

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON DC 20268-0001

RECEIVED
SEP 10 2 16 PM '97

POSTAL RATE AND FEE CHANGES, 1997]

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY
DOCKET NO. R97-1

MOTION TO DISMISS

1. As part of this Docket, the United States Postal Service is proposing to change the fee for Stamped Cards from \$0.00 to \$0.02 and for Double Stamped Cards from \$0.00 to \$0.04. This would institute an actual charge, as opposed to a zero charge, for Stamped Cards. Implementation of this change would require that Stamped Cards be sold at a larger sum than the value indicated on its face. A Stamped Card with a 21 cent stamp indicated on its face would be sold for 23 cents.
2. Section 1721 of Title 18, United States Code, provides in part, "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."
3. Based on this statute, I request that the Postal Rate Commission reject the Postal Service's request as contravening this Statute on its face.
4. While the Postal Rate Commission could possibly approve a rate to charge more for Stamped Cards than that which appears on their face, any postal employee who sold them to the public for that increased cost would be subject to violation of this Statute.
5. Since the definition of the newly defined *Stamped Cards* is identical to the formerly defined *postal card* [see Section 222.11 (proposed Section 962.11) in the Classification Schedule for Stamped Cards and Section 222.13 (proposed Section 962.12) for Double Stamped Cards], the changing of the name [from postal to Stamped Cards] will not change the intent of Congress in that they be sold at the value indicated

on the face. An Act of Congress would be required to allow for this request of the Postal Service.

6. Because of the distinction in the Statute between postage stamps and postal cards which must be sold at their face value and stamped envelopes which must be sold at the established USPS price, the intent of the Congress is clear that only stamped envelopes may be sold at other than the value indicated on the face.

7. Furthermore, an examination of the legislative history of this Statute fails to indicate any other meaning for the Statute. In 1905, 25 Op. Atty. Gen. 354, it states that, "No postmaster or other person connected with the postal service shall sell or dispose of postage stamps for any larger sum than indicated on their faces."

8. The modifications made to 18 USC 1721 in the Postal Reorganization Act [Public Law 91-375] only made changes to update the section for the change from the Post Office Department to the United States Postal Service and have no discussion relative to the issue at hand.

9. Likewise, Senate Report No. 2720 dated July 20, 1956 to accompany H.R. 5417 has no discussion relative to the issue at hand.

10. The Statute is very clear on its face. Twenty-one-cent Stamped Cards must be sold for twenty-one cents - no more and no less. The Statute states that and there is no legislative history to indicate otherwise or to change the meaning of the otherwise very clear law.

11. Any reference by the Postal Service to 6 Op. Solicitor of the Post Office Dep't. 652 [1918] is inappropriate. This opinion of the Post Office Department's own Solicitor is not legislative history of the law. It is nothing more than the Post Office Department's own interpretation of the law and has no weight outside the agency.

12. Based on the above, I request that the request by the United States Postal Service to establish an actual charge for Stamped Cards be dismissed as contravening the existing Statute.

Respectfully submitted,

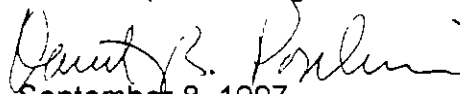


David B. Popkin, Post Office Box 528, Englewood, NJ 07631-0528

September 8, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the rules of practice.



David B. Popkin

September 8, 1997