

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

In the Matter of:

Crescent Lake Post Office
Crescent Lake, Oregon

Docket No. A2010-4

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**
(May 6, 2010)

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction to consider an appeal of a Postal Service Final Determination to close the Crescent Lake, Oregon Post Office. The Final Determination to close the suspended Crescent Lake Post Office was posted February 2, 2009. Appeals to Post Office closings must be received by the Commission within 30 days of the date a Final Determination is posted.¹ Because the Commission did not receive Petitioner's appeal until March 12, 2010, over a year late, the Commission lacks subject matter jurisdiction and should accordingly dismiss the appeal.

PROCEDURAL HISTORY

The proposal to close the Crescent Lake Post Office was posted with an invitation for public comment at the Crescent, Oregon Post Office from July 21, 2008 through September 19, 2008. A Final Determination to close the Crescent Lake Post Office was posted at the Crescent Post Office from February 2, 2009 through March 5, 2009. No appeals were filed within the thirty day period for submitting appeals. A Postal Bulletin Post Office Change Announcement Form

¹ The Postal Accountability and Enhancement Act (PAEA) applies the mailbox rule to the appeal period, providing that an appeal meets the deadline if mailed within the thirty day period but received by the Commission thereafter.

was completed and submitted to Postal Service Headquarters Address Management for publication in the Postal Bulletin, where it subsequently appeared.²

On March 12, 2010, the Postal Regulatory Commission received an appeal from Carol Goevelinger, on behalf of the Crescent Lake Community Action Team, objecting to the closing of the Crescent Lake Post Office. Petitioner appeals the Crescent Lake Post Office closing and discontinuance of ZIP Code on the grounds that the Postal Service did not follow the proper procedures for closing a Post Office and discontinuing a ZIP Code as required by 39 U.S.C. § 404(d).

FACTUAL BACKGROUND

Crescent Lake is a rural community located in Klamath County, approximately 17 miles from Crescent, Oregon, the nearest community with a Post Office.³ Postal officials temporarily suspended operation of the Crescent Lake Post Office on December 6, 2005, due to a fire that destroyed the facility housing the Post Office. Prior to the suspension of service, the Crescent Lake Post Office provided over the counter postal services for seven and a half hours per day on Monday through Friday, and one and a half hours on Saturday. The Post Office had one hundred thirty-six occupied Post Office boxes, and also offered general delivery service.

On July 21, 2008, postal officials posted at the Crescent Post Office a proposal to close the Crescent Lake Post Office. Postal officials removed the

² Postal Bulletin 22279 (February 25, 2010) (See Exhibit 1).

³ Crescent Lake constitutes one of the premier resorts in that part of the country. See, e.g., www.crescentlakeoregon.com/areainfo.html.

proposal on September 19, 2008. The cover sheet of the revised proposal showing the posting dates is attached as Exhibit 2. No comments were received.⁴ Postal officials posted a Final Determination to close the Crescent Lake Post Office at the Crescent Post Office from February 2, 2009 through March 5, 2009. No appeals were filed within the thirty day period for submitting appeals. A Postal Bulletin Post Office Change Announcement Form was completed and submitted to Postal Service Headquarters Address Management for publication in the Postal Bulletin. Because the Commission received no appeal within 30 days after the posting of the Final Determination notice, the Post Office was officially discontinued the first Saturday 90 days after posting the Final Determination.

Customers are permitted to continue to use Crescent Lake, Oregon as their address to retain community identity. However, they are now required to use ZIP Code 97733, that of Crescent, Oregon.⁵ This change aims to ensure effective and regular service.

ARGUMENT

This matter raises the question of whether the Postal Regulatory Commission has jurisdiction to consider an appeal received by the Commission over a year past the filing deadline for appealing a Post Office discontinuance. Under 39 U.S.C. § 404(d)(5) and 39 C.F.R. § 241.3(a)(2)(iv), any person

⁴ Two customers submitted questionnaires after the proposal was prepared. One was favorable to the proposal and one expressed no opinion.

⁵ While postal policy generally calls for ZIP Code retention upon discontinuance of a Post Office (and, strictly speaking, that policy was honored here), the Crescent Lake ZIP Code was “recalled” shortly after the Post Office itself was formally discontinued because of a shortage of five digit options in the 974 three digit ZIP Code.

regularly served by the affected Post Office may appeal the decision to the Postal Regulatory Commission within the first 30 days after the written determination is made available. The Commission must receive any such appeal within 30 days of the posting of the Final Determination, unless the mailbox rule extends that deadline by a few days. In the instant matter, the Commission did not receive an appeal until over a year after the posting of the Final Determination. Accordingly, the appeal is untimely and should be dismissed.

