

Opinion No. 282.**Photography—Statutes, Construction of—Interstate Commerce.**

HELD: A drug store sending films to non-resident photograprer for free development, selling prints, is not subject to the provisions of the act relating to photography (Chapter 37, Laws of 1937) but should said act be broad enough to include them it would be invalid as interfering with interstate commerce.

May 18, 1938.

Mr. Ace Woods
Vice President, Board of Examiners
in Photography
Missoula, Montana

Dear Mr. Woods:

You have submitted the following:

"Numerous out of state concerns, through the agency of drug stores and other businesses within the state, are advertising free development of films. The customer takes the film to the drug store, for example, and it is then forwarded to one of these out of state concerns for developing. Upon return the only charge made is for printing and the result is a loss of considerable business to Montana photographers."

and have inquired whether any action could be taken to stop this practice.

The practice of photography is defined by Section 1 (b), Chapter 37, Laws of 1937:

"* * * to be the business or profession, occupation or avocation of taking or producing photographs, or any part thereof, for hire."

The act provides for the issuing of a license certificate to photographers lawfully engaged in the practice of photography in the state, and Section 13 of the act reads:

"Any person who shall practice, or attempt to practice, photography in the state, without first having complied with the provisions of this act, or who shall violate any provisions of this act, shall be guilty of a misdemeanor, * * *"

It will be observed the act does not attempt to regulate or license persons

who may engage in the practice of photography outside of the state but who solicit such business through agents. Since the drug stores do not themselves take or produce photographs but merely act as agents for non-resident photographers, I am of the opinion that they could not be successfully prosecuted for violation of the act. Even if the act were broad enough to cover such agents it is probable that it would be held invalid as interfering with interstate commerce. It has been held that an agent of a non-resident portrait company, who receives from such company pictures and frames manufactured by it to fill orders previously obtained, and, after breaking bulk and placing each picture in the frame designed for it, delivers the pictures to the respective purchasers, is engaged in interstate commerce.

Caldwell v. North Carolina, 187 U. S. 622, 23 S. Ct. 229, 47 U. S. (L. ed.) 336;

Laurens vs. Elmore, 55 S. C. 477, 33 S. E. 560, 45 L. R. A. 249;

State v. Scott, 98 Tenn., 254, 39 S. W. 1, 36 L. R. A. 461;

State v. Willingham, 9 Wyo. 290, 62 Pac. 797, 87 A. S. R. 948, 52 L. R. A. 198;

See note 60 A. L. R. 1005, 1023, 5 R. C. L. p. 770, Section 89.

Likewise in the case of orders given for the enlargement of pictures or portraits, the question of the effect on the transaction of the purchase of a frame at the time of the delivery of the portrait has been under consideration in a number of cases, but it has been decided that the sale within the state of a frame for a portrait, made in another state to fill an order, cannot be so separated from the rest of the dealings between the non-resident maker and the purchaser as to make such sale the subject of regulation or taxation.

Dozier v. Alabama, 218 U. S. 124, 30 S. Ct. 649, 54 U. S. (L. ed.) 965, 28 L. R. A. (N. S.) 264 and note, reversing 154 Ala. 83, 46 So. 9, 129 A. S. R. 51;

See also State v. Coop, 52 S. C. 508, 30 S. E. 609, 41 L. R. A. 501;

Note.—19 L. R. A. (N. S.) 309, 315;

To the contrary, see State v. Looney, 214 Mo. 216, 97 S. W. 934,

99 S. W. 1165, 29 L. R. A. (N. S.)
412.

5 R. C. L. p. 771, Section 89;

See also Volume 14, Opinions of
the Attorney General, pp. 13 and 228;

12 C. J. 105, Section 145; Id. 26,
Section 25.

The same conclusion is reached, a
fortiori, where there is no such trans-
action with respect to the frame for
the picture.

Brennen vs. Titusville (1894), 153
U. S. 289, 38 L. Ed. 719, 4 Inters.
Com. Rep. 658, 14 Sup. Ct. Rep. 829;
Caldwell v. North Carolina, *supra*.