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FILM — SUPERINTENDENT OF PUBLIC INSTRUCTION — WITHOUT AUTHORITY TO RECALL A FILM FOR RECENTORING OR TO REVOKE ANY CERTIFICATE PERMITTING ITS EXHIBITION WHEN FILM ITSELF IS NOT BASIS OF RECENTORSHIP OR REVOCATION — SUCH PROCEDURE WOULD BE CONTRARY TO SECTION 154-47b G. C.

SYLLABUS:

The superintendent of public instruction is without authority to recall a film for recentoring or to revoke any certificate permitting its exhibition when the film itself is not the basis of such recentorship or revocation. To do so would be contrary to Section 154-47b of the General Code of Ohio.

Columbus, Ohio, February 8, 1950

Hon. Clyde Hissong, Superintendent of Public Instruction
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“This letter is written with the purpose of getting your official opinion concerning the legal authority of the Superintendent of Public Instruction, under Section 154-47b, in either approving or disapproving a film to be shown in the Motion Picture Theatres of Ohio.

“Your interpretation of the law is desired in connection with a film known as ‘Stromboli’ in which Ingrid Bergman is the principal actress. I ask for your opinion on this subject because there have developed, since the issuance of a certificate of approval, certain facts and circumstances in connection with the private life of the principal actress and the director of the film. I assume that the facts are known to you; if not, I will supplement this letter with current news reports. In view of extenuating circumstances, it is my desire to recall and reject for showing this film, if I have the legal authority to do so.

I specifically want to know whether in the exercise of my judgment and discretion I may consider, in addition to the story contained in the picture and the character of the presentation, other circumstances such as the type of advertising that is prac-

ticed, the publicity that is given in connection with the picture or its principal character, and, of course, the public information concerning the private life of the principals.

“Section 154-47b, dealing with the right to approve or reject films, among other provisions contains these statements:

“(1) ‘Only such films as are in the judgment and discretion of the Department of Education of a moral, educational or amusing and harmless character shall be passed and approved by such department. * * *

“(2) ‘The Department of Education shall be authorized to recall any film for recensoring or to revoke any certificate permitting the exhibition of any film in the State of Ohio when in the judgment of the Department of Education the public welfare requires it.’

“The showing of the film was approved on January 30, 1950, at a time prior to the development of the facts and circumstances centering around the private lives of the principal actress and the director of the film.

“I mention this fact to explain to you why the film was approved and why I am now wanting to reconsider the approval that was issued.”

Your question restated would be as follows: Does the Superintendent of Public Instruction, in the exercise of his discretion, have the right to revoke a certificate of approval of a film based on unfavorable publicity of an actress who plays the principal role?

Section 154-47 to Section 154-47i of the General Code govern the censorship of films, the statutes pertinent to the instant question being Section 154-47 and Section 154-47b. Section 154-47 of the General Code reads as follows:

“It shall be the duty of the department of education to examine and censor as herein provided, all motion picture films to be publicly exhibited and displayed in the state of Ohio, except motion picture trailers, all of the scenes of which are included in a previously censored film. Such film shall be submitted to the department and passed and approved by it before they shall be delivered to the exhibitor for exhibition. The department shall charge a fee of three dollars for each reel of film to be censored which does not exceed one thousand linear feet and three dollars for each additional one thousand linear feet or fractional part thereof. All moneys so received shall be paid each week into

the state treasury to the credit of the general revenue fund, except as otherwise provided in section 154-47a of the General Code. Any person, firm or corporation who shall publicly exhibit motion picture trailers exhibiting scenes ordered deleted by the department of education or exhibiting scenes which were not included as a part of the motion picture which it advertises, at the time it was censored, shall be subject to the penalty provisions of section 154-47e of the General Code."

