

It was noted in this opinion that an examination of different statutes disclosed that the powers given to the clerk of courts and his deputy in section 2873, General Code, referred to supra, were powers which could be exercised by a notary public, but that when they were exercised by the clerk of courts or his deputy, the fees should not be retained by such officials but should be paid into the county treasury. (See page 45, printed volume referred to supra.)

Specifically answering your questions, it is my opinion that:

1. Section 6310-13a, General Code, does not authorize the clerk of courts or his deputy to furnish certified copies of a lost, stolen or destroyed bill of sale or sworn statement of ownership, without requiring the filing of an affidavit showing that such bill of sale or sworn statement of ownership has been lost, stolen or destroyed.

2. If the affidavit required by virtue of section 6310-13a, General Code, is taken by the clerk of courts or his deputy, a fee of twenty-five cents is required for the taking of the affidavit in addition to the twenty-five cent fee for the furnishing of a certified copy of such lost, stolen or destroyed bill of sale or sworn statement of ownership.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3976.

CORPORATION—COMMUNICATION TO TAX COMMISSION IS LETTER UNDER POSTAL LAWS WHEN—TRANSMITTED BY EXPRESS UNLAWFUL WHEN.

SYLLABUS:

1. *A communication from a corporation to the Tax Commission of Ohio, containing information with reference to stockholders in such corporation, is a letter within the meaning of the Postal laws of the United States.*

2. *The transmitting of such communication by express is a violation of the United States Statutes which make it a criminal offense to convey letters or packets out of the mail.*

3. *When instructions are given to transmit such information by express and such instructions are complied with, the giving thereof constitutes a violation of the aforesaid statutes.*

COLUMBUS, OHIO, February 25, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

“We enclose herewith our tax form No. 939, and call your attention specifically to the instructions printed thereon as follows:

“To be transmitted to the Tax Commission of Ohio, Columbus, Ohio, Postage or Express Prepaid.”

We also enclose a circular issued by the United States Post Office, which has a direct bearing on the question to be determined.

Form 939, as is apparent from the instructions thereon, is used by Ohio corporations and corporations authorized to do business in this State in reporting the names, addresses, number of shares, etc., of shareholders of such companies resident of this State. This information is in turn used in auditing the personal property tax return of such residents. Many corporations, in submitting this list of stockholders to the Commission, have followed the instruction quoted above and transmitted to the Commission these forms by prepaid express.

An inspector from the post office department recently visited our Cleveland office, as well as this office, and advised that that instruction and the consequent following of that instruction by the various corporations was, and is, a violation of the laws governing the transportation of mails.

We therefore respectfully request your opinion as to whether the Tax Commission is within its rights in so instructing corporations with respect to the method of transmitting these forms or whether it is violating the federal statutes relating to the mails in so doing."

There is, by statute, reserved to the Post Office Department, a monopoly of the business of receiving, transmitting and delivering mails. The statutes pertinent to your inquiry are Title 18, Sections 304 and 306, United States Code Annotated, and read as follows:

Title 18, Section 304:

"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 \$500, or imprisoned not more than six months, or both. 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 mail matter, any mail matter properly stamped."

Title 18, Section 306:

"Whoever shall transmit by private express or other unlawful means, or deliver to any agent thereof, or deposit or cause to be deposited at any appointed place, for the purpose of being so transmitted, any letter or packet, shall be fined not more than \$50.00."

It is seen from the above sections that the government has assumed exclusive charge and carriage of the mail, prohibiting anyone other than the government from engaging therein, and said sections, which make it a criminal offense to convey mail by private express, and to convey letters and packets out of the mail, are designed to protect such monopoly.

In the case of *Williams vs. Wells Fargo Express*, 177 Fed. 352, it was held that the monopoly extends only to letters and like mailable matter, and not to the transportation of merchandise in parcels or packages of such a character, which might be carried through the mail.

