

consideration and discussion is unnecessary, as it is believed that the sections referred to in your letter as the "new fees and cost law" does not change the situation in this regard.

It should be pointed out, however, that such consideration and answers to your first and second questions relate only to such judgments or orders as to costs in such cases as the probate court may lawfully make, and the question of his power to make such judgment or order against the person legally responsible for the care and support of the person proceeded against in such cases, where he has no estate, not being specifically involved in your question, is not considered.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

1356.

CIGARETTE LICENSE LAW—WHERE BUSINESS COMMENCED AFTER  
FOURTH MONDAY OF MAY—ASSESSMENT PROPORTIONATE—  
LIMITATIONS AS TO MINIMUM ASSESSMENT—NO AUTHORITY TO  
ISSUE LICENSE TO TRANSIENT DEALER—WHEN ASSESSMENT IS  
ONE-FIFTH OF TOTAL YEARLY ASSESSMENT FEE.

1. *A cigarette retail dealer may be issued a license only upon the payment of the total yearly assessment fee, or when business is begun after the fourth Monday of May the assessment shall be proportionate in amount to the remainder of the assessment year, except it shall not be less than one-fifth of the total yearly assessment fee.*

2. *There is no authority to issue a license to a transient dealer upon the payment of one-fifth of the total yearly assessment. However, in cases where business is begun after the expiration of four-fifths of the assessment year, one-fifth of the total yearly assessment fee is the proper charge.*

COLUMBUS, OHIO, June 22, 1920.

HON. BARCLAY W. MOORE, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR—Acknowledgment is made of your communication wherein you submit the following questions relative to the operation of the cigarette tax law, as last amended and effective May 20, 1920:

"(1) What collections, if any, should be made between the date when the new law becomes effective, May 19th, and the date fixed in section 5895, the fourth Monday of May, which this year is the 24th day?

(2) Can a license be issued for a transient dealer, for instance an operator of a booth at a county fair, for a week upon the payment of one-fifth of the annual assessment fee? Or must a license be issued for the remainder of the year and a refund made upon the cancellation and surrender of the license?

(3) Can a license be sold by the quarter or half year provided it does not extend beyond the fourth Monday of May?"

You are advised that the auditor of state has administratively ruled that the three day period from May 20th, the date upon which the amended law became operative, and May 24th, the beginning of the assessment year, should be ignored in the collection of taxes. Undoubtedly, this ruling has been brought to the attention of the auditor of your county before this date. In view of the complications that would arise from a bookkeeping standpoint in making the collections at the new rate for

the three day period, together with other possible legal questions that might arise, it is believed that the ruling of the auditor of state is proper.

The foregoing will dispose of your first inquiry.

In reference to your second inquiry you are referred to opinion No. 1325 issued by this department June 9, 1920, a copy of which is enclosed herewith, which, it is believed, throws some light upon your inquiry.

It is the opinion of this department that there is no provision in the statutes authorizing the issuance of a license to a transient dealer upon the payment of one-fifth of the annual assessment fee. The law contemplates (see section 5895) that a certificate may be issued upon the payment of the total yearly assessment fee, or when business is begun after the beginning of the assessment year a certificate may be issued upon the payment of an assessment fee which shall be proportionate in amount to the remainder of the assessment year; except, of course, that in no case it may be less than one-fifth of the whole amount to be assessed in any one year. Therefore, the first branch of your second inquiry is answered in the negative.

In view of the foregoing, it seems clear that the license for a transient dealer must be issued for the remainder of the assessment year, and a refund may be made upon the cancellation and surrender of the license. However, it is clear that no such refunding order shall be issued for less than one-fifth of the whole amount to be assessed in any one year. The practical operation of this, of course, results in the transient dealer being required to leave at least ten dollars, or one-fifth of the total yearly assessment fee, in the treasury.

If considering your third inquiry you are advised, as above indicated, that there is no authority to issue any license except for the whole assessment year or for so much thereof as remains from the date upon which business is begun. Of course it will be readily seen that in no case a license may be issued for less than the minimum fee, which is one-fifth of the total yearly assessment fee. Therefore, there is no authority for the issuance of a license for the quarter or half year, as suggested in your inquiry. However, it will be observed that if the time between the date business is commenced and the date upon which the assessment year ends should constitute exactly one-half or one-fourth of the total assessment year, in such a case the effect would be to grant a certificate for the one-half or one-fourth of the time, but, as above stated, a certificate should be issued for the total assessment year or for so much thereof as remains from the time business is begun.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*