

39 U.S. Op. Atty. Gen. 535 (U.S.A.G.), 1940 WL 1427

United States Attorney General

FOREIGN PROPAGANDA, EXCLUSION FROM MAILS

DECEMBER 10, 1940.

A person outside the United States who uses the mails to commit here an act forbidden by statute is liable to the penalties of the statute. Propaganda dispatched by an agent of a foreign principal who has not registered under the act of June 8, 1938, as amended, may be excluded from the mails.

****1** The POSTMASTER GENERAL.

MY DEAR MR. POSTMASTER GENERAL:

In your letter of November 20, 1940, you request my opinion whether you have authority to exclude from the mails under [section 343, title 18, U. S. C.](#), matter of the character described in your letter if it be first ascertained from the State Department that the foreign mailers of such matter have not complied with the provisions of [section 233, title 22, U. S. C.](#), and the Foreign Agent Registration Act of 1938, sections 223a–223g, title 22, U. S. C.

You state in part:

‘The matter in question is coming into this country in large quantities principally ‘Via Siberia.’ Recently one Japanese ship bore some 3,000 pounds of ‘prints’ mailed by individuals and concerns in Germany to persons in the United States. The matter is open to postal inspection. In general, it purports to give ‘news and views’ to influence American readers in behalf of Germany and the Axis powers against the British and the democracies. In the pursuit of this aim it perverts and distorts the facts. It is of such a character as would subject the mailers, who have not registered as foreign agents with the State Department, to the penalties imposed by the provisions of [22 U. S. Code 233](#) and 233e and 18 U. S. Code 98.’

[Section 343, title 18, U. S. C.](#), is taken from section 1 of title XII of the act of June 15, 1917, 40 Stat. 230, which reads in pertinent part:

‘Every letter, writing, circular, postal card, picture, print, engraving, photograph, newspaper, pamphlet, book, or other publication, matter, or thing, of any kind, in violation of any of the provisions of this act is hereby declared to be nonmailable *536 matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier: *Provided*, That nothing in this act shall be so construed as to authorize any person other than an employee of the Dead Letter Office, duly authorized thereto, or other person upon a search warrant authorized by law, to open any letter not addressed to himself.’

Section 98, title 18, U. S. C., is also taken from the said act of June 15, 1917, having embodied in it the following provision of section 22 of title XI of that act:

‘Whoever, in aid of any foreign government, shall knowingly and willfully have possession of or control over any property or papers designed or intended for use or which is used as the means of violating any penal statute, or any of the rights or obligations of the United States under any treaty or the law of nations, shall be fined not more than \$1,000 or imprisoned not more than two years, or both.’

Sections 233a to [233g of title 22, U. S. C.](#), are taken from the act of June 8, 1938, 52 Stat. 631, as amended by the act of August 7, 1939, 53 Stat. 1244 (known as the Foreign Agent Registration Act of 1938). Section 2 of that act, as amended, requires ‘every person who is * * * an agent of a foreign principal’ to file with the Secretary of State ‘a registration statement, under oath, in a form prescribed by the Secretary which shall set forth’ certain specified information. Section 4 requires the Secretary to retain in permanent form all statements filed under the act and provides that such statements shall be public records and open to public examination and inspection. Section 5 subjects a person who violates the provisions of the act to a fine of not more than \$1,000 or imprisonment for not more than two years, or both. Section 1, among other things, gives the following definitions of the terms ‘foreign principal’ and ‘agent of a foreign principal,’ as used in the act:

****2** ‘(c) The term ‘foreign principal’ includes the government of a foreign country, a political party of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation, or political organization, or a domestic organization subsidized, directly or ***537** indirectly, in whole or in part by any of the entities described herein;

‘(d) The term ‘agent of a foreign principal’ means any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives compensation from or is under the direction of a foreign principal: *Provided, however,* That such term shall not include—

‘(1) a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States; nor

‘(2) any official of a foreign government recognized by the United States as a government other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States; nor

‘(3) any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States; nor

‘(4) any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal; nor

‘(5) any person engaged only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.’

The purpose of the act of June 8, 1938, as shown by its language and its legislative history, ‘is to make available to the American public the sources that promote and pay for the spreading of * * * foreign propaganda’ in the Senate in reporting on the bill which became the statute said Senate in reporting on the bill which became the statute said in part (S. Rept. 1783, 75th Cong., 3d sess.):

***538** ‘This bill does not in any way impair the right of freedom of speech, or of a free press, or other constitutional rights. On the other hand, this measure does provide that an alien * * * and American citizens who accept foreign political propaganda employment, shall register; * * *.

‘We believe that the spotlight of pitiless publicity will serve as a deterrent to the spread of pernicious propaganda. We feel that our people are entitled to know the sources of any such efforts, and the person or persons or agencies carrying on such work in the United States.

‘* * * The passage of this bill will force propaganda agents representing foreign agencies to come out ‘in the open’ in their activities, or to subject themselves to the penalties provided in said bill.’

****3** It seems well settled that if a person outside of the United States uses the United States mails for the purpose of committing an act which if committed by him while in the United States would constitute a violation of a criminal statute of the United States he thereby renders himself liable to the penalties of such statute. *In Re Palliser*, 136 U. S. 257; *Strassheim v. Daily*, 221 U. S. 280; *Horwitz v. United States*, 63 F. (2d) 706. If, therefore, the mail matter involved is of such a character that its dissemination within the United States by an agent of a foreign principal acting within the United States would fall within the purview of the act of June 8, 1938, as amended, it follows that its dissemination here by such an agent acting outside the United States but using the United States mails to affect the dissemination, without first having filed with the Secretary of State the 'registration statement' required by section 2 of said act, would constitute a violation of the penal provisions of the act, rendering the agent liable to the penalties therein prescribed.

Also, it is believed that in such circumstances the act of such agent in so mailing the matter—thus using matter under his control as a means of violating the penal provisions of the act of June 8, 1938, as amended—would constitute a violation of section 22 of title XI of the act of June 15, 1917, and ***539** that, therefore, section 1 of title XII of the latter act would authorize you to exclude the matter from the mails. A contrary ruling would permit agents of foreign principals who had not registered as such to disseminate their propaganda in this country through the mails, thereby defeating the purpose of the 1938 act.

Accordingly, if you find that the mail matter involved is of such a character that distributors of it in this country would be subject to the provisions of the act of June 8, 1938, as amended, and you further find that the foreign mailers of the matter have not complied with section 2 of that act by registering as foreign agents with the State Department, you will be authorized, in my opinion, under section 1 of title XII of the act of June 15, 1917, to exclude the matter from the United States mails.

Respectfully,

ROBERT H. JACKSON.

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