

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Before Commissioners: Edward J. Gleiman, Chairman;
George A. Omas, Vice Chairman;
Dana B. Covington; Ruth Y. Goldway;
And W. H. "Trey" LeBlanc, III

In the Matter of:

Roanoke, WV 26423 : Docket No. A2000-1
(Robert J. Conley, Petitioner) :

**RESPONSE OF INTERVENOR OLIVER R. POSEY TO MOTION OF U.S. POSTAL
SERVICE FOR RECONSIDERATION OF ORDER NO. 1296
AND REQUEST FOR IMMEDIATE REMAND**

Comes now the intervenor, Oliver R. Posey, by counsel, who moves the Postal Rate Commission to deny the Motion For Reconsideration of Order No. 1296 filed by the U.S. Postal Service (Postal Service) and to remand the final determination to close the Roanoke, West Virginia Post Office to the Postal Service.

INTRODUCTION

The Postal Service filed a Motion to Dismiss the above-referenced proceeding on May 16, 2000. The motion was accompanied by attachments made up of the Participant Statement filed by petitioner Robert Conley (Lewis County Commission), a cover sheet from a Revised Proposal to Close the post office, a cover sheet from the Final Determination to Close the post office, and a copy of page from the Postal Bulletin. In its Motion to Dismiss, the Postal Service argued that proper notice of the proposed closure and the final determination was provided to those parties served by

the Roanoke, West Virginia Post Office, so the appeal filed by the petitioner was untimely. On June 16, 2000, the Postal Rate Commission (Commission) denied the motion based on a proper application of the relevant law and upon its review of the “evidence” submitted by the Postal Service in support of the motion.¹ On the same day that the Commission denied the Motion to Dismiss, the Postal Service filed a Statement of Explanation by United States Postal Service Regarding Filing of Administrative Record. In that statement, the Postal Service set forth its reasons for ignoring the order of the Commission to file a copy of the administrative record by May 25, 2000. The Postal Service again argued that it had provided proper notice so the appeal was untimely. In the statement, the Postal Service represented that, “The Postal Service contends that the posting of the notices on the bulletin board located in the lobby of the Walkersville/Crawford Post Office did constitute proper notice.”² The Postal Service attached additional documentation regarding the proposed closure and the final determination.³ Nothing in the attachments supports the representations of the Postal Service. On June 23, 2000, the Postal Service filed a Motion for Reconsideration of Order No. 1296. Once again, the Postal Service argued that the Commission had no jurisdiction to hear the appeal because proper notice of the proposed closure and the final determination was given and the appeal was therefore filed untimely. However, proper notice was not provided. In the absence of proper notice, the appeal was timely filed and the Commission has jurisdiction to consider the appeal.

¹ Commission Order No. 1296, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 16, 2000).

² Statement of Explanation by United States Postal Service Regarding Filing of Administrative Record, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 16, 2000), page 11.

³ Attached to Statement of Explanation by United States Postal Service Regarding Filing of Administrative Record, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 16, 2000), was a seven page Revised Proposal to Close the Suspended Roanoke, WV Post Office, labeled Exhibit 1, and an eight page Final Determination to Close the Suspend Roanoke, WV Post Office, labeled as Exhibit 2.

ARGUMENT

The core of the argument of the Postal Service is that the Commission has no jurisdiction to hear the appeal because the appeal was filed too late. In support of its position, the Postal Service cites case after case stating that an appeal must be timely filed. However, the Postal Service spends little time addressing the real issue – that is, whether or not proper notice was given to start the running of the time limit in which to file an appeal. The limited record that accompanied the various pleadings and motions filed by the Postal Service shows that it failed to provide proper notice under the regulations.

