

Additional force to the conclusion herein reached is given by the fact that the bond of the broker, which is given to protect the public in its dealings with the broker, has obviously expired at his death. In any business transaction after death there would accordingly be no bond for the benefit of the public.

It should, perhaps, also be pointed out that the salesman, in order to be lawfully authorized to act as such, must be licensed as the employe of some *licensed broker*. The provisions of law with relation to the salesman's license require that his application shall show the broker by whom he is or is to be employed and the license must be kept on file in the office of the broker. Consequently, where the broker dies, the authority of the salesman to act also ceases.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2218.

FILMS—AUTHORITY OF BOARD OF CENSORS TO EXAMINE AND  
CENSOR VITAPHONE AND MOVIE-TONE PICTURE FILMS—MAY  
REQUIRE EXHIBITOR TO FURNISH CONTINUITY SHEETS.

*SYLLABUS.*

*Under the provisions of Sections 871-48 and 871-49, General Code, the board of censors are authorized to examine and censor vitaphone and movietone picture films and if necessary order the elimination of objectionable matter that is to be either seen or heard and as an incident to such authority said board may require the exhibitor to furnish continuity sheets showing the words, whether spoken or sung, which are to be reproduced as a part of the picture and explanatory of and otherwise characterizing the same in all cases where it is practicable to furnish such continuity sheets.*

COLUMBUS, OHIO, June 11, 1928.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you in which my opinion is requested on certain questions therein stated. Your communication is in part as follows:

“In the censorship of moving pictures the following question has arisen, upon which your opinion is respectfully asked:

Certain films are now being offered which do not have printed statements or titles running with the pictures, but which instead have with them the records for spoken statements or titles. As the film is run these words are made audible, and constitute for the pictures the explanatory matter.

In some cases the firms submitting the films give the matter to be heard by the audience with them under protest, and they now insist that I am not acting within my legal rights in demanding this matter or in ordering the elimination or modification of such spoken words connected with the films as I deem objectionable. Believing that the spoken words are essentially the same in their effects as the corresponding words cast on the screen, when connected with the pictures as the words like print might have been, I have deemed the censoring of such words for sound reproduction with the pictures

a subject for censorship of moving pictures, to be treated for elimination under Section 871-49 \* \* \*

\* \* \*

The question is therefore whether spoken matter accompanying motion picture films may be required to be submitted with the films to be censored, whether films may be rejected because of spoken matter judged to be harmful, or eliminations in this spoken matter may be ordered to be made before the exhibition of the films and the use of spoken matter with them.

The questions therefore are (1) whether the director of education has authority to censor spoken matter which accompanies motion picture films, as in the 'movietone' or 'vitaphone'; (2) if so, whether that authority would have certain limitations, and if so, what limitations; (3) whether the spoken matter to accompany motion picture films may be required to be submitted with the films to be censored, and whether films may be rejected because of spoken matter judged to be harmful, or eliminations in this spoken matter may be ordered to be made."

Under the provisions of Section 154-46, General Code, the Department of Education has all the powers and performs all the duties vested by law in the Industrial Commission of Ohio and the Board of Censors of Motion Picture Films by Sections 871-48 to 871-53 inclusive of the General Code.

Sections 871-48 and 871-49, General Code, read as follows:

Section 871-48. "It shall be the duty of the board of censors to examine and censor as herein provided, all motion picture films to be publicly exhibited and displayed in the state of Ohio, and when necessary the board of censors may designate certain of the assistants furnished to them by the industrial commission, who under the direction and supervision of the board may examine motion picture films. Such films shall be submitted to the board and passed and approved by the board before they shall be delivered to the exhibitor for exhibition. The board shall charge a fee of one dollar for each reel of film to be censored which does not exceed one thousand lineal feet, and one dollar for each additional one thousand lineal feet or fractional part thereof. All moneys so received shall be paid each week into the state treasury to the credit of the general revenue fund."

Section 871-49. "Only such films as are in the judgment and discretion of the board of censors of a moral, educational or amusing and harmless character shall be passed and approved by such board. When a film has been censored by the board of censors a certificate showing the approval or rejection of such film shall be issued to the party submitting the film. When a film is passed and approved by the board of censors such film shall be given an approval number which shall be shown on the certificate issued by such board of censors to the party submitting the film. Such certificate shall also show the title of such film and all eliminations ordered from such film by the board of censors. For each film so approved there shall also be issued by the board of censors an official leader or stamp of approval of not less than five feet in length bearing the words 'Approved by the Ohio Board of Censors' and the number assigned to such film on the certificate of approval. Such official leader or stamp of approval shall also contain an outline map of the state of Ohio with the great seal of the state of Ohio printed thereon. The board of censors shall be authorized to recall any film for recensoring or to revoke any certificate permitting the exhibition of any film in the state of Ohio,

whenever in the judgment of such board the public welfare requires it. Before any motion picture film shall be publicly exhibited all eliminations ordered by the board shall have been made by the person loaning, renting or leasing such film or films to the exhibitor for exhibition, and there shall be projected upon the screen the design of the official leader or stamp of approval of not less than three feet in length, issued by the board for such film."

