

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

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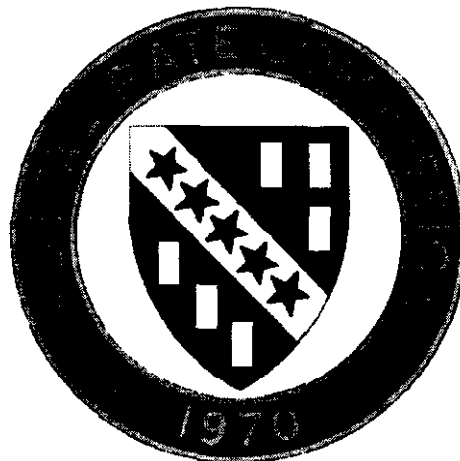
Before

Chairman Gleiman, Vice Chairman Omas
Commissioners Covington, Goldway and Le Blanc

In the Matter of:

Docket No. A2000-1

Roanoke, West Virginia 26423
(Robert J. Conley, Petitioner)



COMMISSION OPINION REMANDING DECISION
UNDER 39 U.S.C. § 404(b)

Washington, D.C. 20268-0001
August 1, 2000

I. Introduction

This opinion is issued pursuant to section 404(b) of the Postal Reorganization Act (39 U.S.C. § 404(b)). The Commission remands the Postal Service's decision to close the suspended Roanoke, West Virginia post office. On April 10, 1985, the Commission remanded a previous decision of the Postal Service to close the Roanoke post office. PRC Op. A85-11. As explained in greater detail below, the Commission finds, after considering section 404(b) of the Act and the applicable regulations, that the Postal Service did not act within the statutory guidelines in reaching its decision.

On April 21, 2000, the Commission received correspondence from Robert J. Conley (Petitioner) objecting to the Final Determination of the Postal Service to close the Roanoke post office. The Commission established Docket No. A2000-1 to consider the appeal pursuant to section 404(b) of the Postal Reorganization Act (39 U.S.C. § 404(b)). Subsequently, the Commission received 58 letters in opposition to the closing of the Roanoke post office from residents of the Roanoke area. In addition, the Commission received correspondence from United States Senators Robert C. Byrd and John D. Rockefeller IV. All of the letters received by the Commission have been consolidated into this docket.

On May 16, 2000, the Postal Service filed a motion to dismiss the appeal on the basis that the appeal was not received by the Commission within 30 days after the posting of the Postal Service's Final Determination on March 4, 1998. On May 31, 2000, Oliver R. Posey (by counsel) filed a notice of intervention pursuant to section 111(b) of the Commission's Rules of Practice (39 CFR § 3001.111(b)) and a response to the Postal Service's motion to dismiss.

On June 16, 2000, the Commission issued Order No. 1296 denying the Postal Service's motion to dismiss. In denying the Service's motion, the Commission found that the Postal Service failed to provide adequate notice of its intention to close the Roanoke post office, as required by section 404(b) of title 39, United States Code, and that such failure prejudiced the petitioner's ability to file a timely appeal in accordance with section 404(b)(5) of title 39. Accordingly, the Commission found that the appeal of petitioner Conley could be considered as timely filed.

On June 16, 2000, the same day that the Commission issued Order No. 1296, the Postal Service filed a "Statement Of Explanation By United States Postal Service Regarding Filing Of Administrative Record." The Statement of Explanation contains additional information and a more thorough argument in support of the Postal Service's motion to dismiss the appeal in this docket. Subsequently, on June 23, 2000, the Postal Service filed a motion for reconsideration of Commission Order No. 1296 on the basis that the Commission had not had an opportunity to consider the Service's Statement of Explanation prior to issuing its Order No. 1296. On June 29, 2000, intervenor Posey filed a response to the Postal Service's motion for reconsideration of Order No. 1296.

In view of the findings set forth below in this opinion, the Postal Service's motion for reconsideration of Commission Order No. 1296 is denied.

