

**MOTOR VEHICLES, BUREAU OF: Defining the offense of using the mails to defraud as a felony under the Federal Criminal Code.**

April 9, 1937.

Mr. Robert H. Hill,  
Chief Hearing Judge,  
Department of Treasury,  
Bureau of Motor Vehicles,  
State House,  
Indianapolis, Indiana.

My Dear Judge:

Your request for an official opinion dated April 7, to the Attorney General has been referred to me for reply. You inquire as to whether "a person convicted in Federal Court of using the mail to defraud, is such offense considered a misdemeanor or a felony?"

Section 215 of the criminal code, being title 18 of section 338 of the United States Code, Annotated, is the federal statute concerning using mails to promote frauds. The penalty clause of this statute provides that anyone committing any of the actions described in the body of the statute "shall be fined not more than \$1,000, or imprisoned not more than five years, or both. (R. S. § 5480, Mar. 2, 1889, Ch. 393, § 1, 25 Stat. 873; Mar. 4, 1909, Ch. 321, § 215, 35 Stat. 1130.)"

Section 335 of the criminal code, being section 541 of title 18 of the United States Code, Annotated, is the federal statute concerning felonies and misdemeanors. I quote the Act in full:

"All offenses which may be punished by death or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors. (March 4, 1909, Ch. 321, § 335, 35 Stat. 1152)."

The above Act has been construed in the case of *United States v. Chapman*, (D. C. Ala. 1931), 3 Fed. Supp. 900, the court holding that the statute providing that offenses punishable by death or imprisonment exceeding one year shall be deemed felonies and other offenses applies only where the statute declaring an offense fixes punishment and fails to designate the offense as a felony or misdemeanor. This

case as applied to the federal statute concerning using the mails to promote frauds indicates that the offenses under the statute here mentioned are felonies for the reason that the body of the statute does not set out whether the offenses are misdemeanors or felonies, but does specify that the penalty may be imprisonment for more than one year.

I am clearly of the opinion that in view of this construction of the federal statute with regard to felonies and misdemeanors that offenses under the federal statute concerning using the mails to promote frauds are felonies. Therefore, my answer to your question is in the affirmative; namely, that a person convicted in Federal Court of using the mails to defraud is guilty of a felony.

I trust that the above is a complete answer to your question.

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**BARBER EXAMINERS, STATE BOARD OF: Rules and regulations not applicable to hours or days of working of licensed barbers.**

April 12, 1937.

Mr. Frank McKamey, Secretary,  
State Board of Barber Examiners,  
State House,  
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your request of April 9 for an opinion on instructions relative to a letter of inquiry dated April 9, 1937, from the city attorney of Richmond to which letter said city attorney attaches a copy of a proposed ordinance.

The letter from the city attorney inquires whether or not the Indiana State Board of Barber Examiners has the authority to enact an ordinance such as is proposed by the city of Richmond, or whether the authority to regulate barber shops rests wholly with the Indiana State Board of Barber Examiners.

I note from the ordinance that the city proposes to regulate the days of the week and hours of each day that barber shops located within the city may remain open for the practice of the profession of barbering.