Statutory time limits for the initiation of legal action set by Congress, such as 39 U.S.C. § 404(d)(5), are limited waivers of sovereign immunity that define the jurisdiction of the reviewing body. See Irwin v. Dept. of Veterans Affairs, 498 U.S. 89 (1990). In Irwin, the Supreme Court "granted certiorari to determine ... whether late filed claims are jurisdictionally barred." Id. at 92. The underlying question whether time limits for filing claims against the government were jurisdictional had been answered in the affirmative by Soriano v. United States, 352 U.S. 270 (1957). Irwin dealt with the question whether the equitable tolling principles applicable in suits between private parties could also toll a limitations period applicable to suits against the government. See Irwin at 98 (White, J., concurring).

Irwin involved the interpretation of 42 U.S.C. § 2000e-16(c), which sets a 30 day time limit in language very similar to that used in 404(d)(5): "Within thirty days of receipt of notice of final action taken by ... the Equal Employment Opportunity Commission, [an aggrieved party] may file a civil action" Id. at 94. The Supreme Court noted the similarity of this time limit to others applicable in

suits filed against the government, and that such congressional waivers of sovereign immunity must be construed very narrowly.⁶ Id. Justice White concurred, noting that statutory deadlines for suits against the government are conditions on the government's waiver of sovereign immunity that must be construed strictly. Id. at 97 (White, J., concurring);⁷ see also, Ramos v. United States, 683 F.2d 396, 397-98 (Ct. Cl. 1982) (applying strict and narrow construction of waiver of sovereign immunity in finding that thirty day appeal period barred plaintiff's appeal of Merit Systems Protection Board decision); Lewis-Hall Iron Works v. Blair, 23 F.2d 972, 974 (D.C. Cir. 1928) [cert. denied, 277 U.S. 592 (1928)] (finding sixty day filing period related to tax deficiencies "statutory and jurisdictional and .. not merely procedural"). Accordingly, the 30

⁶Sovereign immunity has been the subject of two long standing rules of construction, one broad and one narrow. The former applies to general waivers based upon sue and be sued clauses and the latter to specific waivers for particular actions. United States v. Nordic Village, 503 U.S. 30, 112 S.Ct. 1011, 1014-15 (1992); Commonwealth of Pennsylvania, Department of Environmental Resources v. USPS, 810 F. Supp. 605, 608 and n. 4 (M.D. Pa. 1992); see USPS v. Flamingo Indus., 540 U.S. 736, 744-746 (2004) (recognizing that Postal Accountability and Enhancement Act's waiver of sovereign immunity does not strip Postal Service of government status and does not subject Postal Service to liability under statutes otherwise inapplicable to the United States government); Pennsylvania DER, 810 F. Supp. at 611 (Clean Water Act limited the Postal Reorganization Act's general waiver of sovereign immunity so that Postal Service was no more liable than other federal agencies). If the law were otherwise, then the sue and be sued clause in 39 U.S.C. § 401(1) in concert with district court jurisdiction (39 U.S.C. § 409(a)) would override the (exclusive) remedy for review of post office closing decisions embodied in 39 U.S.C. § 404(d)(5). See also Loeffler v. Frank, 486 U.S. 549, 562 (1987) (limited waiver of sovereign immunity in the Federal Tort Claims Act controls the more general waiver in the sue and be sued clause).

⁷Justice White would not have allowed equitable tolling of statutes of limitation applicable to suits against the government. Irwin at 97. He also noted that the statute in question in Irwin was enacted in 1972 "when the presumption was, as set forth in [Soriano], that statutes of limitation were not subject to equitable tolling." Justice White further noted that Congress likely had this legal principle in mind in 1972 (Irwin at 99, n. 2), much as it likely did four years later when enacting section 404(d). This reasoning also extends to the Postal Accountability and Enhancement Act (PAEA).

day time limit embodied in section 404(d)(5) is a limit upon the jurisdiction of the Commission that must be strictly construed.

Petitioner argues that the Postal Service did not follow its regulations in closing the Crescent Lake Post Office and discontinuing the 97425 ZIP Code, and that “[t]he USPS representatives[] were confused as to the location of the alleged posting of the Final Determination.” But Exhibit 2 contradicts these arguments. The Proposal and Final Determination notices were both posted at the Crescent Post Office.⁸ This was the proper procedure under 39 C.F.R. § 241.3(d)(4)(v).

Because no timely appeal was filed pursuant to 39 U.S.C. § 404(d)(5), the Postal Service published the official closing date of the Crescent Lake Post Office in the Postal Bulletin, effective on the February 25, 2010 posting date.⁹ This was proper procedure under 39 C.F.R. § 241.3(g)(2).

The Postal Service followed the proper procedures in closing the Crescent Lake Post Office. No appeal was filed during the thirty day period allowed by law. Accordingly, postal officials closed the Crescent Lake Post Office properly and in compliance with all legal requirements. The Commission should dismiss the late appeal as untimely and moot.

⁸ The Crescent Lake Post Office was destroyed by fire and thus did not exist at the time postal officials posted these notices. The Crescent Post Office is the postal facility located closest to the site of the former Crescent Lake Post Office. In addition to the posting of notices, the Postal Service provided customers of the Crescent Lake Post Office with questionnaires notifying them of the discontinuance study and requesting their input for consideration as part of this study. The Postal Service received 38 questionnaires from Crescent Lake customers.

⁹ See Exhibit 1.

CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this matter.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product
Support

Kenneth N. Hollies
James M. Mecone

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-6525; Fax -6187
May 6, 2010

EXHIBIT 1

Intelligent Mail and Address Quality

Post Office Changes

Old/ New	Finance No.	ZIP Code	State	P.O. Name	County/ Parish	Station/Branch/ Unit	Unit Type	Effective Date	Comments
Old New	05-6834 05-6948	95117 95050	CA CA	San Jose Santa Clara	Santa Clara Santa Clara	Main Office Main Office	Post Office Post Office	07/01/2010	Realign ZIP™ Code boundaries. Use Santa Clara CA 95050 as last line of address for the 250 deliveries previously in ZIP Code 95117.
Old New	28-5814 28-5814	64645 64645	MO MO	Newtown Newtown	Sullivan Sullivan	Harris Harris	Community Post Office Place Name	05/16/2009 05/30/2009	Community Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Harris MO 64645 as last line of address.
Old New	30-0510 30-4305	68923 68923	NE NE	Atlanta Holdrege	Phelps Phelps	Main Office Atlanta	Post Office Place Name	11/20/2007 01/16/2010	Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Atlanta NE 68923 as last line of address.
Old New	38-4207 38-9149	43752 43752	OH OH	Laings Woodsfield	Monroe Monroe	Main Office Laings	Post Office Place Name	10/01/2005 01/16/2010	Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Laings OH 43752 as last line of address.
Old New	38-4816 38-3941	43757 43757	OH OH	Malaga Jerusalem	Monroe Monroe	Main Office Malaga	Post Office Place Name	05/26/2001 01/16/2010	Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Malaga OH 43757 as last line of address.
Old New	38-5530 38-3087	43760 43760	OH OH	Mount Perry Glenford	Perry Perry	Main Office Mount Perry	Post Office Place Name	11/18/2005 01/16/2010	Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Mount Perry OH 43760 as last line of address.
Old New	40-2032 40-2016	97425 97733	OR OR	Crescent Lake Crescent	Klamath Klamath	Main Office Crescent Lake	Post Office Place Name	12/06/2005 05/09/2009	Community Post Office and ZIP Code discontinued. Establish a place name. Crescent Lake OR becomes an acceptable last line for use with ZIP Code 97733.
Old New	41-4976 41-4976	15132 15132	PA PA	Mckeesport Mckeesport	Allegheny Allegheny	Central Main Office	Classified Station Post Office	12/28/2005 05/23/2009	Classified station discontinued. Retain ZIP Code. Continue to use Mckeesport PA 15132 as last line of address.
Old New	46-6012 46-6138	57758 57758	SD SD	Mud Butte Newell	Meade Meade	Main Office Mud Butte	Post Office Place Name	09/26/2008 11/21/2009	Post Office discontinued. Retain ZIP Code. Establish a place name. Continue to use Mud Butte SD 57758 as last line of address.

EXHIBIT 2

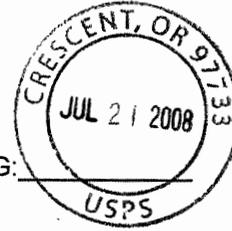
DOCKET NO.

ITEM NO.

PAGE

97425
52
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DATE OF POSTING:



DATE OF REMOVAL:



PROPOSAL TO CLOSE
THE SUSPENDED
CRESCENT LAKE, OREGON POST OFFICE
AND CONTINUE TO PROVIDE
A NONPERSONNEL UNIT

DOCKET NUMBER 97425