



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-217555

March 20, 1985

The Honorable Fortney H. Stark
House of Representatives

Dear Mr. Stark:

Your letter of December 27, 1984, asked us to investigate a possible violation of the penalty mail provisions by the Director of the Federal Emergency Management Agency, Louis O. Giuffrida. Your request arises in connection with a holiday greeting letter you received from Mr. Giuffrida in a penalty cover. The General Accounting Office has no jurisdiction over what may be transmitted as penalty mail. B-128938, January 10, 1979; see 24 Comp. Dec. 111 (1917). These standards are set by the Postmaster General. However, since appropriations pay the postage on penalty mail items (not to mention the cost of preparing the items themselves), an agency head responsible for interpreting and enforcing the Postal Service's rules on penalty mail use must apply those rules with reference to Comptroller General decisions. Because the agency head is the mailer in this case, we think it is appropriate to offer you our independent analysis of the situation, even though we have no official role in determining the issue or in enforcing the penalty for misuse of penalty mail. For the reasons explained below we think the holiday greeting letter was a violation of our longstanding rule against sending Christmas cards with appropriated funds, and consequently, an improper use of penalty mail.

Penalty mail is authorized by 39 U.S.C. §§ 3201-09 (1982). The permissible contents of penalty mail are specified in the Domestic Mail Manual (DMM) (incorporated by reference, 39 C.F.R. § 111.1 (1984)). The Manual provides that penalty mail is strictly limited to:

"* * * official mail sent by agencies of the United States Government containing matter relating exclusively to the business of the Government of the United States * * *." DMM § 137.21, as amended, 49 Fed. Reg. 33567 (1984).

In addition, the DMM has traditionally included an express prohibition on mailing Christmas cards as penalty mail. See, e.g., DMM § 137.22a (1983) (copy enclosed). However, the Postal Service amended the Manual in August of 1984. Agency heads are now required to issue guidelines governing:

"* * * the circumstances, if any, when officers and employees may mail retirement announcements, Christmas cards, job resumes, complaints, grievances, and similar materials as penalty mail.
* * *" DMM § 137.241, 49 Fed. Reg. 33567 (1984).

The revision creates the impression that there might be some circumstances in which Christmas cards could legitimately be sent at public expense as penalty mail. Since the DMM must be read in conjunction with other rules applying to expenditures of appropriated funds, an agency head would not be free to conclude that the revision opened a loophole for Christmas card mailings.

Our Office has long taken the position that the cost of greeting cards is a personal expense of the officer who authorizes their use, and, therefore, is not properly charged to appropriations. We first applied this doctrine to Christmas cards in 7 Comp. Gen. 481 (1928). We reasoned first, that there was no specific authority to send cards and second, that sending the cards did not materially aid in the accomplishment of the purpose for which the appropriation was made. Based on these two premises, and citing earlier decisions by the Comptroller of the Treasury, we concluded that the cards were a personal expense of the officer who ordered and sent them.

We further clarified our position in 37 Comp. Gen. 360 (1957). There, the Christmas cards bore the imprint of the agency name, rather than the signature of an individual. We still found them to be a personal expense of the official who ordered the cards. We applied the same analysis as in 7 Comp. Gen.; namely, that if not specifically authorized by law Christmas cards could not be considered an expense necessary to carry out the agency mission. We pointed out that the true purpose of the cards was apparently, "to secure the recipient's good-will and cooperation in carrying out [the] Agency's work." Id. at 361. We stated that such a purpose would not materially aid in achieving the purpose for which the agency's appropriation was made. Cf. B-205292, June 2, 1982 (July 4th fireworks display may not be charged to appropriated funds although intended to establish good relations with surrounding community).

The question remains whether the letter from Mr. Giuffrida is a Christmas card. The whole text of the letter, which is signed by Mr. Giuffrida, reads as follows:

"The entire staff of the Federal Emergency Management Agency joins me in wishing you a

joyous holiday. We look forward to working with you and your staff throughout the coming year.

The letter transacts no official business. Its sole purpose is to extend Mr. Giuffrida's personal greetings with the obvious intent of securing "the recipient's good-will and cooperation." This is the essence of a Christmas card as described in 37 Comp. Gen. 360, discussed above. Therefore, we must conclude that the letter was a "Christmas card" for which appropriations should not have been charged.

We applied the same kind of analysis in B-149151, July 20, 1962 where we held that other kinds of greeting cards were prohibited. The cards in that case read "Thank you for Hospitality."

We are sending a copy of this letter to Mr. Giuffrida and we will make this opinion available to the public 30 days after its issuance.

Sincerely yours,

for Harry R. Van Cleave
Comptroller General
of the United States

DIGEST

GAO is unable to act on Congressman's request to invoke \$300 penalty against agency head who sent holiday greeting letters as penalty mail because jurisdiction over penalty mail is with the Postmaster General. However, postal regulations were relaxed in 1984 giving the impression that it might be permissible to mail Christmas cards at Government expense. GAO believes that agency heads are still obliged to follow the longstanding injunction of this Office against sending Christmas cards at public expense absent specific statutory authority for such printing and mailing. If our rules are followed, agency heads must determine that it is not proper to mail holiday greetings as penalty mail.

1 COPY FULL GDSB - INFO
 1 COPY - PENALTY MAIL FILE
 1 COPY - CHRISTMAS CARDS FILE

EACH COPY -
 1 - DIGEST
 3 PAGE LETTER