



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

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make available to public reading

The Honorable Adam Benjamin, Jr.
House of Representatives

Dear Mr. Benjamin:

In your letter of May 28, 1981, you asked whether mail marked personal or addressed to a Government employee at his work address may be opened by someone other than that employee without his express permission. We are not aware of any established legal rights that are violated by the practice you describe.

The relevant Federal statute is 18 U.S.C. §1702, which provides:

"Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

A violation of section 1702, however, occurs only where a letter has been taken with intent to convert it and deprive the addressee of possession.

"* * * 'Take' as used in said section, considered in conjunction with the 'design' of the person doing the taking, denounced therein, is synonymous with the

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common law crime of larceny, and means to remove a letter, as one's own, with intent to convert it and deprive the addressee of possession thereof. It refers to 'a clandestine taking--not a taking through mistake, or with an innocent intent. It must be a taking with a criminal intent.'* * *" United States v. Maxwell, 137 F. Supp. 298, 304 (W.D. Mo. 1955), aff'd 235 F.2d 930 (8th Cir. 1956), cert. denied, 352 U.S. 943 (1956).

We are aware of no other proscription against opening mail marked personal or addressed to a specific individual.

Postal Service regulations provide for mail addressed to an employee at his place of employment to be delivered to the employer. Section 153.4 of the Domestic Mail Manual, which has been incorporated by reference into the Code of Federal Regulations at 39 C.F.R. §111.1, provides:

".41 Mail directed to officials or employees of a governmental or private organization at the address of the organization will be delivered to the organization when such mail is claimed both by an officer or employee and by the organization. This also applies to mail addressed in this manner to former officials or employees.

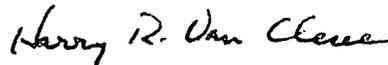
".42 Mail addressed elsewhere to a public or private official by title or to the organization even though marked to the attention of a particular person or title will be delivered to the organization if it so directs."

We are informed that the Service believes the employer may open mail addressed to an employee at his place of employment to determine if it relates to the employer's business. If the employer determines that the letter is not related to business, it should be turned over to the employee.

An agency may, of course, take steps to insure the privacy of incoming correspondence without unduly hindering the conduct of its business. For example, it is our policy to forward, unopened, mail that appears to be personal. This includes mail marked with words like "personal" or "confidential," and mail that otherwise appears to be personal such as mail from a professional association or commercial organization. If the markings on the envelope create uncertainty, the mail is presumed personal and is forwarded unopened; recipients of such mail are instructed to follow certain procedures for the handling of business mail if such mail is in fact not personal.

The purpose of our policy is to protect the privacy of Federal employees. To this end, and in recognition that nevertheless some personal mail on occasion may be opened inadvertently, we have suggested to our employees that they arrange, to the extent possible, for their personal mail to be sent to their homes or to a post office box. With these precautions, and in order to conduct business in an expeditious and efficient manner, we presume that mail addressed to an individual with no indication that it might be personal is related to business, and that mail is opened by employees who handle the mail.

Sincerely yours,



Harry R. Van Cleve
Acting General Counsel