The time limit in which to file an appeal of a final determination of the Postal Service ends thirty (30) days after the final determination is made available to the people served by the post office.⁴ The regulations explain what is necessary to provide the required notice in a typical case. Generally, notice of the final determination must be posted prominently in the affected post office.⁵ The Postal Service contends that the Walkersville/Crawford Post Office was the “affected” post office.⁶ This is clearly wrong. The Walkersville/Crawford Post Office was not the affected post office in this closure, it was only the post office providing alternative service for the suspended Roanoke Post Office. Moreover, the Walkersville/Crawford Post Office was not closed by the final determination, so it was not the affected post office.

Despite representations to the contrary, the subsequent actions of Postal Service suggest it agrees that the Walkersville/Crawford Post Office is not the affected post

⁴ 39 U.S.C. § 404(b)(5).

⁵ 39 C.F.R. § 241.3(g)(1)(i).

⁶ United States Postal Service Motion for Reconsideration of Order No. 1296, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 23, 2000).

office. The attached affidavit of Oliver R. Posey, labeled as Exhibit I-3, establishes that the documents filed in this proceeding are not posted at the Walkersville/Crawford Post Office. The Postal Service is required to display a copy of the documents filed in an appeal prominently in the post office serving the persons affected by the closure.⁷ The failure of the Postal Service to do this may suggest that the Postal Service does not consider the Walkersville/Crawford Post Office to be serving the persons affected by the closure of the Roanoke Post Office. The failure to display prominently also suggests that the Postal Service may not be as “acutely attuned to the needs and interests of its customers” as it represents.⁸

In *Mullane v. Central Hanover Bank & Trust Co.*, the United States Supreme Court stated, “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”⁹ Consistent with this basic tenet of due process is the requirement that the Postal Service must take any other steps necessary to apprise the affected persons of the proposed action.¹⁰ Since the affected post office was suspended, other steps should have been taken by the Postal Service to notice affected persons in the 1998 closure determination. The Postal Service submitted a copy of the Revised Proposal to Close the Suspended Roanoke, WV Post Office.¹¹ That proposal indicates that in late 1983, more than one year after the

⁷ 39 C.F.R. § 3001.117.

⁸ See Statement of Explanation by United States Postal Service Regarding Filing of Administrative Record, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 16, 2000), footnote 3.

⁹ *Mullane v. Central Hanover Bank & Trust Co.*, 70 S.Ct. 652, 657 (U.S. 1950).

¹⁰ 39 C.F.R. § 241.3(d)(3).

¹¹ See Exhibit 1 attached to Statement of Explanation by United States Postal Service Regarding Filing of Administrative Record, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 16, 2000).

suspension of the Roanoke Post Office, the Postal Service actually mailed letters and questionnaires to the affected persons to obtain comments regarding closure. That overt action by the Postal Service gave the affected persons notice that the Postal Service was contemplating closure. Consequently, the affected persons had some reason to expect a final determination. Accordingly, the subsequent final determination was timely appealed and sent back to the Postal Service for further consideration.

The Revised Proposal to Close the Suspended Roanoke, WV Post Office, shows that the Postal Service took quite some time to reconsider closing the post office – about (12) twelve years. The rationale for the closure set out in these documents makes it very clear why the Postal Service did not include the full text of the Revised Proposal and the Final Determination with its original Motion to Dismiss. The Revised Proposal to Close and the Final Determination reflect that the 1998 determination of the Postal Service was not based on any then current community input but rather upon community concerns raised in 1983. Based on the Revised Proposal and the Final Determination, it does not appear that the Postal Service took other steps necessary to make its plans to close the post office known in 1997-98, i.e., mailing letters to the affected persons, as it did in 1983. The Walkersville/Crawford Post Office is not found in a location convenient for the persons served by the Roanoke Post Office so there is no reason to expect that affected persons would be noticed if documents were prominently displayed in that post office.¹² The Postal Service failed to provide proper notice of the closure based on the fact that the Walkersville/Crawford Post Office was

¹² See affidavit of Oliver R. Posey, executed on May 30, 2000, attached to Response of Intervenor Oliver R. Posey To Motion To Dismiss, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 14, 2000).

not the affected post office, the inconvenience of the location of the Walkersville/Crawford Post Office in relation to patrons served by the Roanoke Post Office, and the failure of the Postal Service to take other steps, such as mailing letters, to notify the affected persons of its revised intent to close the post office. The Postal Service's lengthy argument that the Commission has no jurisdiction appears to be a smokescreen to hide the fact that its final determination was made without proper notice and without a proper basis.

