

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

That is the procedure outlined by the legislature. It may change the procedure at any time. The law does not authorize the release of budget estimates by the budget officer to the general public or to candidates for office.

GEORGE C. WEST

Deputy Attorney General

October 18, 1962

To: Charles G. H. Evans, Economic Development

Re: Copyright on Norman Rockwell Illustrations

In your memorandum of October 8, 1962, you have asked for the procedure which should be followed in obtaining copyrights on certain drawings of Norman Rockwell being purchased by your department. You explained to us that your department has entered into a contract with Ad Media, Inc., through its president, Mr. Jack Havey, whereby Ad Media, Inc. will supply four original drawings by Norman Rockwell dealing with the Maine scene. The artist understands that these will be used by your department to publicize the State. Mr. Jack Havey is in touch with the artist advising him on certain points dealing with the pictures. You mentioned, by way of example, that Rockwell asked whether a scope on a rifle was considered sporting by hunters in this State and whether hunters smoked cigarettes or pipes.

One of the four pictures entitled "Where Friendship Begins" has already been delivered to the State. It is my understanding that prior to the signing of a contract with Ad Media, Inc., the first picture, "Where Friendship Begins", was shown prominently on page 1 of the May, 1962, issue of the Maine Stater, the official paper of the Maine State Employees' Association. The MSEA has advised me that this issue was distributed to both members of the association and to non-members. The circulation of that issue was indicated to be between nine and ten thousand. The issue containing "Where Friendship Begins" carries no notice of copyright.

On September 29, 1962, the Daily Kennebec Journal printed its 7th Annual Hunting Edition featuring on the cover of that supplement a copy of the drawing "Where Friendship Begins." There was no notice of copyright in that supplement.

On October 4, 1962, the Enterprise carried prominently on page 1 a copy of that picture. The printing in the Daily Kennebec Journal and the Enterprise was authorized by your department and occurred after the contract between Ad Media, Inc. and the State had been entered into. The copy of the picture in the Daily Kennebec Journal and in the Maine Stater has no notice of copyright.

In addition, the artist may have commenced work on the second drawing.

Both statutory and common law copyrights in "Where Friendship Begins" were lost by the publication of the picture in the Maine Stater without notice of copyright. Common law copyright by which the artist can prevent the copying of a picture is lost merely by publication. *Wrench v. Universal Pictures Co.* (D.C.S.D.N.Y. 1952) 104 F. Supp. 374. The much more valuable statutory copyright is lost by publication without the required notice. It has been said that publication without the required notice amounts to a dedication of the work

to the public sufficient to defeat all subsequent efforts at copyright protection. *Universal Films v. Copperman*, 212 F. 301, (D.C.S.D.N.Y. 1914). For the statutory prohibition see 17 U.S.C. § 8. Because of the size of the distribution of the Maine Stater, the copying of the picture in the May, 1962, issue could not be considered to be a limited publication and thus make possible a copyright. Thus, the State does not have the power to control who copies or under what circumstances the first drawing is copied.

As to the drawings contemplated but not yet in existence, the fact that copyrights have been lost on "Where Friendship Begins" should in no way affect the ability of the State to protect copyrights in these future drawings.

A drawing of the quality of Norman Rockwell's is surely copyrightable if the proper procedure is followed. 17 U.S.C. § 8, provides in subsection (g) for works of art as a registerable work. Under the Rules and Regulations of the Copyright Office, section 202.8, the class of "works of art" includes "works belonging to the fine arts, such as paintings drawings and sculpture." The art which is covered by the copyright laws need not be "fine art."

It is clear that the artist, Norman Rockwell, has the right to copyright his drawings. 17 U.S.C. § 9.

What the artist may do himself, he may assign to another person (who is then technically the proprietor of the work). Howell, *The Copyright Law*, 55 (3d 1952); *Harms v. Stern*, 229 F. 42 (2d Cir. 1915); also, *Paige v. Banks*, 80 U.S. 608 (1872). Under the reasoning of these cases, if Ad Media, Inc. purchases the drawings and all rights to them from the artist and in turn transfers all their right, title, and interest to the drawings to the State, the State could copyright the drawings as they were produced, provided of course they had not been previously published without the statutory notice of copyright.

In the absence of a clearly defined agreement between Ad Media, Inc. and the State, the course which I would recommend as being the safest would be to have the artist copyright his drawings as each is produced and then transfer the copyright and drawing to Ad Media, Inc. who would then transfer the copyright and drawing to the State.

Under section 28 of the copyright law any copyright may be assigned. The assignment must be in writing. By case law any conveyance of less than the total interest in a work and its copyright may be considered as a mere license. To prevent the infringement of a copyright, one holding a license must join his licensor in the proceeding. This is a cumbersome procedure and one which can be avoided by clearly indicating in the transfer of the copyright that all the assignor's right, title, and interest is conveyed, and by the avoidance of contradictory language. *Witmark v. Pastime Amusement Co.*, 298 F. 470 (D.C.E.D. So. Car. 1924); *Goldwyn Pictures Co. v. Howell Sales Co.*, 282 F. 9 (2d Cir. 1922).

In order to protect the State, each prior assignment must be recorded in the Patent Office. The assignment must be recorded within three calendar months of execution. Failure to record within the specified time limits will make the recording void against any subsequent purchaser or mortgagee for value, without notice, whose assignment has been recorded. 17 U.S.C. § 30.

PETER G. RICH

Assistant Attorney General