

Post Office Department
Solicitor
Opinion of March 10, 1916
6 Ops. Sol. POD 373 (pub. 1928).

MARCH 10, 1916

I have your letter of January 3, 1916, reading as follows:

"It having come to the knowledge of this office that a certain practice was and is prevalent in the building known as the 'Insurance Exchange,' this city, in the passing of sealed communications between members of an organization called the Chicago Board of Underwriters through its clearing house, these Communications being delivered by paid messengers, this organization has been called upon to make a statement of fact in writing regarding the practice. This written statement has been prepared by Messrs. Furber and Wakelee, general counsel for the Chicago Board of Underwriters, and is herewith submitted for the information of the department and for your ruling upon the matter for the guidance of this office. The statement has been carefully read and seems to this office, to be fairly complete and comprehensive. If, however, further information is desired this office will make all endeavors to secure it."

More detailed information on certain features being deemed essential in passing upon the question the matter was referred for investigation and the inspector's report has just been received.

The practice the legality of which is in question is explained by general counsel for the Chicago Board of Underwriters in a letter to you of December 31, 1915, as follows:

"We would respectfully ask you to refer this communication to the honorable Solicitor for the Post Office Department with request for information of his interpretation of the meaning, and scope of sections 1289 and 1290 of the Postal Laws and Regulations in regard to the maintenance of paid messenger service for collecting and de- **[6 Ops. Sol. POD 374]** livering fire-insurance policies, with bills of debits and credits and other insurance data, in sealed envelopes, among policy writing agents and members of an organization called the Chicago Board of Underwriters and the clearing houses, all offices being located in the Insurance Exchange Building. The reasons for the maintenance of such paid messenger service are as follows:

"There are, approximately, 120 individuals and firms engaged in the business of fire-insurance agents, and occupying, almost exclusively,

the offices on the floors above the eleventh one of 21 stories of the Insurance Exchange Building. In conducting the business the policy-writing agents frequently obtain a line of insurance that is larger than the policy writing capacity of their companies; so much of the line as can not thus be written by an agent in his companies [sic] is placed among other offices in such proportionate amounts as these offices are able to handle. There thus exist among all these local policy-writing offices credits for premiums which they write and debits for premiums on policies which are written for them. There are also credits for brokerage or commission upon the premiums of policies placed by them and charges for brokerage or commission on premiums written in the interchange of business between the agents. In order to insure the prompt payment of the balances between agents and the systematic and convenient settlement of same between agents, with the prompt handling and delivery of insurance policies with bills there is maintained in the same building a clearing house, which is in principle similar to clearinghouses existing to facilitate the business of banks in the larger cities; wherein the debits and credits are balanced, and the agent who is indebted pays into the clearing house the amount of his net indebtedness, and the agent who has a credit, as the result of balancing accounts, receives from the clearing house the payment of such balances.

"To expedite the work, such messenger service under the immediate direction and control of the clearing house is indispensable. The messengers are subject to frequent call and detail of the manager so as to go at frequent intervals to the various policy-writing agency offices to collect certain policies so written, with the bills therefor, upon which bills there is a charge for the premium on the policies written and a credit for the brokerage earned by writing such policies. These policies and bills so collected are taken to the office of the clearing house, there sorted and are by the messenger boys distributed among the offices for whom they are written. The bills are O.K.'d, one copy is kept by the office for whom the policy is written, the other is put in the place from which it is collected by the messenger for the clearing house, then taken [6 Ops. Sol. POD 375] to the clearing house and there kept as a memorandum of the charge and credit as between the two local insurance offices, respectively. Once a month statements are made up and balances struck which statements are by the messengers for the clearing, house distributed among the members thereof.

"In addition to the matter thus carried by messengers there also will

be offices of cancellation and cancelled policies with statements of charges for returned premiums upon such cancelled policies and other items which may affect the balances or accounts of the policy-writing agencies.

