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 circumstances 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.

Respectfully,
EDWARD C. TURNER,
Attorney General.

373.

CORPORATION—MUST MAINTAIN OFFICE AT PLACE DESIGNATED IN ARTICLES OF INCORPORATION IN ORDER TO SECURE BENEFIT OF TAXATION—DIRECTORS' MEETINGS AT SUCH PLACE UNNECESSARY.

SYLLABUS:

In order to secure the benefit of the tax rate of the place designated by a corporation in its articles of incorporation as the place where it is located, or its principal business transacted, an office must be maintained at said place, but it is unnecessary to hold directors' meetings at said place.

COLUMBUS, OHIO, April 23, 1927.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

> "It is my understanding that the domicile of a corporation, for the purpose of taxation, is its principal office as specified in Charter.
>
> We have several corporations in Trumbull county, whose principal office, as specified in charter, is in a district having a low tax rate.
>
> Kindly advise me if it is necessary for the corporation to maintain an office or hold directors' meetings in the district claimed as its residence, in order to secure the benefit of the lower tax rate."

Section 8625, General Code, provides that articles of incorporation must state:

"(1) * * * * * * * * *

(2) The place where it is to be located, or its principal business transacted."

Section 8626 of the General Code provides for the acknowledgment of said articles and requires that the official character of the officer shall be certified by the clerk of the court of common pleas of the county where the acknowledgment is taken. Thereupon the articles of incorporation shall be filed with the Secretary of State who shall record them, as well as record all certificates relating to the corporation thereafter filed in the office.

Section 8626 provides in substance that a copy of the articles of incorporation shall be prima facie evidence of the existence of the corporation therein named.

The foregoing sections show the intent and object of the Legislature that the requirements of the statute import the verities of the stipulations in the articles of incorporation, made in obedience to legislative mandate. When the law-making body requires the designation of "the place where it is to be located or its principal business transacted," its clear purpose must have been to publish and make known the legal residence of the corporation, or in other words, the place where it is to be located. It will be observed that the word "or" is the connecting link between "the place where it is to be located" and "its principal business transacted." This language confers a choice of either one or the other upon the corporation.

In Opinions of the Attorney General for 1923, at page 285, it was held that:

"A company coming within the purview of a bank under Section 5408, General Code, and which has its domicile in Mentor Township Special School District, Lake county, Ohio, should be taxed in said Mentor township, although its business is chiefly, if not entirely transacted in Cuyahoga county."

Where the status authorizing the formation of corporations requires the corporation to state the place where its principal office is to be located, such statement in the certificate is frequently regarded as conclusive of the fact required to be stated: The Union Steamboat Company vs. Buffalo, 82 N. Y. 351; Fletcher on Private Corporations, page 848.

In the case of Pelton vs. Transportation Company, 37 O. S. 450, the first paragraph of the syllabus is as follows:

"A certificate of incorporation which, under the statute, specifies the place where the principal office of the company is to be located, is conclusive as to the location of such office."

In the case of Stanton vs. The State Tax Commission of Ohio, The Union Mortgage Company, et al, decided March 7, 1927, by the Court of Appeals of Cuyahoga county, Ohio Law Bulletin, XXV, page 301, it is held that:

"The place designated by a corporation in its articles of incorporation as the location of its principal office is the situs of its intangible property for purposes of taxation, regardless of the fact that the company may maintain an office in some other locality where it transacts a much larger amount of business."

It is therefore evident that we must look to the articles of incorporation to see the place where it is located, or its principal business transacted. The doctrine of

the Pelton case, supra, has been followed in all Ohio State courts and also by Federal tribunals: Fairbanks Steam Shovel Company vs. Wills, 240 U. S. 642.

Your question is whether it is necessary for the corporation to maintain an office, or hold directors' meetings in the district claimed as the place where it is located or its principal business transacted in order for said corporation to secure the benefit of the tax rate of said district.

