



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 2040

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The Honorable Phil Gramm
United States Senate

Dear Senator Gramm:

This letter is in response to the inquiry dated March 10, 1986, signed by you and Senators Dan Quayle, Pete Wilson, and Don Nickles, as to whether the Antideficiency Act (31 U.S.C. § 1341-1351) is violated when the cost as billed by the Postal Service of delivering congressionally franked mail exceeds the amount appropriated in a given fiscal year. In this respect, you point out that the amount appropriated for congressionally franked mail for fiscal year 1986, after reduction pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), is \$95.7 million while the estimated cost of handling congressional mail during the fiscal year is \$146 million.

The Antideficiency Act prohibits an officer or employee of the Government from making or authorizing an expenditure or obligation in excess of the amount available in an appropriation or fund for the expenditure or obligation. It also prohibits commitments for the payment of money in advance of an appropriation unless otherwise authorized by law. 31 U.S.C. § 1341. For the reasons which are explained in greater detail in the enclosed Office of General Counsel staff discussion paper, we conclude that no violation of 31 U.S.C. § 1341 is incurred when the cost of handling franked mail exceeds the amount appropriated by the Congress to pay the Postal Service for handling the franked mail. This practice is authorized by 39 U.S.C. § 3216(c) which makes the lump-sum appropriation made to the legislative branch for payment to the Postal Service full payment for all matter mailed under the frank. Furthermore, absent later appropriations for additional costs incurred by the Postal Service for delivery of franked mail, the Postal Service is entitled to receive no more than the amount already appropriated by the Congress for fiscal year 1986 for payment for handling franked mail, as reduced by any sequestrations under Public Law 99-177.

Sincerely yours,

Shelton J. Stoslar
for Comptroller General
of the United States

Enclosure

Office of General Counsel Staff Discussion Paper

The evolution of the congressional franking privilege is discussed in the following passage from the report of the Senate Post Office and Civil Service Committee prepared in connection with Congressional franking reform:

BACKGROUND"History

The word 'frank' is derived from the Latin *francus* which means 'free.' The franking privilege denotes the right of a governmental official to send matter through the public mails free of postage. This privilege, as it applies to Members of Congress, is older than the Declaration of Independence itself, having been enacted by the Continental Congress on November 8, 1775. On October 18, 1782, the franking privilege was extended to letters, packets and dispatches to and from Members of the Continental Congress.

Franking Laws 1789 to Present

The First Congress enacted in 1789 practically the same laws as were in existence under the Continental Congress. In 1792, the law was changed to specifically include the Vice President, Members of the House and Senate, and assistants.

During the 1800's the franking privilege enjoyed by the Congress was alternatively broadened and limited depending upon the mood of the citizen. In 1845, legislation was passed conferring the right of the Secretary of the Senate and Clerk of the House of Representatives to use the franking privilege.

Due to alleged excessive abuses, the franking privileges for Congressmen were discontinued for a few years in the mid-nineteenth century.

Little was done until 1957 when the uniform date was established for termination of

the right to use the frank by former Congressmen [on] June 30 following the expiration of their term of office. * * * The privilege, with but the one exception, has continually been in effect for nearly 200 years.

Justification

The reasons underlying the franking policy are fundamentally sound. Free transmission of letters on governmental business is directly connected to the well-being of the people because of the nature of the legislative function. The franking privilege serves as an aid and auxiliary in informing the populace since most Members of Congress would be unable to afford correspondence with their constituency in the absence of the privilege. It may also be stated that the use of franked mail for official business also provides an efficient means of posting since the Postal Service is not required to stamp and cancel franked mail." S. Rep. No. 93-461, 93d Cong., 1st Sess. 2 (1973).

The current statutory authority for Members of the Congress and others to use the franking privilege is set forth generally in chapter 32 of title 39, U.S.C and 2 U.S.C. § 31b-4 (1982).

While use of the franking privilege means that costs are not paid by those entitled to use the frank, the costs obviously must be borne by someone. Until 1953 all costs connected with the frank were borne by Post Office Department appropriations. These appropriations were funded by postal revenues and when these were inadequate, the deficit was made up out of the general fund of the Treasury. In 1953 the Congress first authorized lump-sum appropriations to pay the postage on mail sent under the frank. Act of August 15, 1953, ch. 511, § 2, 67 Stat. 614. Since the use of the frank itself was not limited, the practice initially followed was for the Post Office Department to request payment in the appropriation request submitted for the fiscal year following the fiscal year to which the billing applied. Congress then appropriated amounts it deemed sufficient based upon its determination of

the propriety of the billing.^{1/} The amount appropriated was also immediately made available for payment to the Post Office rather than awaiting the beginning of the fiscal year of the act in which it was contained in order to make the funds available as soon as possible. This practice continues today.

In 1970, the United States Postal Service was established and the Post Office Department was abolished by the Postal Reorganization Act. Pub. L. No. 91-375, Aug. 12, 1970, 84 Stat. 719. The Postal Service at its first opportunity requested that Congress change the timing of payments to the Postal Service for its handling of franked mail. The Postal Service desired to shorten the time elapsed between when it handled the franked mail and when it received payment related to handling the franked mail. Thus it requested an end to the practice of requesting payment in the fiscal year appropriation following the fiscal year during which the service was rendered and upon which the request was based. Under the proposed new system, quarterly billings would be made based upon estimated volume. These estimated billings would be adjusted at the end of the fiscal year based upon actual volume.

