

# SAYS PUBLICITY LAW LEAVES PRESS FREE

**Solicitor General Argues It Merely Imposes Conditions for Use of Special Mail Rate.**

## QUESTION OF DISCRETION

**Bullitt Insists Congress Has Plenary Power—Publications Have Right to Pay Full Postage for Privacy.**

*Special to The New York Times.*

WASHINGTON, Nov. 28.—The Government's brief in the cases involving the constitutionality of the law requiring newspapers to publish their circulation figures and the names of owners or stockholders, and requiring also that matter printed for a consideration shall be labeled "advertisement," will be filed in the Supreme Court to-morrow by William Marshall Bullitt, Solicitor General. It is a joint answer to the appeals from the United States Court for the Southern District of New York in the cases of The New York Journal of Commerce against Postmaster General Hitchcock and Attorney General Wickersham, and the Lewis Publishing Company, publisher of The New York Morning Telegraph, against Edwin M. Morgan, Postmaster in New York.

Mr. Bullitt holds that a proper construction of the statute forbids newspapers to use the second-class mail privilege unless the terms of the law are obeyed fully. He contends the condition that paid editorials shall be indicated as advertisements is not intended as an abridgment of the freedom of the press, in violation of the first amendment of the Constitution, nor an invasion of the powers reserved to the States under the Eleventh Amendment. If, however, it should be held that this requirement as to paid editorials is unconstitutional, he urges that the advertisement clause is separable from the rest of the section in the law, and may be declared void without affecting the validity of the provision denying the use of the mails unless the statements described are filed.

The Solicitor General argues that the law applies only to newspapers that desire to use the second-class mail privileges and not to newspapers generally; that the present statute does not attempt to regulate the use of the mails generally, and that Congress undertook to deny the use of the mails only to such second-class publications as refused to comply with regulations it deemed wise to impose. The position is taken, supported by many decisions of the courts, that Congress has the absolute right to determine what matter may be carried in and what may be excluded from the mails, and may declare the conditions on which mail may be carried. That power is derived from the eighth section of the first article of the Constitution, which reads: "The Congress shall have the power to establish Post Offices and post roads."

It is recited that the Government received a profit of \$70,000,000 a year from first-class mail matter and carries second-class mail matter at a loss of a like amount annually—in other words, overcharges one class of the people for the benefit of another, which it does under the power the Constitution gives it. The argument is made that if Congress may do that, it equally well may make changes in the classification and may affix such conditions as it chooses to the right to be admitted to the second-class rate.

The aim of the act, Mr. Bullitt contends, is not to regulate or censor the press, but simply to add to existing conditions others which Congress regards as proper if the publications in question desire to make use of the very favorable rate fixed for sending their issues through the mail as second-class matter.

In discussing the decisions in the cases which involve the right to use the mails, and especially the lottery cases, Mr. Bullitt argues that the power of Congress is plenary. He says:

Congress has the unrestrained power to say what in its opinion is so hurtful to the public welfare that it shall not pass through the mails; and it may enforce that opinion without its correctness being subject to judicial review. But it must be always remembered that in the case at bar Congress has not undertaken to exclude the newspapers from the mails, but only to exclude them from the extraordinary privilege of cent-a-pound postage, unless they conform to Congress's ideas as to publicity.

As to the power to compel the press to disclose facts concerning its private business, Mr. Bullitt says:

Unquestionably, Congress, through the control over the mails, can as a price for using them compel a certain acquiescence in its views which the paper may prefer to pay rather than lose the use of the low postage rate; but, even so, that is no abridgment of the full and free right to print and circulate anything the paper pleases, for there are many ways of circulation other than the one-cent-a-pound second-class rate.