In said case of Pelton vs. Transportation Company, it was further stated that:

> "For many purposes, a corporation is regarded as having a residence, a certain and fixed domicile, in this state, and where corporations are required to designate in their certificate of incorporation the place of the principal office, such office is the domicile or residence of the corporation.
>
> The principal office of a corporation which constitutes its residence or domicile is not to be determined by the amount of business transacted here or there, but by the place designated in the certificate. True several offices may be established in the place specified in the certificate as it is sufficient under the statute to specify 'the county or place', but where a single office is established in the county or township or city or other place designated, no future inquiry as to the identity of the principal office is admissible, and as the statute does not require the office building to be specified, it is competent for the corporation to transfer its principal office from one building to another, within the specified 'county or place,' whenever its own convenience or advantage may be subserved. No doubt the exact location of the office should be open and notorious so that a secret or fraudulent removal would not avail any purpose, yet the particular motive in making the change, is not material, as for instance, whether it was done to avoid taxation."

In ex parte Schollenberger, 96 U. S. 369, the Court, by Chief Justice Waite said:

> "A corporation cannot change its residence or its citizenship. It can have its legal home only at the place where it is located by or under the authority of its charter, but it may by its agents, transact business anywhere, unless prohibited by its charter or excluded by local laws."

In the Pelton case, supra, the fourth paragraph of the syllabus reads:

> "A corporation whose principal office is located in a specified township and without the limits of a city, may if the city limits be so extended as to include the site of the office, remove the same to some other part of the township and thus avoid municipal taxes."

While the statute does not require the office building to be specified in the charter, yet it is evident in reading the various cases herein cited, that it was assumed by the court that there was a specific office building where officials of the corporation transacted the corporate business of the company and, as before stated, the exact location of the office should be open and notorious.

In the case of Stanton vs. The State Tax Commission, supra, it is stated that:

> "The Court takes judicial notice of the recent passage by both branches of the legislature of Ohio, of a new corporation act, which vitally changes the essential principles of existing laws, and in said act it provides, in substance, that the domicile of the corporation is that which is designated in the articles of incorporation as the place where its principal office is located."

It is therefore my opinion that, in order to secure the benefit of the tax rate of the place designated by a corporation in its articles of incorporation as the place where it is located, or its principal business transacted, an office must be maintained at said place, but is unnecessary to hold directors meetings at said place.

Respectfully,
EDWARD C. TURNER,
Attorney General.

374.

MUNICIPALITY—HOW GASOLINE EXCISE TAX FUNDS MAY BE USED—FOR REPAIR AND NOT FOR NEW CONSTRUCTION.

SYLLABUS:

1. *The municipality's apportionment of the gasoline excise tax receipts may be used to resurface or make improvements on the streets, public roads and highways of the municipality, when in making such improvement the existing foundation of such street or highway is used as the subsurface of the improvement in whole or in substantial part.*

2. *Gasoline tax receipts which have been apportioned to a municipality cannot be used to pave or make improvements to the public streets and highways of the municipality when in making such improvement the existing foundation of the street or highway is not used as the subsurface of the improvement in whole or in substantial part but a new foundation is made to be used as the subsurface of the new improvement.*

COLUMBUS, OHIO, April 23, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your inquiry, which is as follows:

> "May the municipality's share of the gasoline tax receipts be used to pay the city's share of the cost of paving an unimproved street; said street having been cindered and used as a public thorofare for many years?"

Section 5527 of the General Code reads in part, as follows:

> "For the purpose of providing revenue for maintaining the main market roads and intercounty highways of this state in passable condition for travel, for repairing the damage caused to such highway system by motor vehicles used on the same, for widening existing surfaces on such highways where such widening is rendered necessary by the volume of motor vehicle traffic thereon, for resurfacing such highways where existing surfaces have become worn or rutted, for enabling the several counties and municipal corporations of the state to properly maintain and repair their roads and streets, and supplementing revenue already available for such purposes and arising from direct taxation and from registration fees of motor vehicles, and for distributing equitably upon those persons using the privilege of driving such motor vehicles upon such highways and streets a fair share of the cost of maintaining and repairing the same, there is hereby levied and imposed on the sale or use of each gallon of motor vehicle fuel sold or used by any dealer, as herein defined, within the state of Ohio, an excise tax of two cents; subject, however, to the following specific exemptions. * * *"

Section 5537 reads in part, as follows: