

1476.

TRAFFICKING IN CIGARETTES—LICENSE REQUIRED—SECTION 5894  
G. C. CONSTRUED.

## SYLLABUS:

1. 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.

2. Such company may not sell cigarettes on trains while standing in the Union Station.

COLUMBUS, OHIO, May 16, 1924.

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

Gentlemen:—

This will acknowledge receipt of your letter of May 8, 1924, as follows:

"The Union News Company operates two news stands at the Union Station in the City of Columbus, Ohio; one in the waiting room and the other on the platform outside of the waiting room near the entrance gates to the trains. They sell cigarettes at both places.

Question 1. Under the provisions of Section 5894 G. C., will this company be required to pay a tax of \$50.00 for each of the stands or will the payment of one tax be sufficient for both?

Question 2. If this Company pays the required amount of taxes for the sale of cigarettes at the news stands, may it without paying any additional tax sell cigarettes on trains while standing in the Union Station?

Section 5894, General Code, reads:

"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."

Section 12680, General Code, reads:

"Whoever, being engaged in the business of trafficking in cigarettes, cigarette wrappers or a substitute for either, fails to post and keep constantly displayed in a conspicuous place in the building where such business is carried on, a receipt signed by the county treasurer showing that the amount of the assessment required by law has been paid into the treasury of the county where such business is located, or sells or offers to sell cigarettes, cigarette wrappers or a substitute for either, without complying with the provisions of law relating to cigarettes, shall be fined not less than one hundred dollars nor more than three hundred dollars and for each subsequent offense shall be fined not less than three hundred dollars nor more than five hundred dollars."

I find no former opinions of this department, nor court decisions covering your question.

You will note that Section 5894, General Code, provides for a fee of fifty dollars for "each place where such business is carried on," and Section 12680, General Code, fixes a penalty if a receipt is not displayed "in a conspicuous place in the building where such business is located." So the answer to your question hinges on the interpretation of these two statutes.

Webster's definition of the word "place" is as follows:

"Any position of space regarded as measured off or distinct from all other space, as related to any other position, or as appropriated to some definite object or use; separate division; apartment; room; position; ground; site; spot; rarely unbounded space."

Certainly the business carried on by this company on the platform is not in the building where the "receipt" is displayed, nor is the business conducted in the trains in the train shed, in the building.

Each of these would be a separate "place".

No one would claim that such receipt could be posted in the lobby of a business block and a person or firm sell cigarettes in several different store rooms in such building.

One receipt cannot be displayed in more than one place, nor can an agent carry such receipt or display and do business all over a city on such receipt.

You are governed by the facts in each case passed on and, as a matter of fact, in this case the business in the depot proper is conducted in a separate enclosed place, as is the place on the platform and in the cars, not connected in any way and are in no sense one place.

In my opinion, these are separate places and each should pay a separate tax and display a separate receipt for each place or space occupied by the business.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

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1477.

DISPOSITION OF FUNDS PAYABLE TO MUNICIPAL TREASURY BY  
VIRTUE OF PROVISIONS OF THE MASSILLON MUNICIPAL  
COURT ACT.

*SYLLABUS:*

*Funds payable to the municipal treasury by virtue of the provisions of the Massillon Municipal Court Act other than proceeds of suits for penalties mentioned in Section 4607 G. C. may be distributed to the safety, service and general fund if council by ordinance so directs.*

COLUMBUS, OHIO, May 16, 1924.

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

Gentlemen:—

You have requested my opinion as follows: