

**Opinion No. 37-1568**

March 23, 1937

**BY:** FRANK PATTON, Attorney General

**TO:** Mr. Milton Bawden Santa Fe, New Mexico

{\*65} Your letter of March 22 makes reference to your business of a traveling photographer, and you have submitted an affidavit wherein your method of doing business is set forth.

Rather than copy the facts in this opinion, we are attaching a copy of same to our letter to become a part thereof.

In 1935 a three-judge United States District Court for the district of Minnesota in Equity Cause No. 483 and entitled Woltz Studio, a corporation, vs. City of Mankato, defendant, rendered a decree wherein it was held that an ordinance requiring licenses from transient photographers was unconstitutional and void as placing a direct and unreasonable burden upon interstate commerce.

The said cause was based upon substantially the same facts which you have submitted to me.

I see no reason to make objections to the findings of fact or the conclusions of law found in the decree of the Woltz Studio case and believe that the facts which you submit place you in the same category and that you are therefore engaging in interstate commerce.

I am also basing my opinion upon the reasoning and holdings in the various cases cited below:

"McCulloch vs. Maryland (1819), 4 Wheat. 316, 4 L. Ed. 579; Gibbons v. Ogden (1824), 9 Wheat. 1, 6 L. Ed. 23; Brown v. Maryland (1827), 12 Wheat. 419, 6 L. Ed. 678; Welton v. Missouri (1875), 91 U.S. 275, 23 L. Ed. 347; Robbins v. Shelby Taxing District (1887), 120 U.S. 489, 30 L. Ed. 694, 7 S. Ct. 592; Brennan v. Titusville (1893), 153 U.S. 289, 38 L. Ed. 719, 14 S. Ct. 829; Caldwell v. North Carolina (1903), 187 U.S. 622, 47 L. Ed. 336, 23 S. Ct. 229; Dozier v. Alabama (1910), 218 U.S. 124, 54 L. Ed. 965, 30 S. Ct. 649; Real Silk Hosiery Mills v. City of Portland, (1925),

Trusting the foregoing will be of some benefit to you during your sojourn in the State of New Mexico, I am,

STATE OF NEW MEXICO)

)ss.

COUNTY OF BERNALILLO)

AFFIDAVIT

J. M. Bawden, being first duly sworn, deposes and says that he makes this affidavit for and in be-half of the Bawden Studio for the purpose of establishing that the said Studio is engaged in Inter-State Commerce.

1. That he is part owner and has personal knowledge of the matters herein set forth.
2. That the Bawden Studio is located in the City of St. Paul, State of Minnesota and deponent works out of the main office there situated.
3. That the Bawden Studio has one finishing plant at St. Paul, Minnesota {\*66} and all the finishing of pictures is done at this plant.
4. That our method of doing business is as follows: Our representatives obtain appointments for photographs to be taken at some convenient location in the towns or cities where the solicitations are made. The representatives take an order for a picture and receive a stated sum as down payment. The representative then issues a certificate or coupon as a receipt for the down payment and stating thereon the terms on which the picture will be taken and the balance to be paid. The subject is photographed at a specified place and time and the negatives are sent by United States Mail to the studio in St. Paul, Minnesota where they are developed and the proofs made therefrom. The proofs are then sent by mail to the representatives of the studio who exhibits the proofs to the customer for his selection and choice. The customer can place an order for more pictures if he so desires. The representative in turn sends the proofs back to St. Paul where the pictures are finished and shipped through the United States Mail back to the customer.

This deponent resides in St. Paul, Minnesota and is personally acquainted with the work done and with the nature of the system employed by the Bawden Studio.

BAWDEN STUDIO

By (Sgd.) J. M. Bawden

STATE OF CALIFORNIA)

)ss.

COUNTY OF TULARE)

On this Twenty-second day of March, 1937, before me personally appeared J. M. Bawden, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed same as his free act and deed.

Witness my hand and seal the day and year last above written.

(sgd.) W. F. HARVEY,

Notary Public

In and for the County of

Tulare, State of California

(SEAL)

My commission expires Jan. 25, 1939.