"The matter above indicated includes practically all that is collected, delivered, and distributed by the messengers. Their work is confined to the offices in the Insurance Exchange Building which is, of course, private property on privately owned grounds.

"The messenger boys to the number of four or five are employed by the manager of the clearing house, and he is reimbursed from a fund paid into the clearing house by the Chicago Board of Underwriters. Outside of the wages paid to the boys, no one makes any profit out of the service unless the wages of the messenger boys may be said to be profit.

"The messenger service grew out of the imperative need for frequent collections and deliveries of policies and such data as is indicated to facilitate the work of the clearing house. Such collections and deliveries as are provided by the free-delivery service of the Post Office Department would be entirely inadequate as the demand is for almost constant messenger service during business hours. The lack of such paid special messenger service would seriously embarrass the salutary influence of the clearing house that has become as important an auxiliary in the insurance world of Chicago as is the clearing house in banking. transactions in establishing and conserving methods in a community of interests, tending to elevate standards by clearing transactions and in fixing responsibilities for derelictions, with proper discipline for infraction of rules.

* * * *

"It has been the practice of the policy-writing agencies and clearing house to enclose the matter in envelopes as precaution against the possibilities of messengers losing or misdelivering some of the policies, bills, and other instruction data in the conveyance thereof, and therefore permission for the continuance of such method of handling is desired.

* * * *

"The membership of the Chicago Board of Underwriters consists of those agents who are given by their companies general power to write

insurance policies in Cook County. It also includes a large [6 Ops. Sol. POD 376] number of those engaged in the business of insurance as brokers and other classes of insurance agents who are engaged in business in Cook County, but outside of the principal city district of Chicago. The policy-writing agents with general powers, members of the board, number about 120. The board is a corporation existing under a charter granted in 1861 and it is of the general character that will be readily understood from its name. The clearing house is a voluntary organization unincorporated, composed of about 70 members all of whom are also members of the Chicago Board of Underwriters. The expenses of the clearing house are defrayed by the Chicago Board of Underwriters, Mr. Cutler, who is in charge of the clearing house, receiving a stated salary, and the board reimburses him for the exact amount of the wages paid out to the messenger boys employed by the clearing house. These expenses of the clearing house are defrayed by the board out of a fund arising, from the fees and dues paid by the members and fines imposed on members for violations of the rules of the board. The members of the clearing house pay nothing to the clearing house as such for its support and no fund is specifically created by the members of the clearing house or paid by them for the support of the clearing house or its messenger service alone."

Sections 1289, 1290, and 1294, Postal Laws and Regulations. 1913, constitute, respectively, sections 181, 184, and 186 of the Federal Penal Code, reading as follows:

"SEC. 181. Whoever shall establish any private express for the conveyance of letters or packets, or in any manner cause or provide for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place to any other city, town, or place between which the mail is regularly carried, or whoever shall aid or assist therein shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both: *Provided*, That nothing contained in this section shall be construed as prohibiting any person from receiving and delivering to the nearest post office, postal car, or other authorized depository for any mail matter, any mail matter properly stamped.

"SEC. 184. Whoever, being the owner, driver, conductor, master, or other person having charge, of any stagecoach, railway car, steamboat, or conveyance, of any kind which regularly performs trips at stated periods on any post route, or from any city, town, or place to any other city, town, or place between which the mail is regularly

carried, and which shall carry, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such steamboat or other vessel, to the current business of the [6 Ops. Sol. POD 377] carrier, or to some article carried at the same time by the same stagecoach, railway car, or other vehicle, except as otherwise provided by law, shall be fined not more than fifty dollars.

"Sec. 186. Nothing in this chapter shall be construed to prohibit the conveyance or transmission of letters or packets by private hands without compensation, or by special messenger employed for the particular occasion only."

Whether the practice described above is in violation of the "private express" statutes depends upon the answer to the following three principal questions: First. Is the relation to each other of the parties to the business such as is within the contemplation of the statute under consideration? Second. If so, is it a private express "for the conveyance of letters or packets"? Third. If so, is it for the conveyance of "letters or packets" by regular trips or at stated periods over any post route which is or may be established by law ?

