

3725.

CIGARETTE WRAPPERS—WHERE PACKAGES OF TOBACCO HAVE SAID WRAPPERS ATTACHED—RETAILERS SHOULD PAY LICENSE FEE.

Where packages of tobacco with cigarette wrappers attached thereto are sold at retail, such a practice constitutes trafficking in cigarette wrappers under the provisions of section 12680 of the General Code, and such retailers should pay the license fees referred to in section 5894 of the General Code.

COLUMBUS, OHIO, November 16, 1922.

Hon. Joseph T. Tracy, Auditor of State, Columbus, Ohio.

DEAR SIR:—In your communication of recent date you present a question which may be re-stated as follows:

A certain company is putting upon the market smoking tobacco with a package of cigarette papers pasted upon or attached to the same. The product is sold in several village stores which are not holders of a license permitting the traffic in cigarettes or cigarette wrappers. The parties retailing such packages contend that they are within the law on account of the same having been sold to them at wholesale.

The question presented is whether or not the practice above described is a violation of the laws of the state.

Your question, in so far as the retailer is concerned, grows out of the provisions of section 12680 of the General Code which makes it an offense for any one to engage "in the business of trafficking in cigarettes, cigarette wrappers or a substitute for either" without the posting of a receipt showing that the tax or assessments for the privilege to sell cigarettes or cigarette wrappers has been paid.

The question, of course, is whether or not the facts stated in your communication constitute trafficking in cigarette wrappers in the contemplation of said statute. It is probable that the manufacturers of the product would contend that only the sale of the tobacco took place in the retail transaction. However, it would seem that whether or not the major part of the sale relates to the tobacco, and the wrappers are attached only as an incident, nevertheless the fact remains that the wrappers are attached for some purpose. The logical conclusion would seem to be that the purpose of this addition to the original article is for the purpose of enhancing the sale of the tobacco itself. Therefore, it would seem that there is a distinction to be made between the package of tobacco and the wrappers, even though one price is paid for both. The wrapper must have some value, and it would necessarily follow that the wrappers are a part of the consideration which is returned for the money paid for the article. In any event, according to the facts presented, the cigarette wrappers are attached to the tobacco and must necessarily be a part of the sale.

In view of the plain provisions of the statute, it is the opinion of this department that the state of facts presented constitutes a trafficking in cigarette wrappers under the provisions of section 12680 of the General Code, and such a retailer should be required to pay the license fees referred to in section 5894 of the General Code.

Respectfully,

JOHN G. PRICE,
Attorney-General.