

ORIGINAL

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

ANSWER IN OPPOSITION TO MOTION OF DAVID B. POPKIN
TO DISMISS

Pursuant to section 21 of the Commission's Rules of Practice and Procedure and for the reasons stated below, the Postal Service hereby opposes David B. Popkin's Motion to Dismiss ("Motion"). Mr. Popkin alleges that, if implemented, the stamped card fee proposed in this docket would cause postal employees to engage in conduct violative of 18 U.S.C. § 1721. Mr. Popkin has failed to demonstrate that the remedy he seeks is available under the Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 719 ("Act"), or that the Commission should reach the merits of his Motion. In addition, he has not shown that the implementation of a stamped card fee would give rise to violations of section 1721. The Motion to Dismiss should accordingly be denied.

I. BACKGROUND

Mr. Popkin contends that the proposed stamped card fee contravenes 18 U.S.C. § 1721, which establishes 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 postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Postal Service; shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 1721. Mr. Popkin concedes, however, that the Commission "could possibly approve a rate to charge more for stamped cards than that which appears

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on their face" Motion ¶ 4. Notwithstanding, Mr. Popkin claims that if any postal employee sold a stamped card for any amount above the face value printed thereon, such transaction would give rise to a violation of section 1721. Motion at ¶ 4. Mr. Popkin further argues that "[a]n Act of Congress would be required to allow for this request of the Postal Service." Motion at ¶ 5.

II. ARGUMENT

A. Mr. Popkin Has Not Demonstrated That The Commission Is Authorized To Dismiss The Proposed Classification Change.

Mr. Popkin has utterly failed to demonstrate that the relief he seeks, *i.e.*, partial dismissal of a proposal in the Request, is contemplated by the Act. Congress authorized the Commission to "promptly consider a request made under section 3622 or 3623 of [Title 39]" 39 U.S.C. § 3624(a). While it is within the Commission's authority to decide not to recommend a Postal Service proposal to change a domestic mail classification, rate, or fee, the statute does not contemplate *dismissal* of a proposal forming part of the Postal Service's Request on the grounds raised in Mr. Popkin's Motion,¹ much less before an "opportunity for a hearing on the record . . . has been accorded to the Postal Service" 39 U.S.C. § 3624(a). In short, Mr. Popkin can challenge the stamped card fee proposal by presenting evidence or arguments on brief supporting his view that the Commission should not recommend the fee to the Governors. Dismissal is simply inappropriate relief.

¹ Nowhere in his Motion does Mr. Popkin allege that the Postal Service has failed to satisfy any of the Commission's Rules of Practice and Procedure with regard to this proposal.

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B. The Commission Need Not Reach The Merits Of Mr. Popkin's Complaint In The Exercise Of Its Statutory Responsibilities.

Section 1721 in no way precludes the Commission from recommending a stamped card fee. Mr. Popkin essentially concedes this point in his Motion where he admits that the Commission "could possibly approve a rate to charge more for stamped cards than that which appears on their face" Motion ¶ 4. The Postal Service submits that the Commission may not only recommend such a fee, but the Commission also need not analyze the applicability of section 1721 to the conduct of postal employees in determining whether to recommend it. This conclusion is consistent with the Act and the Commission's treatment of similar arguments in Docket No. C95-1. The underlying controversy in that docket concerned commemorative postal card sets whose prices exceeded the combined face value of the cards. Mr. Popkin, also the complainant in that proceeding, alleged that pricing of these products was contrary to section 1721. The Commission readily dismissed his claim, holding that the scope of its review in complaint proceedings is confined to violations of the policies of Title 39. The Commission reasoned:

With respect to the complainant's allegations concerning possible violations of section 1721 of title 18, United States Code, the Commission finds that such allegations do not fall within the scope of section 3662 of title 39, which relates to complaints concerning postal rates or services which violate the policies of title 39.

Order No. 1088 at 4. Similarly, here, the Commission's evaluation of a rate and classification request is limited by sections 3622 and 3623 to the policies of Title 39, United States Code, and the factors therein. Congress empowered the Commission

to make recommendations on rates and fees "in accordance with the policies of [Title 39]" and the factors specified in section 3622(b). Similarly, the Commission makes recommendations on domestic mail classifications "in accordance with the policies of [Title 39]" and the factors in section 3623(c). None of the factors in sections 3622 and 3623 requires the Commission to reach the merits of whether proposed classifications, rates, or fees would cause postal employees to violate 18 U.S.C. § 1721. Thus, the Commission need not analyze the applicability of Title 18 to conduct of postal employees for purposes of executing its statutory responsibilities under chapter 36 of Title 39. Enforcement of section 1721 should be left to other agencies, such as those with law enforcement responsibilities.

C. Fees For Stamped Cards Would Not Cause Postal Employees To Violate Section 1721.

Even assuming that Mr. Popkin could establish that partial dismissal of a Request is an authorized remedy in this circumstance or that the Commission should reach the merits of his Motion, his claim that the proposed fee for stamped cards, if implemented, would cause postal employees to engage in violations of 18 U.S.C. § 1721 is completely without merit. A stamped card fee would not give rise to a violation of section 1721, since, if implemented, it would be entirely consistent with the policies of Postal Service management, and therefore would not result in the unauthorized sale of postage.

It is evident that Congress did not intend the restrictions in 1721 to apply to pricing policies recommended by the Commission, approved by the Governors, and

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implemented by postal management, since, simultaneously with the enactment of conforming amendments to section 1721 adopted in connection with the Postal Reorganization Act, Congress contemplated that mail classifications such as postal cards would be subject to change, as it created an elaborate scheme for the implementation of and changes to the Domestic Mail Classification Schedule. See 39 U.S.C. §§ 3623, 3625.²

This conclusion is consistent with the statute's legislative history. The conduct that section 1721 protects against is fraudulent salary inflation by postal employees. Compensation for postmasters was and still is determined in part by the total receipts of the office in which they are employed. See S. Rep. No. 2720, 84th Cong., 2nd Sess. (1956), *reprinted in* 1956 U.S.C.C.A.N. 3814, 3815; H.R. Rep. No. 555, 84th Cong., 1st Sess. (1955). Section 1721 thus serves to deter postmasters and supervisory employees from inflating their salaries through manipulating office revenues by overcharging customers for postage stamps, stamped envelopes, and postal cards. That section 1721 is intended to apply to the unauthorized acts of postal employees is manifest from the legislative history of a 1956 amendment to the statute. At that time, Congress passed legislation broadening the class of postal employees to which section 1721 applies. The House Report emphasized that Congress intended to:

broaden the class of postal employees who are prohibited by existing law

² In addition, Congress granted broad authority to the Service "to provide and sell postage stamps and other stamped paper, cards, envelopes" 39 U.S.C. § 404(a)(4).

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from inducing or attempting to induce any person to purchase postage stamps, stamped envelopes, or postal cards *for the purpose of increasing the emoluments or compensation* of the postmaster or any employee of any post office or any station or branch thereof

H.R. Rep. No. 555, 84th Cong., 1st Sess. (1955) (emphasis supplied).

Finally, the interpretation of the statutory predecessor to section 1721 further demonstrates that the provision was not intended to apply to official acts of the Post Office Department. See 6 Op. Solicitor of the Post Office Dep't. 652 (1918). The underlying issue there was a proposed Postmaster General order which provided that the United States postal agent at Shanghai could sell stamps to the public in exchange for foreign currency, on the basis of its value at the prevailing daily rate of exchange for U.S. currency. Since at that time exchange rates apparently could not be ascertained when banks were closed, it was questioned whether sale of stamps during such time would conflict with the predecessor to section 1721. In upholding the proposed order, the Solicitor concluded that there would be no violation of the criminal provision. In support of this conclusion, the Solicitor reasoned in part that:

this is a criminal statute, and in order to constitute a violation a criminal intent is necessary, and while it is well established that intent may be presumed from the commission of the acts prohibited, the circumstances in this case would negative the existence of such intention, *especially should the procedure be authorized by the department* [T]he purpose of the law is not to secure an exact return, for accounting purposes or otherwise, . . . but to regulate and control postal employees in their handling of stamped papers

6 Op. Solicitor of the Post Office Dep't at 655 (emphasis supplied). In short, the Solicitor's interpretation of the predecessor to section 1721 makes clear that the legislation is aimed at the unauthorized conduct of postal employees, and establishes

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that the statute is inoperative against acts authorized by the institution. Thus, assuming the stamped card fee is recommended by the Commission, approved by the Governors, and implemented by postal management, postal employees would not engage in violations of section 1721 when customers paid stamped card fees.

CONCLUSION

Based on the foregoing, the Postal Service respectfully requests that Mr. Popkin's Motion to Dismiss be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

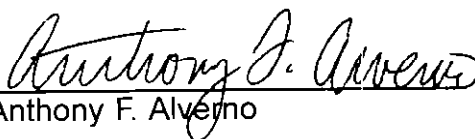
By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking


Anthony F. Alverno

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


Anthony F. Alverno

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2997; Fax -5402
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