

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.

2160.

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

COLUMBUS, OHIO, May 25, 1928.

2161.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES—11 RESIDENT DISTRICT DEPUTY HIGHWAY DIRECTORS.

COLUMBUS, OHIO, May 25, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted to this department certain bonds given by various Resident District Deputy Highway Directors, for the faithful performance of their duties, as follows:

<i>Name</i>	<i>County</i>
Ross E. Hamilton.....	Coshocton.
Frank R. Lander.....	Cuyahoga.
Boyd V. Wright.....	Hocking.
Clifford T. Williams.....	Huron.
Geo. M. Montgomery.....	Mahoning.
Wright McCroba.....	Meigs.
R. S. Fisher.....	Preble.
H. E. Calvin.....	Vinton.
C. M. Weeks.....	Washington.
John W. Dowler.....	Athens.
D. M. Cooper.....	Harrison.

I find all of the foregoing official bonds in proper legal form, and I have noted my approval thereon as to form, and am returning the same herewith to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2162.

NEWSPAPER—CLEVELAND NEWS—PUBLICATION OF ANNUAL FINANCIAL REPORT OF CITY OF CLEVELAND FOR AN AGREED SUM LESS THAN THAT AUTHORIZED UNDER SECTION 6251, GENERAL CODE—NO RECOVERY OF DIFFERENCE.

SYLLABUS:

The rates prescribed by Section 6251, General Code, that may be charged and received by publishers of newspapers for the publication of advertisements, notices and proclamations required to be published by a public officer of a city or other political subdivision are maximum rates only, and a city through its public officers may enter into a contract with the publisher of a newspaper therein for the publication of the financial report of the chief fiscal officer of such city, provided for by Section 291, General Code (112 v. 355), at rates less than those provided for by Section 6251, General Code, and in such case the publisher of the newspaper publishing such report is entitled to recover only the amount provided for in said contract.