board ordinarily and those which it makes only after direct authority of a vote of the people is applicable to any kind of levy whether bonds are issued pursuant to such levy or not. The distinction lies in the fact that, when the Legislature used the language "amount levied and collected by said school board for all purposes" in Section 7882 of the General Code, it probably had reference only to those levies made directly by the board and not requiring specific authority of a vote of the people.

In your first question, however, you inquire as to levies for the purpose of retiring bonds issued by a board of education without a vote of the people. In this instance the levy is made directly by the board without any necessity of the approval of the voters. This being true, I am of the opinion that a board of education in a city school district where a custodians' pension fund has been established, is required to cause to be paid to such fund a sum equal to not less than one-tenth, nor more than one-fifth of one per cent of the amount levied for interest and bond retirement purposes of bonds issued without a vote of the people.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

2159.

**CIGARETTES—FOREIGN CORPORATION SELLING TO RETAIL DEALERS  
IN OHIO—LIABILITY FOR TAX—LIABILITY OF JOBBER—WHOLE-  
SALE AND RETAIL LICENSE DISCUSSED.**

**SYLLABUS:**

1. *A corporation located outside the state through its salesmen sells cigarettes to retail dealers in Ohio and ships the same direct. The retail dealers receive no invoices from the corporation, which sends the invoices to an Ohio representative who presents the invoices to the retailers, makes collection and settles with the corporation, deriving a profit from the transactions. Such transactions are in legal effect sales by the corporation direct*

to the retail dealers and the Ohio representative who makes the collections is not liable for the wholesale cigarette dealer's license under Section 5894, G. C.

2. Where manufacturers of cigarettes make sales through their salesman direct to retail dealers and ship the goods direct to said retail dealers, a jobber who is billed for such cigarettes, who is required to pay the invoices therefor and who in turn collects the amounts of such invoices plus a small profit from the retail dealers, but who must stand any loss through failure of any of the retail dealers to pay, is engaged in the wholesale business of trafficking in cigarettes and is liable for the wholesale cigarette license tax.

COLUMBUS, OHIO, May 24, 1928.

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

GENTLEMEN:—This will acknowledge your letter of May 22, 1928, which reads:

“You are respectfully requested to furnish this department your written opinion upon the following:

A manufacturer of cigarettes located outside of Ohio sends traveling salesmen into Ohio to take orders from retail dealers in cigarettes, the bill for such cigarettes is forwarded by the manufacturer to a wholesale grocer in Ohio, who collects from the retailer the amount of the account and remits the same to the manufacturer.

Question: Does this action of the wholesale grocer in Ohio make him liable to the payment of the wholesale cigarette license if he does not in any other way traffic in cigarettes?”

You further inform me that such cigarettes as are ordered are shipped by the manufacturer direct to the purchaser.

The question that you present has been previously passed upon by this office. I refer to an opinion addressed to you which appears in Vol. II, Opinions, Attorney General for 1915, at page 1271, the first paragraph of the syllabus of which reads:

“A corporation located outside the state through its salesmen sells cigarettes to retail dealers in Ohio and ships the same direct. The retail dealers receive no invoices from the corporation, which sends the invoices to an Ohio representative who presents the invoices to the retailers, makes collection and settles with the corporation, deriving a profit from the transactions. Such transactions are in legal effect sales by the corporation direct to the retail dealers and the Ohio representative who makes the collections is not liable for the wholesale cigarette dealer's license under Section 5894, G. C.”

Your attention is also directed to Opinion No. 372, dated April 23, 1927, addressed to the Auditor of State, the syllabus of which reads:

“Where manufacturers of cigarettes make sales through their salesman direct to retail dealers and ship the goods direct to said retail dealers, a jobber who is billed for such cigarettes, who is required to pay the invoices therefor and who in turn collects the amounts of such invoices plus a small profit from the retail dealers, but who must stand any loss through failure of any of the retail dealers to pay, is engaged in the wholesale business of trafficking in cigarettes and is liable for the wholesale cigarette license tax.”

In Opinion No. 372, *supra*, after quoting the syllabus of the Opinion of 1915, the following language appears:

"It did not appear in the facts under consideration in that opinion that the jobber was billed for the merchandise or that he was responsible to the manufacturer for the payment of the invoices regardless of whether he was able to collect from the retailer.

However, such are the facts in the question under consideration at the present time. The jobber is billed for the cigarettes and is responsible for the payment of the invoices. He in turn bills the retailers for the amounts of the invoices plus a small profit, but if he is unable to make collection he has no recourse against the manufacturer and must personally stand the loss.

Under such circumstance it is clear that the jobber is more than merely the agent of the wholesaler for the purpose of making collection of the wholesaler's accounts. It is further clear that under such circumstances, as between the manufacturer and the jobber, there is a sale of the cigarettes to the jobber and that the title to such cigarettes passes to the jobber even though they are delivered to persons other than the jobber and never come into his actual physical possession. The salesmen who sell the cigarettes to the retailers are as a matter of law the agents of the jobber for the purpose of making such sales. It is not necessary for the purposes of this opinion to determine the exact time when title does pass to the jobber.

For the reasons above stated it is my opinion that under circumstances as outlined in the two letters above referred to and as set out above the jobber is a wholesaler of cigarettes and is liable for the payment of the wholesale cigarette license tax."

You do not state whether or not the wholesale grocer, who collects from the retailer, is billed for the merchandise or that he is responsible to the manufacturer for the payment of the invoices regardless of whether he was able to collect from the retailer. With the exception of this fact, the facts presented by your inquiry are identical with the facts stated in the two opinions herein referred to.

If the fact be, in the question that you now present, that the wholesale grocer, who collects from the retailer, is billed for the merchandise or that he is responsible to the manufacturer for the payment of the invoices regardless of whether he was able to collect from the retailer, your question is answered by Opinion No. 372, *supra*. If the facts be similar to those contained in the 1915 Opinion, *supra*, it is my opinion that the wholesale grocer who makes the collections is not liable for the wholesale cigarette dealer's license under Section 5894, General Code.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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2160.

APPROVAL, BONDS OF MORROW COUNTY—\$32,379.48.

COLUMBUS, OHIO, May 25, 1928.