

License, for Selling Cigarettes and Cigarette Papers. Cigarettes, Licenses for Selling.

Under provisions of Section 2763 no license is required where cigarette papers are given away with tobacco when no extra charge is made therefor.

March 21, 1911.

Mr. D. W. Doyle,
County Attorney,
Choteau, Montana.

Dear Sir:

Your letter of March 17th has been received requesting my opinion upon the following proposition:

"Wholesale dealers in certain kinds of tobacco when they ship a box of smoking tobacco in packages to retail dealers, enclose in the box a number of packages of cigarette paper, one or more of which is to be given to each person who purchases a package of tobacco if the purchaser wants it. No extra charge is made for the papers but when a purchaser buys a package of smoking tobacco he is entitled to one or more of the packages of papers. There are two kinds of cigarette papers; one kind is made for the purpose of selling independently of the sale of tobacco, and the other kind is made by the tobacco dealers for the purpose of being given away with the package of tobacco when sold. Is a tobacco dealer who gives away with the packages of tobacco sold a package of the last mentioned cigarette papers obliged to have a license under Section 2763 of the Revised Codes?"

In reply, I will say, that Sub-division 2, of Section 2763, Revised Codes, provides:

"Every person or persons who is engaged in the business of selling cigarettes, cigarette paper or the material used, in making cigarettes, except tobacco, shall pay a license of ten dollars per month."

The meaning and intention of this section is to require persons engaged in the business of selling cigarettes or cigarette paper, to pay a license for the right to sell the same. If the cigarette papers which come with tobacco for the purpose of being given away with the tobacco, are actually given away and no additional charge is made for the tobacco by reason of that fact, I do not think that the retail dealer would be required to have a license under this section, but if the cigarette papers are given away with the tobacco and additional charge is made for the tobacco by reason of that fact, it would only be a subterfuge and would be a violation of the section and in that event a license should be charged. However, if the retail dealer in good faith gives away the paper without any charge or consideration whatever, he certainly would not be "selling" cigarettes or cigarette papers, or the materials used in the making of cigarettes under the provisions of this section.

Yours very truly,

ALBERT J. GALEN,

Attorney General.