Section 154-47b, General Code, reads as follows :

"Only such films as are in the judgment and discretion of the department of education of a moral, educational or amusing and harmless character shall be passed and approved by such department. When a film has been censored by the department of education a certificate showing the approval or rejection of such film shall be issued to the party submitting the film. When a film is passed and approved by the department of education such film shall be given an approval number which shall be shown on the certificate issued by the department of education to the party submitting the film. Such certificate shall also show the title of such film and all eliminations ordered from such film by the department of education. For each film so approved there shall also be issued by the department of education an official leader or stamp of approval of not less than five feet in length bearing the words 'Approved by the Ohio department of education' and the number assigned to such film on the certificate of approval. Such official leader or stamp of approval shall also contain an outlined map of the state of Ohio with the great seal of the state of Ohio printed thereon. The department of education shall be authorized to recall any films for recensoring or to revoke any certificate permitting the exhibition of any film in the state of Ohio, whenever in the judgment of the department of education the public welfare requires it. Before any motion picture film shall be publicly exhibited all eliminations ordered by the department of education shall have been made by the person or persons loaning, renting or leasing such film or films to the exhibitor for exhibition, and there shall be projected upon the screen the design of the official leader or stamp of approval of not less than three feet in length, issued by the department of education for such film."

In the case of *State ex rel. The Midwestern Film Exchange, Inc. v. Clifton, Director of Department of Education*, 118 O. S. 91, the court said at page 94:

"It is manifest that these sections of the law, governing film censorship, were not complied with. While the court would not

disturb the exercise of a sound discretion upon the part of the board, in its approval or disapproval of a film, yet the order of the director basing his disapproval upon what he terms his 'general knowledge' of the film and its title, and not upon examination, was not made in compliance with the aforesaid sections of our law relating to film censorship."

The above case refers to former Section 871-48 and Section 871-49 of the General Code, however, no substantial change is found in the present law.

It now becomes necessary to determine first, whether or not the reason for the proposed revocation would have been grounds for disapproval at the time the film was presented for censor. It is to be noted that Section 154-47b sets up the standards to be followed by the department of education, those standards being in reference to the film presented and not to the principal actress or the director of said film. For emphasis only, I wish to repeat that part of Section 154-47b: "Only such films * * * of a moral, educational or amusing and harmless character shall be passed and approved by such department." Since the legislature saw fit to set up the standard by which the department of education could exercise its discretion and judgment, that standard must be followed and the department has no legal right to go outside of same.

The maxim *Expressio unius est exclusio alterius* is clearly applicable to the instant case. In *Sutherland, Statutory Construction, Vol. 2, Section 4915*, at pages 412-414, it is said:

"As the maxim is applied to statutory interpretation, where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are affirmatively or negatively designated, there is an inference that all omissions were intended by the legislature. * * * 'Where a statute creates and regulates, and prescribes the mode and names the parties granted right to invoke its provisions, that mode must be followed and none other, and such parties only may act.'"

Section 154-47b, *supra*, was the subject of discussion by me in Opinion No. 1074, dated October 6, 1949, wherein I stated that:

"Therefore, it is my opinion that the Division of Film Censorship in the State Department of Education does have authority to consider the title of a motion picture as an integral part of such picture but only for the purposes outlined in the General

Code, namely, to determine if such title is, in the judgment and discretion of the department, of a 'moral, educational or amusing and harmless character.'"

I further stated in Opinion No. 1074, supra, that:

"* * * censorship provided for by the statutes establishes a standard based on whether or not a film is of a moral, educational or amusing and harmless character, and that the authority of the Division of film censorship does not extend to a determination of whether or not the title of the film is misleading or not truly indicative of the nature of the motion picture, but that in attempting to pass upon a given title the division of film censorship of the department of education must be guided by the language of the statute as contained in Section 154-47b, supra."

It is true that Section 154-47b also provides that the department of education is authorized to recall any film for recensoring or to revoke any certificate permitting the exhibition of any film in the state of Ohio whenever, in the judgment of the department of education, the public welfare requires it. Can it be said that the legislature intended to place greater powers in the hands of the department in matters of revocation than it has relative to approval in the first instance? I think not. Clearly it was the intent of the legislature when granting such powers of revocation that said powers would only be invoked if there was a change in the film itself and that such changes would cause the film to become immoral, non-educational or non-amusing and of a harmful character. Since this is not the case, I have no alternative other than to hold that using as a basis for revocation of a certificate of approval unfavorable publicity of the principal actress would not only be an abuse of discretion but also contrary to Section 154-47b of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.
