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PRESIDING OFFICER'S
RULING NO. R97-1/31

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

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

Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING
ON POPKIN'S MOTION TO DISMISS

(September 26, 1997)

On September 10, 1997, David Popkin, an intervenor, filed a Motion to Dismiss, ("Motion") in this docket asking that Postal Service's request for a fee for stamped cards be dismissed. In response, the Postal Service filed its "Opposition of the United States Postal Service to Motion of David B. Popkin's Motion to Dismiss, "(hereafter "Opposition") on September 22, 1997.

BACKGROUND

Popkin requests that the Postal Service's proposal for instituting a fee for stamped cards be rejected by the Commission because it conflicts with a criminal statute, 18 U.S.C. § 1721. This statute provides:

§1721 Sale or Pledge of Stamps

Whoever, being a Postal Service officer or employee, knowingly and willfully: uses or disposes of postage stamps, stamped envelopes, or postal cards entrusted to his care or custody in the payment of debts, or in the purchase of merchandise or other salable articles, or pledges or hypothecates the same or sells or disposes of them except for cash; *or 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; or sells or disposes of postage stamps, stamped envelopes, or postal cards at any point or place outside of the delivery of the office where such officer or employee is employed; or for the purpose of increasing the emoluments, or compensation of any such officer or employee, inflates or induces the inflation of the receipts of any post office or any station or branch thereof; 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 (emphasis added). Popkin argues that a fee for stamped cards would contravene the statute because the creation of a fee would inevitably lead to the face value of a stamped card no longer equaling its sales price. Motion at 1. While Popkin admits that the Commission could approve a fee for stamped cards, Popkin believes the sale of these cards to the public would constitute a violation of the statute. Id.

In response, the Postal Service offers two arguments. First, it would be premature to rule on this Motion prior to the Commission's issuance of its Recommended Decision. Second, a stamped card fee would not cause postal employee to violate a statute that is aimed at preventing misuse of postal products rather than the regulation of postal fees.

DISCUSSION

Charging a fee for stamped cards will not inevitably lead to violations of this statute. First, it is not certain that a stamped card fee will cause the price of a stamped card to no longer equal the value on its face. The creation of a fee for stamped cards may not lead Postal Employees to violate this statute anymore than increases in the price of stamps leads to violations. The Postal Service may choose to increase the

“value” indicated on the face of stamped cards as the Postal Service does with stamps. Alternatively, the Postal Service could choose not to indicate any value on stamped cards. As a result, it is not clear that a fee for stamped cards will lead to a stamped card’s face value not equaling its price.

Even if the face value of a stamped card did not equal its price, postal employees would likely not be in violation of the statute. As the Postal Service convincingly argues, this particular criminal statute appears to have been aimed at preventing the misuse of postal items by postal employees attempting to increase their salaries (postmasters’ salaries are determined in part by a post office’s revenues). Opposition at 5. By all appearances, it is not an effort to regulate postal fees. It would be remarkable if Congress had regulated postal fees by criminalizing conduct. “If Congress wished to prevent the Postal Service from authorizing the sale of stamped cards for a fee in addition to postage, Congress would have enacted a law directed at the Postal Service rather than its individual employees and officers.” Opposition at 4 n.2. This the method Congress used to create other preferred rates in 39 U.S.C. § 3626. See 39 U.S.C. § 3626 (sets out preferred rates for educational and non-profit materials).

For the foregoing reasons, the Motion to Dismiss is denied.

RULING

David Popkin’s Motion to Dismiss, filed September 10, 1997, is denied.



Edward J. Gleiman
Presiding Officer