The Postal Service also contends that it is undisputed that the proposal to close and the final determination were "posted" at the Walkersville/Crawford Post Office.¹³ However, whether or not there was proper posting is disputed. The Postal Service must display any final determination prominently in the affected post office.¹⁴ The Postal Service represents that it did this.¹⁵ Even if prominent display in the Walkersville/Crawford Post Office is all that is required for proper notice, there is no evidence to show that the Postal Service displayed the notices prominently. The Postal Service failed to provide proper notice of its actions, effectively depriving the intervenor and other persons served by the Roanoke Post Office of their right to due process. Therefore, the time period for filing an appeal did not expire prior to the filing of this appeal, the Commission has jurisdiction to hear the appeal, and the final determination should be returned to the Postal Service.

¹³ United States Postal Service Motion for Reconsideration of Order No. 1296, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 23, 2000).

¹⁴ 39 C.F.R. § 241.3(g)(1)(i).

¹⁵ Statement of Explanation by United States Postal Service Regarding Filing of Administrative Record, Docket No. A2000-1, Roanoke, West Virginia 25423 (June 16, 2000), page 11.

CONCLUSION

Wherefore, the intervenor respectfully requests that the Motion for Reconsideration of Order No. 1296 made by the Postal Service be denied. The intervenor further requests that the final determination of the Postal Service be set aside immediately due to the failure of the Postal Service to establish that proper notice was provided of either the proposal to close the Roanoke Post Office or the final determination to close said post office.

Respectfully submitted,

OLIVER R. POSEY
Intervenor
By counsel



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Roanoke, WV 26423 : Docket No. A2000-1
(Robert J. Conley, Petitioner) :

AFFIDAVIT

STATE OF WEST VIRGINIA,
COUNTY OF LEWIS, TO WIT:

Oliver R. Posey, the affiant, having first been duly sworn avers and says:

1) That my name is Oliver R. Posey; that my address is Route 2 Box 95
Roanoke, West Virginia; that my telephone number is (304) 452-8255.

2) That I am served by the Roanoke, West Virginia Post Office;

3) That I am an intervenor in the above-referenced proceeding;

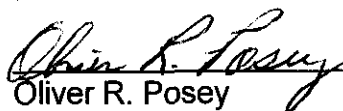
4) That on June 26, 2000, I visited the Walkersville/Crawford Post Office to
review the pleadings, notices, orders, and briefs filed in the above-referenced appeal;

5) That I was unable to locate any such documents in the lobby of
Walkersville/Crawford Post Office;

6) That I immediately spoke to Sara J. Watson, postmaster of the
Walkersville/Crawford Post Office, and inquired about the location of these documents;

7) That Ms. Watson advised me that while she had received some correspondence regarding the above-referenced appeal, that correspondence was not for public posting; and

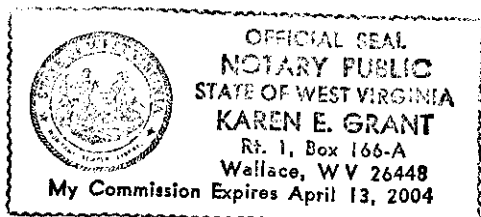
8) That further the Affiant sayeth naught.


Oliver R. Posey

STATE OF WEST VIRGINIA
COUNTY OF LEWIS, TO WIT:

Taken, subscribed and sworn to before me this the 27th day of June, 2000, by Oliver R. Posey.

My Commission expires: April 13, 2004




NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice, specifically by mailing true copies to the U.S. Postal Service and to Robert J. Conley, Petitioner, by depositing same in the U. S. Mail, postage paid, on the 28th day of June, 2000.



Clinton G. Bush, Esquire