

cluding all the details of procedure, such as form of ballot, is the exclusive way in which bonds may now be submitted to a vote of the people of a municipality.

In view of the above, I am compelled to advise you that the above issues are not valid, and you are not warranted in purchasing them.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

214.

APPROVAL, BONDS OF VILLAGE OF BEXLEY, FRANKLIN COUNTY,  
OHIO—\$44,500.00.

COLUMBUS, OHIO, March 21, 1927.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

215.

CIGARETTE LICENSE—SECTION 5894, GENERAL CODE, CONSTRUED.

*SYLLABUS:*

1. *Where a manufacturing company sells cigarettes to its employes in package and carton lots, it is selling by retail and not by wholesale.*
2. *Under the provisions of section 5894, General Code, a manufacturing company, operating stands where cigarettes are sold to employes in package and carton lots, must secure a retail cigarette license for each stand so operated.*

COLUMBUS, OHIO, March 21, 1927.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent letter reading in part as follows:

“A large manufacturing concern of this city is planning to sell cigarettes to its employes during the noon hour, on its premises. They are to be sold at different stands, located in various parts of the plant. All of these stands, with the exception of one, are on contiguous pieces of real estate, all owned by the company. The one stand is also on land owned by the company but separated from the others by a public street.

Will this company be required to pay \$200.00 for the wholesale license to sell the cigarettes, or will it be required to pay the \$50.00 retail license to meet the requirements of the law? If the \$50.00 retail license is the one required will the company be obliged to take out a license for each stand; also

will it make any difference as to whether or not the stands where cigarettes are sold are located on contiguous property, all owned by the company, or whether the stands may be on property owned by the company but separated by public streets or thoroughfares."

Your letter presents the two following questions:

1. Under the above statement of facts, would this manufacturing company be selling cigarettes wholesale or retail?

2. If the company would be selling cigarettes retail, under the above statement of facts, how many cigarette licenses should they be required to take out, that is, should they take out:

- (1) One license for all the contemplated stands;
- (2) Two licenses, one for the stands located on contiguous parcels of real estate and one for the stand across the street; or
- (3) A license for each stand where the cigarettes are to be sold?

Section 5894 of the General Code reads as follows:

"A person, firm, company, corporation or co-partnership, engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers or a substitute for either, shall annually be assessed and pay into the county treasury the sum of two hundred dollars, or, if so engaged in such traffic in the retail business, the sum of fifty dollars for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership."

In Bouvier's Law Dictionary, Century Edition, the following definitions are found:

*Wholesale.* To sell by wholesale is to sell by large parcels, generally in original packages and not by retail.

*Retail.* To sell by small parcels and not in the gross.

*Retailer of Merchandise.* One who deals in merchandise by selling it in smaller quantities than he buys, \* \* \*."

Assuming that the cigarettes are to be sold to the employes in package and carton lots, it is clearly evident from the above definitions that the manufacturing company would be engaged in the cigarette traffic in a retail way, and it is my opinion that this would be selling by retail. This specifically answers the first question.

I am unable to find any court decisions decisive of the second question. However, an opinion was rendered by this department on May 16, 1924, reported in the Opinions of the Attorney General for 1924, at page 281, the first paragraph of the syllabus reading as follows:

"Under the provisions of section 5894, G. C., a company operating two news stands where cigarettes are sold, one within the union station and the other upon the platform without the union station, is operating two places where such business is carried on, and is required to secure a license for each place."

The facts upon which the opinion above was given were substantially the same as a certain phase of the facts in the case at hand. The two stands were located on real estate owned by the same company and the stands were operated by the same company. As a further analogy, in the case covered by the opinion, the stands were

not in the same building, while in the instant case the same fact is true as to at least two of the contemplated stands. The fact that the owner of the real estate and the operator of the stands referred to in the opinion cited were different parties, does not distinguish these two cases and does not in any way affect the question. Accepting the conclusion of the above opinion, and applying the same to the question at hand, it is evident that this manufacturing company cannot operate the cigarette stands in the main plant and the one located across the street without securing at least two licenses.

This brings us to the last phase of the second question, that is, should this company be required to secure a retail cigarette license for each stand located in the main plant, or, as you have put it, on contiguous parcels of real estate?

You will note that section 5894, supra, provides for a fee of fifty dollars for "each place where such business is carried on by or for such person, firm, company, corporation or co-partnership." A determination of the question presented therefore hinges on the interpretation of the above quotation from this section of the code.

In Funk and Wagnall's New Standard Dictionary, the following definition of "place" is given:

"A particular point or portion of space, especially that part of space occupied by or belonging to a thing under consideration."

Webster defines "place" as:

"Any position of space appropriated to some definite object or use."

In the case at hand you state that stands are to be located in various parts of the plant, that is, at various "particular points" or "portions of space."

What is the meaning of the phrase "place of business"? A long line of decisions have construed this term definitely and particularly as the lexicographers have done with the word "place." It follows therefore, that any portion of space utilized for the selling of cigarettes is a "place where such business is carried on" within the purview of section 5894, supra, and in order to lawfully carry on such business at such a place, a fee of fifty dollars must be paid into the county treasury for each such place.

Section 5894, supra, is plain and unambiguous, and the meaning of the legislature is clear. The legislature did not intend that "ownership of property," "ownership of the business", or "contiguity of real estate" should be the determining factor in the making of the cigarette assessment. Had this been so, they could very easily have substituted the word "building", or "premises", or some like general term for the word "place" and thereby given a different meaning to the section in question.

For the reasons stated, I am of the opinion that each of the stands described in your letter, where cigarettes are to be sold, is a place where such business is carried on, and each stand is required to have a retail cigarette license.

Respectfully,

EDWARD C. TURNER,  
Attorney General.