Taking up the first of these questions, then, it may first be stated that it is now quite well settled that the correct view of sections 181 and 184, above quoted, is that they apply to the carriage of mail for *third parties, or for others*. (21 Op. A.G. 394; 28 Op. A. G. 538; Op. Sol. P.O.D., Oct. 5, 1915.) In the opinion of this office just cited the statement, appropriate to the present case, was made that "the prohibition is against the transportation of mail between entities rather than between places." The relationships of the persons and concerns connected with this system are set out in the letter of the general counsel for the board of underwriters as follows:

"The membership of the Chicago Board of Underwriters consists of those agents who are given by their companies general power to write insurance policies in Cook County. It also includes a large number of those engaged in the business of insurance as brokers and other classes of insurance agents who are engaged in business in Cook County, but outside of the principal city district of Chicago. The policy-writing agents with general powers, members of the board, number about 120. The board is a corporation existing under a charter granted in 1861 and it is of the general character that will be readily understood from its name. The clearing house is a voluntary organization, unincorporated, composed of about '70 members, all of whom are also members of the Chicago Board of Underwriters. The expenses of the clearing house are defrayed by the Chicago Board of Underwriters; Mr. Cutler, who is in charge of the clearing house, receiving a stated salary; and the board reimburses him for the exact

amount of the wages paid out to the messenger boys employed by the clearing house. These expenses of the clearing house, are defrayed by the board out of a fund arising from the fees and dues paid by the members and fines imposed on members for viola- **[6 Ops. Sol. POD 378]** tions of the rules of the board. The members of the clearing house pay nothing to the clearing house as such for its support and no fund is specifically created by the members of the clearing house or paid by them for the support of the clearing house or its messenger service alone."

The various independent agents, or brokers, who make use of the clearing house and of the corps of messengers, are engaged in the business of writing insurance as the local agents, or brokers, of one or more insurance companies (corporations, joint-stock companies, and the like), such companies having their respective domiciles in different States throughout the United States and abroad. Each of these agents is conducting a separate business for his own company, or companies, with the general public. It is obvious, therefore, that these various agents are third parties to the clearing house, the origin and organization of which is described above. As an instrumentality of communication between these agents and, to some extent, between these agents and the clearing house, there is employed this messenger service.

The manner in which the messenger service is operated is described in a general way in the statement of the general counsel for the board of underwriters heretofore quoted, and a concrete illustration is given in the inspector's report, as follows:

"The clearing house is used by members in the following way: A local agent (No. 1) receives an order for \$100,000 fire insurance on a certain building, or stock of goods. His own company will permit him to write a policy for only 20 per cent of this amount and he must parcel out the remaining 80 per cent to other companies. Accordingly, after obtaining the rate to be charged from the board of underwriters, he dispatches his clerk or 'placer' with what is termed, a 'binder.' This 'binder' describes the property, gives the rate, etc., and is for the signature of the other agents if they elect to accept and issue a policy for a portion of the risk. The 'placer' obtains the signatures of any four agents to the 'binder,' whereby they agree to write, policies in the sum of \$20,000 each, returns the 'binder' to his employer, and his work is completed. Agent No. 2 then writes up a policy and sends it by messenger, together with a clearing house bill for his premium, to agent No. 1, who in turn endorses his acceptance on the bill and returns it by messenger to agent No. 2. The latter then forwards it by messenger to the clearing house that No. 1 may be debited and No. 2 credited with the amount of bill. What applies to No. 2 likewise applies to Nos. 3, 4, and 5, and the entire transaction can be

completed within one or one and one-half hours, and No. 1 has his five policies all ready for delivery to the insured."