II. Background and Procedure

Roanoke is an unincorporated rural community located in Lewis County, approximately 11 miles from Walkersville, West Virginia. Final Determination (FD) at 5. In February 1982, the operation of the Roanoke post office was suspended when the central area of Roanoke was taken over by the Corp of Engineers for purposes of constructing the Stonewall Jackson Dam. FD at 1. Prior to the suspension of operation, the Roanoke post office provided service to 14 post office box customers and 209 rural route customers. FD at 1.

The community was comprised of farmers, retired persons, those who commute to work at nearby communities and those who work in local businesses. At the time of the suspension of operation in 1982, there were no schools or businesses located in the community. However, the record shows that in 1998, the area of Roanoke included an elementary school, a church and two businesses. FD at 5.

In 1984, the Postal Service commenced proceedings to close the Roanoke post office. The proposal to close was posted at the Crawford, West Virginia post office (now the Walkersville/Crawford post office) from March 6 through May 5, 1984, and the Final Determination to close the post office was posted on December 4, 1984. The Final

Determination was appealed to the Commission on December 24, 1984, by Oliver R. Posey, the intervenor in this proceeding. In the course of that proceeding (Docket No. A85-11), the Commission received more than 140 letters concerning the proposed closing of the Roanoke post office.

By opinion issued on April 10, 1985, the Commission set aside the determination of the Postal Service to close the Roanoke post office and remanded the matter to the Postal Service for further consideration. PRC Op. A85-11. The Commission found that the Postal Service's primary finding that the Roanoke community would cease to exist after construction of the Stonewall Jackson Dam was unsupported by substantial evidence on the record. The Commission's opinion advised the Postal Service that it was free to supplement the record with information on the extent of change caused by the dam and take the appropriate steps toward following the statutory procedures to close a post office. PRC Op. A85-11 at 5.

It appears from the record before the Commission that following the Commission's remand, little action was taken by the Postal Service with respect to the Roanoke post office until June 1988, at which time the Postal Service visited, evaluated and rejected several alternative sites for a new post office in the Roanoke community. Record Item 24.

The administrative record contains date-stamped cover pages showing that a revised proposal to close the Roanoke post office and "Invitation for Comments" were posted at the Walkersville/Crawford post office from July 21 through September 19, 1997. Record Item 37. The Postal Service received no comments from Roanoke customers during the posting period. FD at 5. The administrative record also contains date-stamped cover pages showing that the Final Determination was posted at the Walkersville/Crawford post office from March 4 through April 6, 1998. Record Item 44.

III. Commission Review of Record and Findings

Under section 404(b) of title 39, United States Code, the Postal Service must afford postal patrons the opportunity to present their concerns regarding a proposal to

close or consolidate a post office within their community. Additionally, the law requires the Postal Service to consider the following four specific factors: the effect on the community; the effect on Postal Service employees; whether a maximum degree of effective and regular postal services will be provided; and the economic savings to the Postal Service.

The Commission's responsibility under the law is to review the Postal Service's determination to close or consolidate a post office "on the basis of the record before the Postal Service in the making of such determination." 39 U.S.C. § 404(b)(5). The Commission is obliged to set aside any determination, findings and conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; without observance of procedure required by law; or unsupported by substantial evidence on the record. 39 U.S.C. § 404(b)(5). Where it makes such findings, the Commission can return the matter for further consideration, but it may not modify the determination of the Postal Service.

The Commission's decision to remand this matter to the Postal Service for further consideration is based on the following findings:

Inadequate Notice

Section 404(b)(1) of title 39, United States Code, requires the Postal Service to provide *adequate* notice of its intention to close or consolidate a post office at least 60 days prior to the proposed date of the change in order to ensure that customers of the post office will have an opportunity to present their views. The implementing regulations of the Postal Service provide that a copy of the written proposal and invitation for comments must be posted *prominently* in each affected post office. 39 CFR § 241.3(d)(1).

Section 404(b)(3) of title 39, United States Code, provides that a determination of the Postal Service to close a post office shall be in writing and shall be made available to persons served by such post office. Under section 404(b)(5) of title 39, a determination of the Postal Service to close a post office may be appealed by any

person served by such office to the Postal Rate Commission within 30 days after the determination is made available to such person.

As discussed under part II of this opinion, the administrative record contains evidence that both the revised proposal and the Final Determination to close the Roanoke post office were posted at the Walkersville/Crawford post office for the requisite number of days. The administrative record and the filings of the Postal Service in this docket also show that the revised proposal and Final Determination were not posted at any other location in the Roanoke area and that no other steps were taken by the Postal Service to notify former Roanoke post office customers of the closing. Contrary to the earlier proceedings in 1982-1984 when the Postal Service first proposed to close the Roanoke post office, the Postal Service did not meet with residents of the Roanoke community to discuss the proposed closing and did not distribute questionnaires to residents.

Both petitioner Conley and intervenor Posey assert that they were unaware of the postings of the revised proposal and the Final Determination at the Walkersville/Crawford post office. Numerous other residents of the Roanoke community who submitted letters to the Commission pursuant to the appeal also asserted that they were not aware of the postings of the proposal and Final Determination. Intervenor Posey and several other residents asserted that the Walkersville/Crawford post office, located 11 miles from the Roanoke area, is not proximate to the commerce center of the Roanoke area and, therefore, is not convenient to them. The Postal Service contends that the posting of the revised proposal and Final Determination at the Walkersville/Crawford post office—the office providing alternative service—did constitute proper notice under the applicable Postal Service regulations (39 CFR §§ 241.3(d)(1) and (g)(1)).

The Commission finds that the Postal Service's posting of the revised proposal and Final Determination at only the Walkersville/Crawford post office more than 12 years after the Commission's remand of the Service's 1984 decision to close the Roanoke post office did not constitute adequate notice within the meaning of section 404(b) of the Postal Reorganization Act (39 U.S.C. § 404(b)). As noted above, no other steps were

taken by the Postal Service to ensure that former customers of the Roanoke post office were made aware of the proposed action.

The record shows that the Postal Service received no written comments from Roanoke customers in response to the posting of the revised proposal and "Invitation for Comments," and no appeal was filed with the Commission until April 2000. The Commission finds this lack of customer response to be telling, given the high level of interest in this matter otherwise displayed by former customers of the Roanoke post office. In that regard, the Commission notes that in the earlier proceeding (Docket No. A85-11), 66 customers returned questionnaire forms to the Postal Service, and over 140 customers submitted letters to the Commission pursuant to the appeal. In this docket, the Commission has received 59 letters from residents of the Roanoke area pursuant to petitioner Conley's appeal.

The assertions of petitioner Conley, intervenor Posey and numerous other Roanoke residents in their letters to the Commission, together with the lack of customer response to the postings of the proposal and Final Determination, constitute sufficient evidence that the Postal Service did not provide adequate notice of its intention to close the Roanoke post office, as required by section 404(b) of the Postal Reorganization Act. The Commission also finds that the Postal Service failed to comply with section 241.3(d)(3) of its own regulations which requires postal officials, in addition to posting the proposal and "Invitation for Comments," to take any other steps necessary to ensure that the persons served by the affected post office understand the nature and implications of the proposed action.

Since the Postal Service did not provide adequate notice of its intention to close the Roanoke post office, the former customers of that office were denied the opportunity to present their views and concerns regarding the closing. In addition, as the Commission found in Order No. 1296, the failure of the Postal Service to provide adequate notice and to make its determination and findings reasonably available to affected persons, prejudiced the customers' ability to file a timely appeal in accordance with section 404(b)(5) of title 39, United States Code.

Effect on Community

Section 404(b) of title 39, United States Code, requires the Postal Service to consider four specific factors when deciding whether to close or consolidate a post office. Among the factors to be considered is the effect on the community. The Postal Service's regulations provide that the written proposal to close a post office must include an analysis of the effect the proposed closing might have on the community served by the post office. 39 CFR § 241.3(c)(4)(ii). The law also requires the Postal Service to afford the community residents an opportunity to present their views regarding a proposal to close a post office within their community. 39 U.S.C. § 404(b)(1).

