

ORIGINAL

005234

RECEIVED

SEP 11 3 54 PM '96

PRESIDING OFFICER'S
RULING NO. MC96-3/11

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Special Services Fees and Classifications Docket No. MC96-3

PRESIDING OFFICER'S RULING DENYING
MOTION TO DISMISS

(September 11, 1996)



On August 9, 1996, David B. Popkin filed a Motion to Dismiss the Postal Service's proposal to charge a two-cent fee for stamped cards in addition to the postage printed on such cards ("Motion"). His motion contends that the proposed stamped card fee would violate 18 U.S.C. § 1721, which provides that

Whoever, being a Postal Service officer or employee, knowingly and willfully: . . . sells or disposes of postage stamps or postal cards for any larger or less sum than the values indicated on their faces; or sells or disposes of stamped envelopes for a larger or less sum than is charged therefor by the Postal Service for like quantities; . . . shall be fined under this title or imprisoned not more than one year, or both.

Mr. Popkin acknowledges that the Commission might be able to approve a fee for stamped cards (currently called "postal cards") in addition to the postage that is printed on such cards, but contends that a postal employee who sold them for more than the postage printed on them would violate § 1721. Motion, para. 4. He observes that the language in § 1721 distinguishes between

Docket No. MC96-3

- 2 -

postage stamps and postal cards, which must be sold at their face value, and stamped envelopes, which must be sold at the price established by the Postal Service. He contends that this language indicates a Congressional intent to allow only stamped envelopes to be sold for price other than the value indicated on their face. Motion, para. 6.

The Postal Service filed its Answer in Opposition to Motion of David B. Popkin to Dismiss on August 16, 1996 ("Answer"). It contends that the Commission may recommend that the Postal Service's proposal to charge a separate fee for stamped cards not be adopted, but it may not dismiss a request made under § 3622 or § 3623 before an "opportunity for a hearing on the record . . . has been accorded to the Postal Service." 39 U.S.C. § 3624(a). Answer at 2. It argues that the Commission need not reach the merits of Mr. Popkin's legal argument, since the Commission's evaluation of a rate or classification request is limited by §§ 3622 and 3623 to the policies of Title 39. It cites the Commission's refusal to reconsider its dismissal of a § 3662 proceeding (Docket No. C95-1) as precedent for this position. The issue raised there on reconsideration was whether § 1721 prohibits selling commemorative post card sets whose prices exceeded the combined face value of the cards.

On the merits, the Postal Service argues that Congress did not intend that § 1721 apply to prices recommended by the Commission, approved by the Governors, and implemented by the Postal Service. It argues that the legislative history of § 1721 indicates that its purpose is to deter postmasters and supervisory employees from inflating salaries through

manipulating office revenues by overcharging customers for postage stamps, postal cards, and stamped envelopes. Answer at 5-6. The Postal Service cites a 1918 opinion of the solicitor of the Postal Office Department concerning the predecessor to § 1721. The solicitor concludes that charging foreign exchange prices for stamps that might not equal the face value of the stamps in U.S. currency at the time sold would not violate § 1721's predecessor, if it were a procedure authorized by the Post Office Department. Answer at 5-7.

I cannot conclusively say that the Commission would not be authorized to dismiss without prejudice a seriously flawed request for a change in fees. Nor can I conclusively say that in evaluating a fee proposed in a § 3622 and § 3623 proceeding, the Commission could not consider that implementing the fee might involve violations of criminal statutes. Both § 3622(b)(9) and § 3623(c)(6) allow the Commission to consider "such other factors as [it] may deem appropriate." In light of the legislative history of § 1721 and its predecessors cited by the Postal Service, however, the merits of Mr. Popkin's legal argument are not sufficiently compelling to warrant dismissal of the Postal Service's proposed fee for stamped cards prior to a hearing and the briefing of legal issues. Mr. Popkin remains free to address both the merits of his legal argument, and the ability of the Commission to consider them under the framework of the Act, at the briefing stage of this proceeding.

RULING

1. The Motion to Dismiss filed on August 9, 1996, by David B. Popkin is denied for the reasons stated in the body of this ruling.



H. Edward Quick, Jr.
Presiding Officer