In order to answer the question presented by your inquiry, it therefore becomes necessary to determine whether or not Tax Form No. 939, to which you refer, is a letter. A letter is defined by the Post Office Department as "any written or printed communication which conveys live, individual current information between the sender and the addressee upon which the latter may act, rely, or refrain from acting." In the case of *Dwight vs. Brewster*, 18 Mass., page 50, it is stated: "A letter is a message in writing, a packet is two or more letters under one cover." In the cases of *U. S. vs. Britton*, 17 Fed. 731, and *U. S. vs. Denicke*, 35 Fed. 407, wherein the statutes involved herein were under consideration, it was held that a letter is a written or printed message. It was declared by the Supreme Court of the United States, in the case of *U. S. vs. Bromley*, 53 U. S. 88, that the word "letter" as used in the Act of Congress of March 3, 1845, forbidding transportation by railroads, boats, etc., of letters, packets and other mailable matter on such trains, boats, etc., as carry United States mail, except such as may have relation to some part of the cargo or some article at the same time conveyed, includes an unsealed order sent on a steamboat directing tobacco to be sent by the return boat.

So regarded, there can be no question that the said form would come within the definition of a letter and consequently within the prohibition of the statute. Title 18, Section 306, supra, provides that whoever shall transmit by private express or deposit or cause to be deposited at any appointed place for the purpose of being so transmitted, any letter or packet, shall be guilty of an offense. Your question, however, is whether an offense is committed by instructing corporations to transmit by express the desired information. Title 18, Section 550 of the United States Code Annotated, reads as follows:

"Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

By the terms of the above section, a person who commits, induces or procures the commission of a criminal act, is a principal. In the case of *U. S. vs. Martin*, 176 Fed. 110, it was held that the above statute is applicable to misdemeanors. It is stated in the case of *U. S. vs. Sykes*, 58 Fed. 1000, that when a person commits a misdemeanor under the instructions of another, it is only necessary in order to implicate the latter, that his instructions have been substantially complied with.

Tax Form No. 939, submitted with your letter, bears the specific instructions:

"To be Transmitted to The Tax Commission of Ohio, Columbus, O., Postage or Express Prepaid."

Having concluded that said form is a letter within the meaning of the statute prohibiting the transmitting of letters by private express companies, it would naturally follow that a compliance with the printed instructions to transmit by express would constitute a violation of the statute. Likewise, would the giving of such instructions, if and when followed, be a violation.

It is therefore my opinion that:

1. A communication from a corporation to the Tax Commission of Ohio, containing information with reference to stockholders in such corporation, is a letter within the meaning of the Postal laws of the United States.
2. The transmitting of such communication by express is a violation of the United

States Statutes which make it a criminal offense to convey letters or packets out of the mail.

3. When instructions are given to transmit such information by express and such instructions are complied with, the giving thereof constitutes a violation of the afore-said statutes.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3977.

ESTATE—"ASSETS" AS USED IN SECTION 10501-42 G. C., INCLUDES REAL ESTATE AVAILABLE FOR PAYMENT OF DEBTS OF ESTATE.

SYLLABUS:

The term "assets" as used in paragraph 48 of section 10501-42, General Code, in connection with the word "estates," includes real estate which is available for or may be appropriated to the payment of the debts of an estate.

COLUMBUS, OHIO, February 25, 1935.

HON. THOMAS G. JOHNSON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication which reads:

"A question has come up in our Probate Court here in Brown County which has been referred to me. The question is this: Is real estate an asset of the estate in computing court costs under Section 10501-42-48 of the General Code of Ohio?"

Section 10501-42, General Code, a section of the new probate code, provides, so far as pertinent, as follows:

"The fees enumerated in this section shall be charged and collected, if possible, by the probate judge and shall be in full for all services rendered in the respective proceedings:

1. For deposit of will\$1.00

* * * * *

48. Providing, however, that in estates the *assets* of which do not exceed five hundred dollars in value the total fees of the probate judge chargeable against such estate shall not exceed10.00."

You inquire as to the meaning of the word "assets" underscored in the above quoted statute. An examination of the General Code does not reveal any definition of such word as used in such section or other related sections of the new probate code.

It is a general principle of law that the legislature is presumed to have used words in statutes in their generally accepted meaning, unless there appears in the context or surrounding circumstances something clearly justifying a different use or meaning. *Lewis' Sutherland Statutory Construction*, 2nd Ed., Vol. 2, Section 389, pages 747, 748: