

Post Office Department
Assistant Attorney General
Opinion of May 18, 1909
5 Ops. Sol. POD 193 (pub. 1928)

MAY 18, 1909

SIR: Your letter of the 17th instant, in regard to certain matter sent outside the mails by the Pope Manufacturing Company, has just been received. I note that you state you are awaiting reply to your letter to the Postmaster-General of date April 30, 1909. I regret to say that upon investigation I find that the reason you have not received reply to that letter is because of an oversight in my office. The letter to which you refer, addressed by you to the Postmaster-General, was referred to my office for reply. A reply thereto was prepared by my assistant for my signature under date of May 8, to which I suggested some changes, and the letter was sent back to be rewritten, and through some oversight was placed in the files and never mailed. I regret exceedingly that this occurred.

Before your letter of April 30 was referred to me Mr. Larkin, of the firm of Joline, Larkin & Rathbone, called to see me in regard to this matter. I told him that I had no knowledge in regard to it, and that the matter was entirely in your hands, and that he would have to take it up with you. He stated, among other things, as he claims in his letter which I transmitted to you, that the letters sent by express were letters addressed by correspondents to either the office at Hartford or Westfield which should have been addressed to the other office, and that when the letters were received at Hartford, for instance, which should have been addressed to Westfield, the Hartford office would make them up in a package and send them by express to Westfield, and vice versa. Whether such a shipment as this would be a violation of the statutes I am not prepared to say. There seems to be no doubt, however, that the letters of instructions which passed from one office to the other were in violation of the law, and that the penalty incurred (in each instance) would be \$50, as provided by the statute. The express company would also be liable for the penalty of \$150 for each violation of section 3982, Revised Statutes.

I do not feel that at this distance I am able to advise you as to the amount of penalty which you should insist upon in settlement. That depends very largely upon the evidence which you have of the number and character of the shipments. The amount demanded by way of any settlement should be large enough to reimburse the Gov- **[5 Ops. Sol. POD 194]** ernment for all possible loss which it may have sustained, and also large enough to deter the company from again indulging in this practice. As to whether there has been willful and intentional violation of this statute, which demands punitive damages, you are better able to judge than I am. The department would be fully satisfied with a settlement for \$1,000, as you suggest, and, if you think it advisable, would be satisfied with a settlement at considerably less than that amount. It hardly seems probable that the Government has been the loser to anywhere near this extent through the practice referred to.

Attorney General Wayne MacVeagh, in an opinion dated June 29, 1881, copy of which I inclose, held that the term "packet" used in this connection in the statute means a package of letters, and since that time the statute has been so construed by this department. It has been insisted by some

parties that the term "packet" would include a package of merchandise of any character, and that therefore under the statute express companies have no right to carry any package weighing less than 4 pounds, the Government having a monopoly over all such matter. The position taken by the department, however, has been, as I have stated, that the term "packet" referred only to a packet of letters. (In this connection see *U.S. v. Chaloner*, 1 Ware, 214, Fed. Case No. 14777; *U.S. v. Blackman*, 17 Fed. 837.) As to what is a "letter," it has never, so far as I have been able to learn, been defined other than the common, ordinary acceptance of the term. As to whether reports, invoices, etc., would constitute "letters" within the meaning of the statute, it would seem to me depends somewhat upon the circumstances of each case. If they partake of the nature of personal correspondence, the conveying of written information from one to another, I am inclined to think that they should be construed as coming within the definition of "letters." However, this question is not free from doubt, and as the question is still an open one, so far as I am advised, I should be glad to see it raised in this case, should you think it advisable under all the circumstances to go into the courts on the matter.

I am also inclosing you herewith a pamphlet compiled in the office of the Second Assistant Postmaster-General, in relation to railroad mail matter, which may be of some assistance to you; also a copy of the digest of decisions of the United States and other courts affecting the Post Office Department and the Postal Service, where you will find several decisions touching these cases on page 146.

Respectfully,

R. P. GOODWIN.

Hon. JOHN T. ROBINSON,
United States Attorney, Hartford, Conn.