RELATING TO AUTHORITY OF OTHER STATES TO PROHIBIT SALE OF "PRISON MADE" GOODS WITHIN SUCH STATES - DETERMINED IN THE LIGHT OF THE COMMERCE CLAUSE AS AFFECTED BY THE POWER CONFERRED UNDER THE HAWES-COOPER LAW.

2-17

February 14, 1934

Hon. Robert L. Chapman
Superintendent of Industries
Jefferson City, Missouri

Dear Sir:

We acknowledge receipt of your request as follows:

> "Please give us your opinion whether the State of New York, under the provisions of the following law, can successfully prohibit sale of prison made goods by the State of Missouri to private industry in New York.
>
> "69. SALE OF CONVICT MADE GOODS.
>
> No goods, wares, or merchandise, manufactured, produced or mined wholly or in part by prisoners or convicts, except by prisoners or convicts on parole or probation, shall be sold in this state to any person, firm, association or corporation except that nothing in this section shall be construed to forbid the sale of such goods produced in the prison institutions of this state to the state, or any political division thereof, or to any public institution owned or managed and controlled by the state, or any political division thereof as provided in section one hundred eighty four of the correction law."

I.

The New York statute, as quoted, if applied to interstate commerce shipments, is not repugnant to the Constitution of the United States with reference to commerce between the states.

The question presented in your request must be determined in the light of the operation of the commerce clause as effected by the power conferred upon the states by what is known as the Hawes-Cooper Law (Act of January 19, 1929), which provides as follows:

> "All goods, wares, and merchandise, manufactured, produced, or mined, wholly or in part, by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal and/or reformatory institutions, except commodities manufactured in Federal penal and correctional institutions for use by the Federal Government, transported into any State or Territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in such State or Territory be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise."

From the above statute it would appear that Congress, by virtue of its regulating authority , caused a shipment of goods, wares, and merchandise, manufactured, produced, or mined wholly or in part by convicts or prisoners, in interstate commerce, to become subject to state authority after arrival and delivery in such State or Territory of the United States and remaining therein for use, consumption, sale or storage, shall be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, etc. had been manufactured, produced, or mined in such State or Territory.

It is also apparent to us that the exertion by the State of New York of its authority to prevent the sale of goods, wares, or merchandise manufactured, produced, or mined wholly or in part by prisoners or convicts is lawful in view of the provisions conferred upon the states by the Hawes-Cooper Law,supra (Act of January 19, 1929). By said act, the transportation into the State of New York, on arrival and delivery in said state, is divested of its interstate character and subject to the operation and effect of the laws of the State of New York, to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in the State of New York, and are not exempt from the operation of the state laws of the State of New York by reason of being introduced into the State of New York in the original package.

No greater restrictions are placed upon "prison made goods" of other states than is placed upon goods of a like character manufactured, produced, or mined in their own state; except that they permit such goods manufactured, produced, or mined in their own state to be sold to the state and all political subdivisions thereof.

New York state, in determining what shall be an offense against the better interest, peace and dignity of its citizens, is exercising its own sovereignty, and not that of any other state.

We have reached the conclusions,as herein expressed, based upon the following authorities:

In the case In Re: Rahrer, 140 U. S. 1. c. 554, the court in part said:

> "The power of the State to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order and prosperity, is a power originally and always belonging to the States, not surrendered by them to the general government nor directly restrained by the Constitution of the United States, and essentially exclusive. ****
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> The Fourteenth Amendment, in forbidding a State to make or enforce any law abridging the privileges or immunities of citizens of the United States, or to deprive any person of life, liberty or property without due process of law, or to deny to any person within its jurisdiction the equal protection of the laws, did not invest, and did not attempt to invest, Congress with power to legislate upon subjects which are within the domain of state legislation. ****
>
> The power of Congress to regulate commerce among the several States, when the subjects of that power are national in their nature, is also exclusive. The Constitution does not provide that interstate commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free except as Congress

> might impose restraint. Therefore, it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by the several States. *****

In United States v. Lanza, 262 U. S. 377, the court said in part as follows:

> "Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other."

In McCormick & Co. v. Brown, 286 U. S., l. c. 143, the court said in part as follows:

> "If the provisions of the state law, and the regulations under it, which expressly require state permits for sales by wholesale dealers of the products in question, are valid, it necessarily follows that sales by appellants of these products without such permits would be in violation of the state law within the meaning of the Webb-Kenyon Act. The appellants in making the sales are obviously interested persons, and the shipment of their products into the State for the purpose of there consummating their sales without the described permits would fall directly within the terms of that Act."

Our construction of the New York statute is of little importance.

We have endeavored herein to answer your question, assuming that said statute is not in conflict with any constitutional provisions of the State of New York.

Very truly yours,

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Assistant Attorney General

APPROVED:

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