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SENATE

{ REPORT
No. 4

AMENDING TITLE 18 OF THE UNITED STATES CODE RELATING TO THE MAILING OF OBSCENE MATTER

JANUARY 17 (legislative day, JANUARY 8), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 34]

The Committee on the Judiciary, to which was referred the bill (S. 34) to amend title 18 of the United States Code, relating to the mailing of obscene matter, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to amend section 1461 of the Criminal Code by repealing the sentence, "Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and" and substitute therefor the following: "Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and".

HISTORY OF THIS LEGISLATION

S. 3800 of the Eighty-first Congress in a form identical to this bill passed the Senate on July 26, 1950.

STATEMENT

The purpose of the bill is to enlarge section 1461 of title 18, United States Code, so as to include within the prohibition of said section all matter of obscene nature, whether or not said matter had fallen within the more restricted definition contained in the statute. It is believed

that the intent of the law is, and properly should be, to strike at all obscene matter. Therefore, the committee is of the opinion that the definition of prohibited matter should be enlarged as herein proposed so as to include all items whether or not specifically heretofore described.

Attached hereto and made a part of this report is a letter of June 7, 1950, to the Vice President of the United States from Postmaster General Jesse M. Donaldson, advocating this legislation.

OFFICE OF THE POSTMASTER GENERAL,
Washington 25, D. C., June 7, 1950.

The VICE PRESIDENT,
United States Senate.

DEAR MR. VICE PRESIDENT: There is submitted herewith, for consideration by the Congress, a draft proposal of legislation to amend title 18, United States Code, relating to the mailing of obscene matter.

A recent prosecution under the provisions of section 1462 of title 18, United States Code, has demonstrated the desirability of amending this statute in order to eliminate doubt as to its applicability over the depositing in interstate commerce of certain obscene matters not presently enumerated therein. In the case of *Alpers v. United States* (175 Fed. 2d 137), the United States Court of Appeals, in reversing the conviction of the defendant in the district court for depositing obscene phonograph records with an express company for carriage in interstate commerce, held that since phonograph records are not specifically enumerated in the statute, the depositing of such articles for carriage in interstate commerce even when of an obscene, lewd, lascivious, or filthy character does not constitute a violation of the statute. In arriving at this conclusion, the court of appeals pointed out that had Congress intended the statute to be all-inclusive, it very readily could have eliminated mention of the special classes covered by the statute and employed the general words "any obscene or indecent matter."

The decision of the court of appeals was reversed by the Supreme Court of the United States on February 6, 1950 (*U. S. v. Alpers*, No. 217) by a split decision of 5 to 3, the majority holding that "the portion of the statute here in issue does prescribe the dissemination of matter which, in its essential nature, communicates obscene ideas. We are clear, therefore, that obscene phonograph records are within the meaning of the act."

A bill (S. 2811) to amend section 1462, title 18, United States Code, to include filthy phonograph records, and the like, has been reported by the Senate Committee on the Judiciary. In Report No. 1305, to accompany S. 2811, the committee referred to the decision in the *Alpers* case, and stated:

"The fact that the lower court ruled one way, the Supreme Court sustained their view by a split decision of 5 to 3, and the intermediate court (the court of appeals) took the opposite view, clearly points up the fact that there is substantial and responsible difference of opinion on this matter.

"The committee feel that no one can contend that obscene and indecent records or sound transcriptions should be permitted in interstate commerce and as long as there is any reasonable question in the mind of anyone that such prohibition exists, such doubt should be removed by the passage of this bill."

The comments of Senate Committee Report No. 1305 with respect to the need for amending section 1462 of title 18, United States Code, have equal applicability to the necessity for amending section 1461 of the same title, relating to the mailing of obscene matter.

It is believed that the draft proposal of legislation submitted herewith under which it is proposed to substitute general words for the special classes now covered by the statute, will be inclusive enough to cover phonograph records, and any other matter of obscene nature, and at the same time include everything now covered by the statutes.

The Congressional Record reveals that bills S. 2811 and H. R. 6622 are designed to amend section 1462 of title 18, United States Code, so as to make it unlawful to deposit with an express company or other common carrier for carriage in interstate commerce obscene, lewd, lascivious, or filthy articles or things capable of producing sound. These bills to amend section 1462, however, merely add one more special class of material to the present law. It is obscene matter which the

Congress seeks to prohibit whether it be photographs or phonograph records or some other article or thing not yet described. It is believed that the proposal submitted herewith will accomplish this objective.

This Department has been advised by the Bureau of the Budget that there would be no objection to the presentation of this draft bill to the Congress for its consideration.

Sincerely yours,

J. M. DONALDSON,
Postmaster General.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SEC. 1461. MAILING OBSCENE OR CRIME-INCITING MATTER.—[Every obscene, lewd, lascivious, or filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character; and—]

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and

Every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and

[Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and]

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable, or knowingly takes the same from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

The term "indecent", as used in this section includes matter of a character tending to incite arson, murder, or assassination.