In most cases, the Postal Service solicits the views and concerns of the community's residents by holding a community meeting, distributing questionnaire forms and posting an "Invitation for Comments" along with the proposal to close or consolidate the community's post office. The Postal Service took such steps in the period 1982-1984 when it first commenced proceedings to close the Roanoke post office. The record shows that postal officials met with residents of the Roanoke community in 1982 and distributed questionnaires to 223 customers in 1983. FD at 1. Such actions contrast sharply with the Postal Service's lack of effort in the present case. In its latest proceedings, the Postal Service made no attempt to conduct a timely assessment of the community's views and concerns prior to posting its revised proposal on July 21, 1997. *No community meeting was held and no questionnaires were distributed.* Apparently, the Postal Service was content to rely on information it had gathered more than 12 years earlier.

The Commission firmly believes that the Postal Service must take all reasonable steps to ensure that it not acting on the basis of stale or inaccurate information. PRC Op. A95-3; A97-10. The information relied on by the Postal Service in this case to support its decision to close the Roanoke post office was unquestionably stale, and it clearly could not have reflected the current views and concerns of the Roanoke community. The Commission finds, therefore, that the Postal Service did not provide

the residents of the Roanoke community with a timely and adequate opportunity to present their views regarding the closing of their post office.

In its 1984 Final Determination to close the Roanoke post office, the Postal Service appeared to justify its decision primarily on its conclusion that Roanoke would cease to exist as a community after the construction of the Stonewall Jackson Dam. The 1984 Final Determination stated that the community had been razed, that there were no businesses or schools within the Roanoke community and that there was no evidence of growth in the community. FD at 2-3. However, in letters submitted to the Commission pursuant to the appeal, numerous residents of the Roanoke community expressed their views that the community would continue to survive and that the Stonewall Jackson Dam would spur growth in the community. PRC Op. A85-11 at 3.

In its remand opinion (PRC Op. A85-11), the Commission found that the record did not contain sufficient support for the Postal Service's conclusion regarding the state of the Roanoke community, and the Commission advised the Postal Service to supplement the record with information on the extent of change in the Roanoke community caused by the construction of the dam. PRC Op. A85-11 at 5.

Based on its review of the administrative record and additional documents submitted by the Postal Service in this proceeding, the Commission finds that the Postal Service has failed to submit any additional information to support its earlier conclusion that the Roanoke community would cease to exist after construction of the Stonewall Jackson Dam. On the contrary, the record shows that there have been significant changes in the Roanoke community since 1984. The community now includes an elementary school, a church and two businesses. FD at 5. In addition, the Commission has received copies of letters written by the Superintendent of the Stonewall Jackson Lake State Park and the Project Developer of the State Park describing the successful operation of the park, the current plans for the development of additional facilities within the park and the economic benefits that will accrue to the community as a result of such development. In their letters to the Commission, the petitioner and other residents of the Roanoke area assert that the development of the Stonewall Jackson Lake State Park has spurred both residential and commercial growth in the Roanoke area.

The Commission finds that the Postal Service has failed to address the specific concern raised by the Commission in its remand opinion of April 10, 1985. Indeed, the Postal Service has furnished very little new information regarding the Roanoke community in this proceeding. Therefore, the Commission is unable to find that the Postal Service has adequately considered the effect the closing of the post office will have on the Roanoke community.

The Commission is aware of the fact that the community of Roanoke has not had an actual Postal Service facility operating within its borders for over 15 years. But the failure to adequately consider the impact of closing a post office does not become transformed into adequate consideration simply through the passage of time. The law requires the Postal Service to notify affected customers and consider their views before it closes a post office. In this case, it did neither. The law also requires the Service to make any decision to close an office available to persons served by that office. In this case, it did not do so. Under these circumstances we must remand its decision.


If the Postal Service considers it impractical or unreasonably expensive to reopen a postal facility in Roanoke, it must weigh these considerations along with the other factors set out in § 404(b)(2), and provide the citizens of Roanoke with a forthright explanation of its evaluation before closing that office.

IV. Conclusion

The Commission concludes, based on its review of the administrative record and its "Findings," as set forth above, that the determination of the Postal Service to close the Roanoke, West Virginia post office fails to meet the standards prescribed in section 404(b) of title 39, United States code, and, therefore, the determination is remanded to the Postal Service.

By the Commission.

(SEAL)


Margaret P. Crenshaw
Secretary