

Post Office Department  
Assistant Attorney General  
Opinion of March 31, 1909  
5 Ops. Sol. POD 158 (pub. 1928)

March 31, 1909

SIR: I have considered the matters submitted by your letters of February 15 in relations to the sending of letters by private express in violation of section 3984, Revised Statutes, by the National Supply Company, of Independence, Kans., and the carrying of same in violation of section 3982, Revised Statutes, by the Wells-Fargo Express Company.

Whether the collection made by the inspector of the shipper should be sustained and the conditions of payment approved is more largely a question of administration than of law, but if it is desired to accept same it will have to be done, it appears to me, under section 409, Revised Statutes. I am, however, unable to see how the penalties on the various shipments that have been made can be remitted without knowledge of these specific shipments. That information is not at hand. However, the matter will have to be adjusted by the auditor.

As to the case of the carrier, I can offer not suggestion as to whether suit could be brought, because there is no evidence of any specific offense. This is absolutely essential to determine the character of the carrying and the liability of the carrier. Moreover, whether the evidence in any instance would be sufficient to warrant **[5 Ops. Sol. POD 159]** a reasonable expectation of success is a question to be determined by the prosecuting officers having in charge these cases. Search of the printed reports and of the files of this department so far as they have been available indicates that every few suits have been filed against carriers under this law. The attitude of the department apparently has been not to insist upon payment of the penalty where competition with the service of the department could be prevented by voluntary action of the carriers upon notice from the department. Adherence to that policy would seem, judging from the tenor of the carrier's correspondence, to be sufficient for the necessities of this case. The inspector, of course, has no authority to levy fines. That can only be done by the courts in suits properly brought by the Government. His effort to do so in this instance in connection with the fact that it has apparently been the attitude of the department not to require payment of these penalties where notice was sufficient to prevent further violations, may offer good reasons from an administrative standpoint for not requesting the bringing of suit in this case, even if it were considered that the evidence is otherwise sufficient.

The exact character of matter carried in any instance here is not known. The inspector states that he understands it was "typewritten statements, some on printed forms with blanks filled in with typewriter, some wholly written with typewriter; monthly and weekly reports of the business, and other matters of confidential and private nature relating to the conduct of the business." I do not find any decision by the courts or ruling of this department as to whether such reports are "letters or packets" within the meaning of the mail monopoly statutes. Without desiring to express any definite opinion, for the reason that the exact matter is not before me, I am, however, inclined to think that

such reports are "letters or packets" within the meaning of the law. Consequently, I suggest that if this or other companies are making a practice of receiving such matter for conveyance out of the mails the necessary evidence be [sic] obtained so that a definite ruling can be had, and if it is decided that such carriage is prohibited then notice can be given by the department to all concerned to desist from the unlawful conveyance of such matter, after which notice the department will be in a better position to sue for these penalties if that course is necessary to protect the revenue.

I notice from the correspondence in this case that the Wells-Fargo Express Company has in its schedule "reports on printed blanks filled in on typewriter." That classification would apparently comprehend these reports and would indicate a general business of carrying such matter.

Respectfully,

R.P. GOODWIN

CHIEF INSPECTOR