

Post Office Department
Assistant Attorney General
Opinion No. 14 (August 26, 1873)
1 Ops. Sol. POD 36 (pub. 1905)

SIR: I have carefully considered the letter of the honorable the Secretary of War of the 14th instant addressed to you, and the papers accompanying it. [**1 Ops. Sol. POD 37**]

Inclosed in the letter of the Secretary is a copy of an order of the War Department, in the following words:

General Orders, No. 80.]

“War Department,
“Adjutant-General’s Office.
“Washington, August 1, 1873.

“Where any considerable saving would result, packages of official mail matter, such as returns, etc., weighty or bulky in character, may be transmitted by express instead of through the mails as heretofore, the expressage to be paid out of the appropriations for the military service.

“By order of the Secretary of War.

“Thomas M. Vincent,
“Assistant Adjutant-General.

“Official:

“E.D. Townsend,
“Adjutant-General.”

And you are asked “if the forwarding of mailable matter by express, as directed by that order, is considered by the Department in conflict with existing statutes upon the subject of postal matter.”

There is nothing in any existing statute upon the subject of “postal matter” which discriminates in favor of the Departments of the Government in relation to the mode and manner of transmitting mailable matter.

The law is general, and since the abolition of the franking privilege by the act of Congress passed January 31, 1873, all of the restrictions and prohibitions of the act passed June 8, 1872, entitled “An act to revise, consolidate, and amend the statutes relating to the Post-Office Department,” which apply to the private citizen are applicable to the same extent to an officer of any of the Departments.

If the private citizen, by the provisions of that act, and particularly by the two [**1 Ops. Sol. POD 38**] hundred and thirtieth section thereof, is inhibited from using an express or other unlawful means for the transmission of mailable matter, so also is the public officer, nor are the

inhibitions in any manner affected by the public or private character of the mailable matter.

It will not be supposed that a private citizen would be permitted to violate with impunity the provisions of the two hundred and thirtieth section of the act referred to, which provides "that no person shall transmit by private express, or other unlawful means, or deliver to any agent of any such unlawful express, or deposit, or cause to be deposited, at any appointed place, for the purpose of being transmitted, any letter or packet, and for every such offense the party so offending shall forfeit and pay fifty dollars," for any consideration of the saving of postage to him for the violation, much less could it be allowed an officer of a Department to violate the same law for a similar consideration, especially in view of the fact that Congress has provided so liberally by appropriation for the payment of the postage of the several Departments.

It may not be improper in this communication to notice a matter intimately connected with the subject, although not directly responsive to the question propounded in the letter of the Secretary of War. It was the purpose of the two hundred and twenty-eight, two hundred and twenty-ninth, two hundred and thirtieth, and two hundred and thirty-first sections of the act of June 8, 1872, to prevent, by penal enactments, the transmission of mailable matter of the first class (all correspondence wholly or partly in writing) by express or other unlawful means. By the one hundred and thirty-fourth section of the same act it is provided that "packages weighing more than four pounds shall not be received for conveyance by mail."

The term package in this section, and throughout the law, appears to be used in a different sense and with a different intendment from the term "packet" in the section above referred to.

The latter is restricted to mailable matter of the first class; the former is used throughout the law as applicable to mailable matter of the second and third classes. And inasmuch as mailable matter of the second and third classes, under the restrictions of the one hundred and thirty-fourth section, can not be received into the mails when each of the several proper mailable parcels of such matter, made up in a package, exceeds 4 pounds in weight, such packages are not within the contemplation of the Postal Code, and may be sent by express, or in any other manner, without a **[1 Ops. Sol. POD 39]** violation of law, but the one hundred and thirty-fourth section, not being applicable to mailable matter of the first class, all matter of that class can be conveyed in the mails, without regard to weight, and all the inhibitions of the several sections of the Postal Code prohibiting transmission by express, or other unlawful means, apply to it.

Very respectfully,

T.A. SPENCE

THE POSTMASTER-GENERAL