From these statements we readily perceive the scope and field of utility of the clearing house and of the corps of messengers. We [6 Ops. Sol. POD 379] find that all but a small proportion of the matter transported by these messengers does not reach the clearing house as such. Policies with bills, requiring no attention in connection with the accounts, go back and forth by these messengers between these insurance agents for their attention and their attention only. The matter that passes from individual agents to clearing house per se and vice versa for accounting purposes seems to be only the approved bills and monthly financial statements, it being significant that a bill does not reach the clearing house for attention in an accounting way until it has been transmitted with policies *between agents* and approved and returned, and until the transaction is finally completed between the agents themselves. I am unable to find any compelling necessity for the rapid transmission of these approved bills or monthly statements. Balances between these insurance agents are struck and statements thereof submitted by the clearing house to the agents but once a month, so that the collection or assembling of approved bills once a day would seem to meet all the requirements of the present accounting system. It follows from this that this messenger system is not primarily for convenience in adjusting accounts between the agents, but for the transportation of matter between them.

There is no question, of course, of the right of these various insurance agents, whether located in the building or elsewhere, to have their accounts with each other adjusted by means of a general clearing house, but as this messenger service is operated it appears that by far the greater portion of the matter handled by the messengers does not go, and it is not at all necessary for it to go, through the clearing house, as such, but is merely concentrated in the office of the clearing house by incoming messengers and distributed or routed for delivery to the addressees by outgoing messengers. The employment of a means of communication between the agents such as this messenger system provides, embracing as it does the transportation of matter between the several agents, is a thing apart from the adjustment of accounts, whether the matter is merely brought to the clearing house and there distributed and sent along to its destination, or the messengers collect and deliver it en route without its passing through the central distributing point in the clearing house. As at present conducted, Manager Culver not only constitutes the medium by which financial balances between the different insurance agencies are determined and settled, but as to the matter passing between these insurance agents the operation of this corps of messengers constitutes a transportation system "for others."

Advancing to the second proposition, we find that the prohibition of the statute is directed against the conveyance of "letters or packets." The matter carried by the clearing-house messengers [6 Ops. Sol. POD 380] seems to be for the most part insurance policies and bills, carried together as well as separately, clearing-house statements of balances and notices of cancellation of policies, with statements of charges for return premiums, etc., all in sealed envelopes. Are these items embraced in the phrase "letters of packets"? In order to forestall future inquiry on the point, it will be as well to cover the question of matter unsealed as well as matter under cover, inasmuch as the answer is the same in each case. A letter is defined by Bouvier (Rawles Rev.) (vol. 2, page 185) as

follows:

"An epistle; a despatch; a written message usually on paper, folded up and sealed, and sent by one person to another."

In *United States v. Denicke* (35 Fed. 407, 409), the following definition is given: " A letter is a written or printed message. In *United States v. Gaylord* (17 Fed. 438, 440) it was said:

"That is just as much a letter, if written and sent in an envelope from one person to another unsealed, as if sealed. It is a matter of daily observation that in our large cities letters are constantly posted without being sealed. They are still letters."

The case of *United States v. Bromley* (53 U. S. 88, 97), which was a prosecution for the violation of the law out of which was evolved section 184 of the Penal Code, is not only instructive but in my opinion, decisive of the status as "letters" of the matter being carried by the insurance clearing house messengers. Mr. Justice McLean, delivering the opinion of the court in that case, said:

"The letter or order, as it is called by some of the witnesses, was folded in the form of a letter and directed as such, though it was not sealed. A seal was not necessary to constitute it a letter or to make it chargeable with postage. The letter was not within the exception of the statute, as it did not relate to the cargo or to any article on board of the boat. It was an order for tobacco on Mr. Palmer, of Rochester, who was a dealer in that article. Among merchants, an order to the wholesale dealer for merchandise is a common subject of correspondence. And it may be doubted whether any other subject can be named on which more letters are written and forwarded in the mail. Two-thirds of the half sheet which composed the letter was covered with writing, from which an inference may be drawn that more than a mere order for goods was requested by the writer. But an order for goods, folded and directed as a letter, is clearly mailable matter, and a conveyance of it, as charged, is a violation of the law."