Section 871-52, General Code, provides in part as follows:

"Any person, firm or corporation who shall publicly exhibit or show any motion picture within the State of Ohio unless it shall have been passed and approved by the Ohio board of censors or the department of education shall upon conviction thereof, be fined not less than twenty-five dollars nor more than three hundred dollars, for the first offense, and shall be fined not less than three hundred dollars nor more than five hundred dollars for each separate subsequent offense. \* \* \*"

It is quite certain that neither the vitaphone picture film nor the movietone picture film were known at the time of the enactment of Sections 871-48 et seq., General Code, above quoted. In the vitaphone, as I understand it, sounds, whether produced by the spoken word, singing, musical instrument, or otherwise, are recorded and the reproduction of the same so synchronized with the projection of the moving picture as to produce the illusion that the sounds are being produced by the persons or things shown in the picture. In the movietone, sounds accompanying scenic action are picked up by mechanical means at the same time that the persons, things or other objects involved in the scenic action are photographed in the making of the moving picture, and such sounds are reproduced in the projection of the moving picture on the screen. The mere fact that vitaphone picture films and movietone picture films were unknown at the time of the enactment of the film censorship law is not conclusive of the question of the right of the board of censors to censor said films, and, if the occasion requires, order eliminations to be made from the same. As I see it, the vitaphone or movietone feature of the picture film in its presentation to the public is still but an incident of the moving picture. And the most that can be said of the vitaphone picture film or the movietone picture film is that each of them is but a species or kind of moving picture film.

In the case of *The State of Ohio vs Cleveland*, 83 O. S. 61, it was held:

"A statute may include by inference a case not originally contemplated when it deals with a genus within which a new species is brought. Thus a statute making it unlawful to willfully throw a stone at a railroad car includes an interurban or traction railway car, although such cars were not known or in use at the time the statute was enacted."

In the case of *Richards vs. The State of Ohio*, 110 O. S. 311, it was held that the exhibition of a moving picture show on Sunday was unlawful under the provisions of Section 13049, General Code, which provides that whoever on Sunday participates in or exhibits to the public, with or without charge for admittance, a theatrical or dramatic performance, should be punished as therein provided, although at the time of the enactment of this statute moving picture shows were unknown. In the syllabus of the report of this case it was said:

"1. A motion picture show, exhibited in a building for the entertainment of the public, is a 'theatrical performance,' and such exhibition on Sunday is therefore a violation of Section 13049, General Code.

2. Section 13049, General Code (7032a, R. S.), was originally enacted April 9, 1881, at which time motion picture shows were not in existence, but such shows constitute a new species of theatrical performance as described in the original enactment of that section, and the operation of a motion picture show on Sunday is clearly within the mischief intended to be prevented by that section, and therefore that section includes motion picture shows by inference. (State vs. Cleveland, 83 Ohio St., 61, 93 N. E., 467, 21 Ann. Cas., 1284, approved and followed.)

It is obvious that what is heard by the public in the reproduction of the words or other sounds in connection with the projection of a vitaphone picture show or a movietone picture show may be as clearly within the mischief which occasioned the enactment of the censorship law as the scenic action or explanatory words made visible to the eye in the projection of the ordinary moving picture. In this view there is no reason to doubt the application of the pertinent provisions of Sections 871-48 and 871-49, General Code, with respect to vitaphone picture films and movietone picture films, though, as above noted, they are a species of picture films unknown at the time of the enactment of these sections of the General Code.

I am of the opinion, therefore, that the board of censors has the same right to censor vitaphone and movietone picture films and, if necessary, order the elimination of objectionable matter, either seen or heard, that it has with respect to ordinary picture films; and that it may wholly reject such vitaphone and movietone picture films in proper cases.

As the authority of the board of censors to censor vitaphone and movietone picture films carries with it the authority to adopt and use reasonable means to that end, said board may require the exhibitor to furnish continuity sheets showing the words, whether spoken or sung, which are reproduced as a part of the picture and explanatory of or otherwise characterizing the same, in all cases where it is practicable to do so. It is to be recognized, of course, that some sounds which are picked up and reproduced by the vitaphone and movietone might be of such a vagrant and indescribable character that the same could not be portrayed by words. With respect to sounds of this kind, it of course would not be practicable to furnish continuity sheets.

As in ordinary picture films, the board of censors in censoring the same, causes the motion picture film to be projected as it is and thus determines upon the existence or non-existence of objectionable matter visible to the examining board, so in the matter of censoring the vitaphone and movietone picture films the board of censors is authorized to make provision for the projection and reproduction of such films and thus determine the existence or non-existence of objectionable matter, whether the same be seen or heard. The authority of the board of censors to examine and censor picture films of the kind here in question authorizes the department to procure such appliances as may be necessary for the purpose and, if the censorship of vitaphone and movietone picture films requires the procurement and installation of appliances and facilities for this purpose, the same should be obtained as soon as money is available therefor.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*