

Post Office Department
THIRD ASSISTANT POSTMASTER GENERAL
Washington

October 5, 1942.

Postmaster,

New York, New York.

My dear Sir:

This has reference to the application submitted through you as postmaster at New York, New York, for the entry of "Picture Scoop," a monthly publication to the second class of mail matter at the New York, New York, post office.

For each class of mail, Congress has fixed different rates of postage, the lowest rates with other special privileges being those granted to mailable matter of the second class, which consists of magazines and other periodical publications. The Supreme Court of the United States has pointed out that while "the carriage of these publications as second-class mail matter entails annually enormous loss upon the Government" the fixing of such low postage rates and the accordance of special mailing privileges to periodical publications "was to secure to the public the benefits to result from 'the wide dissemination of intelligence as to current events.'" The Classification Act of March 3, 1879, as amended, requires that "mailable matter of the second class must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts or some special industry."

For more than fifty years admission to the second-class mailing privileges has been accorded to a publication only under a permit issued by the Post Office Department upon a showing that the publication meets the appropriate requirements of the postal laws and regulations.

The Solicitor for the Post Office Department has held that the copy of the November, 1942, issue of "Picture Scoop" upon which this application is based, is nonmailable under the provisions of section 598, Postal Laws and Regulations, 1940, which is the statute forbidding obscenity in the mails (18 U. S. C. 354).

This postal statute forbidding obscenity in the mails is designed, among other things, to prevent the use of the United States

mails for sustained and systematic appeals to lascivious curiosity or for the circulation of periodicals published for the purpose of profitably pandering to the obscene, lewd and indecent. The purpose of this statute is to prevent the circulation and dissemination through the United States mails of matter corrupting and depraving the public mind by implanting obscene thoughts and desires. The statute forbids the presentation by mail to men, women and children of a form of indecency calculated to promote and foster the corruption of morals. The statute forbids obscenity in the mails irrespective of whether the matter is portrayed under the guise of art, fiction, humor or sex education, or whether it appears in stories purporting to be detailed factual accounts of actual sex crimes.

It was never intended by Congress that the Post Office Department should admit such matter to second-class mail privileges. Such a requirement would compel the taxpayer to bear a portion of the expense of the distribution of such publications and in fact contribute to the corruption of the morals of the public.

In view of the ruling of the Solicitor that the November, 1942, issue of "Picture Scoop," a monthly publication is nonmailable under section 598, P. L. and R., the publishers application for entry of the publication as second-class matter is hereby denied with leave to the publishers and the publication to file an application for second-class mail privileges whenever the publication does not violate the laws of the United States and whenever the publication meets the requirements of the Classification Act of 1879, as amended.

Please send to this office by means of canceled postage stamps the deposits, if any, which were made to cover postage on copies which were mailed pending consideration of the application, and the retained copy of the conditional permit which you issued to the publishers.

You are authorized to refund to the publishers one half of the \$100 fee which you received with their application. See section 528, Postal Laws and Regulations. Take the publishers' receipt for \$50 on the inclosed Form 3533 and send it to this office.

Should any copies of future issues be deposited for mailing, regardless of whether presented to you in the manner in which second-class matter is mailed or as third-class matter, three copies of each such issue should be transmitted promptly to this office as and when the issue is dispatched by you.

Very truly yours,

Third Assistant Postmaster General.

Inc.
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