Pursuing the thought of the Supreme Court expressed in the language just quoted, it seems to me that it can with equal truth be said that a bill is a common form of correspondence and constitutes a considerable number of the "letters" handled by the postal establishment. Insurance policies as documents and bills, receipts, etc, as **[6 Ops. Sol. POD 381]** such, are acceptable in the mails and acceptable only as first-class matter. If deposited for handling by the Postal Service they become "letters," and when they are handled by private concerns or parties they are none the less so within the meaning of section 181 of the Penal Code.

The last question involves two propositions—first, whether the conveyance of the "letters"

is by regular trips or at stated periods, and, second, whether such trips are over any post route. The inspector who made an investigation of the matter reports that "the messengers employed by the Chicago clearing house make regular collection trips as follows: Every 20 minutes between the hours of 8:30 and 10:00 a.m., every 30 minutes thereafter until 2:30 p.m. and every 20 minutes thereafter until 6:00 p.m." The first proposition, then, must be answered in the affirmative, it being clear that the business is under that systematic or regular operation which the statute prohibits, and is not that merely occasional, casual, or fortuitous carriage of mail which was evidently in the mind of Congress when it said in section 186 of the Penal Code, which is *in pari materia* with the statute under consideration, that "nothing in this chapter shall be construed to prohibit the conveyance or transmission of letters or packets by special messenger employed for the particular occasion only."

Do these messengers carry these letters over any post route which is or may be established by law "? From the inspector's report we find that—

"The entire building is served by city letter carriers, who deliver the mail directly into the offices of the various tenants. There are no boxes on the ground floor of the building. Six carriers are required to serve the building, which is divided up as follows:

"First to ninth floors, both inclusive, two carriers.

"Tenth to fifteenth floors, both inclusive, two carriers.

"Sixteenth to twenty-first floors, both inclusive, two carriers.

"The carriers serving the lower floors also deliver mail to two or three small buildings on Sherman Street immediately adjacent to the Insurance Exchange. The entire time of the other four carriers is devoted to the Insurance Exchange, and practically all members of the Chicago clearing house are located above the eleventh floor of the building and are served by these four carriers."

All the tenants of this building, then, are on a letter-carrier route and it is settled that a letter-carrier route is a post route within the meaning, of the "private express" statute. (*Blackham v. Grisham*, 16 Fed. 609, 611; *United States v. Easson*, 18 Fed. 590; and see also *United States v. Kochersperger*, 9 Am. L. Re-. 145, 26 Fed. Cases No. 15541; *Railway Mail Service Cases*, 13 Ct. Cl. 199.) [6 Ops. Sol. POD 382]

In conclusion, it is my opinion that the messenger service herein treated of is operated in violation of law and should be required to be discontinued.

Regarding their request for suggestions as to the manner in which the messenger service might be readjusted to comply with the law, you will please advise counsel for the clearing house that this

office may give opinions and advice only to the Postmaster General and officers of the Postal Service upon questions of law arising in the course of the service, and is precluded by regulation from giving opinions or advice to the public generally. However, it seems proper to direct attention to section 3993, Revised Statutes, embodied as section 1291, Postal Laws and Regulations, 1913, which provides:

"All letters inclosed in stamped envelopes, if the postage stamp is of a denomination sufficient to cover the postage that would be chargeable thereon if the same were sent by mail, may be sent, conveyed, and delivered otherwise than by mail, provided such envelope shall be duly directed and properly sealed, so that the letter can not be taken therefrom without defacing the envelope, and the date of the letter or of the transmission or receipt thereof shall be written or stamped upon the envelope. But the Postmaster General may suspend the operation of this section upon any mail route where the public interest may require such suspension."

A copy of this opinion is inclosed for the use of general counsel for the Chicago Board of Underwriters.

W. H. LAMAR

POSTMASTER,
Chicago, Ill.