The second test above stated is based upon "the usual course of trade" doctrine. No argument should be required to demonstrate that a company which makes continued or repeated sales of cigarettes in large quantities to retailers who re-sell such cigarettes to the consumer, would be considered by the trade as being engaged in the wholesale business.

As to the third test above mentioned, the original package theory, no facts are furnished. You do not state that the cigarettes are sold in unbroken cartons or packages of cartons to the retailer who divides the goods and sells the same in small quantities. But since the company sells, as you state, in large quantities, such must undoubtedly be the case. If this be true, the company under consideration is clearly engaged in the wholesale business of trafficking in cigarettes within the original package rule, as well as engaged in such traffic in the retail business.

In so far as the fourth test above set forth is concerned, which is the test applied by the Supreme Court of Ohio in the case of *Kauffman vs. Village of Hillsboro*, supra, clearly this company is engaged in the wholesale business of trafficking in cigarettes and in the retail business as well.

I find no opinions of the courts giving any consideration to the price at which the goods are sold in determining whether or not the business be wholesale or retail, and I am of the opinion that the fact that the company in question sells large quantities to retailers at the same price at which it sells small quantities to consumers in no way affects the question under consideration.

It is my opinion, therefore, that since from the facts stated in your letter it appears that the above company has been making continued and repeated sales of large quantities of cigarettes to retailers who again re-sell the same to consumers, and also sells such cigarettes at retail, the company described in your letter is engaged in both the wholesale and retail business of trafficking in cigarettes and should pay the license required of wholesalers in addition to the license which this company pays to engage in the retail business.

Respectfully,
EDWARD C. TURNER,
Attorney General.

301.

PERSONAL PROPERTY—REQUIREMENTS FOR EXEMPTION FROM TAXATION.

SYLLABUS:

Where under the provisions of Section 5374-1, General Code, exemption from listing personal property for taxation is claimed, the owner must, in compliance with said section, produce a certificate from the proper taxing officer showing that said property has been listed and assessed for the current year in another state, or subdivision thereof, in the manner and form required in said state.

COLUMBUS, OHIO, April 8, 1927.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your recent communication in which you request my opinion as to the construction of Section 5374-1 of the General Code of Ohio, and you state that:

"Our particular question arises under the following state of facts. An automobile was brought into this state during the month of June following tax listing day; the party brought this machine from Pennsylvania. In Pennsylvania there is no provision for listing personal property for taxation; the auditor of this county placed this automobile on the tax duplicate for the current year because the owner thereof was not able to furnish a copy of the assessment duly certified from Pennsylvania. The owner objects to this on the grounds that she is not able to produce such certificate because in the first place no provision is made in the Pennsylvania law for listing personal property and in the second place she claims that in Pennsylvania the tax is figured in with the license fee for the automobile and also that personal taxes are paid in the form of income tax and therefore this property has been duly taxed and assessed in Pennsylvania.

In view of this situation is the auditor of this county justified in forcing the collection of taxes in a case such as the above?

We are of the opinion that the statute intended that where property has been duly assessed and taxed in one state, if brought to Ohio within the year it need not be taxed again for the current year. But where a person, owing to the peculiar provisions of our statute, is unable to produce the certificate required therein, shall his property be taxed again?"

Section 5374-1 of the General Code reads:

"The personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise of persons moving into this state from another state between the day preceding the second Monday of April and the first day of October, in any year, shall be listed for taxation for such year in all respects agreeably to the provisions of this chapter; unless the person required to list the same shows to the assessor, under oath, and by producing a copy of the assessment duly certified to by the proper officer of the state or sub-division thereof in which said property was assessed, that the same property has been listed and assessed for taxation for that year in such other state, or that such property has been received by him in exchange for property so listed or assessed."

Under the provisions of this section, the personal property of persons moving into this state from another state between tax listing day and the first of October shall be listed for taxation; unless such person shows to the assessor, under oath, and by producing a copy of the assessment duly certified, that the same property has been listed and assessed for taxation for that year in such other state, or that such property has been received by him for exchange of property so listed and assessed. The burden is upon the person claiming the exemption from listing under this section, to comply with the requirements of said section.

You state that in Pennsylvania from which the automobile was brought into Ohio, there is no provision for listing personal property for taxation, and that the owner claims that in Pennsylvania the tax is figured in with the license fee for the automobile and that personal taxes are paid in the form of income tax, and therefore this property has been duly taxed and assessed in Pennsylvania.

This being true it seems that the owner of the automobile may still comply with the provisions of Section 5374-1, General Code, by obtaining from the proper taxing officers of the state or sub-division, a statement in regard to the taxing and assessing of said automobile in the form of income tax. Said certificate could also include the statement as to whether or not the automobile tax is figured in with the license fee. It is evident that the purport of this section is to secure exemption from double taxation

of personal property that has been listed and assessed in the current year in another state providing certain provisions of the section are complied with.

A statement of this kind may be secured from the taxing officials of Pennsylvania or the sub-division, and it is therefore my opinion that unless such statement is secured and the provisions of said section complied with, that the county auditor is authorized to place the automobile on the tax duplicate for the current year.

Respectfully,
EDWARD C. TURNER,
Attorney General.

302.

PUBLIC DANCE—CONSTRUING SECTION 13393, GENERAL CODE.

SYLLABUS:

In a given case where a public notice is given through the press or otherwise that a dance will be given at a particular time and place, and that everybody is invited, and where upon the assemblage of the parties interested in the dance and who propose to attend the same, printed invitations are handed out to the prospective dancers before appearing upon the dance floor, the proposed dance in question is a public dance and will require a permit under the provisions of Section 13393, General Code of Ohio.

COLUMBUS, OHIO, April 8, 1927.

HON. J. S. MCDEVITT, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

> "My question is relative to Section 13393, General Code of Ohio, and pertains to public dances, etc. without permit. The particular dance hall in question has been operating as a private dance hall and they conduct their dances in the following manner. A set form of invitation is printed and kept in the custody of the manager of the dance. Frequently advertisements are run in the paper announcing that there will be a dance at this particular place on a certain date, everybody invited. Then as the guests gather at the appointed hall these above mentioned printed invitations are handed out to all those present and they have one in their possession before they enter on the dance floor to dance. The question which I am asking is whether under the terms of the above mentioned statute this would be considered a private dance or whether it would be public and to be legal would require permission from the Probate Judge as stated in the statute.
>
> Section 13393 General Code provides:
>
> "No person shall give a public dance, roller skating or like entertainment in a city, village or township without having previously obtained a permit from the mayor of such city or village if such public dance, roller skating or like entertainment is given within the limits of a municipal corporation, or from the probate judge if such public dance, roller skating or like entertainment is given outside a city or village, or permit another so to do. All permits issued under the authority of this section shall be subject to revocation at all times. The provisions of this section shall not apply to charter cities where the licensing authority is vested in some other officer than the mayor."