Appropriations would thereafter be requested in advance based upon Postal Service estimates similar to the way Government agencies request operating appropriations. While the billings would be reconciled with actual volume of franked mail handled upon close of the final quarter, actual payments could not exceed appropriations. To address the problem of shortfalls caused by Postal Service under estimates in its initial budget request, or changes in the method employed by the Postal Service to determine its billing to the Congress, the Congress also adopted the practice of adjusting the final quarter's billing through use of the next fiscal year's appropriations. However, no requirement was imposed upon the Congress to appropriate funds to cover the adjusted billings

^{1/} See H.R. Rep. No. 1557, 87th Cong., 2d Sess., accompanying the Legislative Branch Appropriations Bill for 1963, 8 (1962); Legislative Branch Appropriations for 1962 Hearings before the Subcommittee of the Committee on Appropriations House of Representatives, 86th Cong., 2d Sess. 273-274 (1961); H.R. Rep. No. 1607, 86th Cong., 2d Sess., accompanying the Legislative Branch Appropriations Bill, 1961, 4-5 (1960); and Legislative Branch Appropriations for 1961 hearings before the Subcommittee of the Committee on Appropriations House of Representatives, 86th Cong., 2d Sess. 293-296 (1960).

and no effort was made to limit the use of the franking privilege.^{2/} In fiscal year 1982, the Postal Service began monthly billings for franked mail based upon one-twelfth of the amount of the appropriation for "Official Mail Costs" made for the fiscal year. The Postal Service also provides quarterly reports to show actual usage and to revise its estimate of actual yearly costs. Total billings may not exceed the amount appropriated. Any shortfalls are to be considered during the following fiscal year's appropriation request.^{3/} This is the current procedure.

DISCUSSION

At the time that the Postal Service proposed the change to the payment procedure to decrease the time between its rendering the service and receiving payment, Congress amended 39 U.S.C. § 3216 to provide:

"§ 3216. Reimbursement for franked mailings

(a) The equivalent of--

(1) postage on, and fees and charges in connection with, mail matter sent through the mails--

^{2/} See H.R. Rep. No. 92-937, 92d Cong., 2d Sess., accompanying the Legislative Branch Appropriations Bill, 1973, 10-11 (1972); Legislative Branch Appropriations for 1973, hearings before a Subcommittee of the Committee on Appropriations House of Representatives, 92d Cong., 2d Sess. 840-845 (1972); Legislative Branch Appropriations, 1973, Hearings before the Senate Appropriations Committee, 92d Cong., 2d Sess., 449-460 (1972). Rule XLVI of the House of Representatives limiting use of the frank by Members of the House under 39 U.S.C. § 3210(d) (relating to mass mailings) was adopted by the House on March 2, 1977 (H. Res. 287, 95th Cong., 123 Cong. Rec. 5952-5953) and currently constitutes the only limitation upon the amount of the use of the frank that we are aware of.

^{3/} See Legislative Branch Appropriations for 1982 Hearings before a Subcommittee of the Committee on Appropriations House of Representatives, 97th Cong., 1st Sess. 345-346 (1981).

(A) under the franking privilege
* * * by the Vice President, Members of
and Members-elect to Congress, the
Secretary of the Senate, the Sergeant at
Arms of the Senate, each of the elected
officers of the House of Representatives
(other than a member of the house), the
Legislative Counsels of the House of
Representatives and the Senate, the Law
Revision Counsel of the House of
Representatives, and the Senate Legal
Counsel; and

(B) by the survivors of a Member of
Congress under section 3218 of this title;
and

(2) those portions of fees and charges
to be paid for handling and delivery by
the Postal Service of Mailgrams considered
as franked mail under section 3219 of this
title;

shall be paid by a lump-sum appropriation to the
legislative branch for that purpose and then
paid to the Postal Service as postal revenue.
* * *

(c) Payment under subsection (a) * * * of this
section shall be deemed payment for all matter
mailed under the frank and for all fees and
charges due the Postal Service in connection
therewith."

Subsection (c) of this provision was new and for the
first time expressly stated what had been implied since 1953--
that regardless of the cost incurred by the Postal Service in
handling franked mail, the amount the Congress appropriated to
the Postal Service would be considered payment in full for
that service.

Accordingly, exercise of the franking privilege without
regard to amounts appropriated for payment to the Postal
Service for this service is authorized by law and thus not a

violation of 31 U.S.C. § 1341.^{4/} Members, therefore, are authorized to use the franking privilege and the Postal Service is required to handle franked mail regardless of the amount appropriated by the Congress for "Official Mail Costs." Should the actual costs of handling franked mailed exceed the amount appropriated (as reduced by any sequestrations under Public Law 99-177), no violation of 31 U.S.C. § 1341 would occur since the amount appropriated is as a matter of law deemed full payment for all matter sent under the frank. Therefore, if the amount billed exceeds the amount appropriated, the Postal Service should be paid only the amount appropriated as reduced by sequestration unless additional funds are provided by a supplemental appropriation.

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- ^{4/} We note that the appropriation for "Official Mail Costs" in the annual Legislative Branch Appropriations Act is deemed postal revenue by virtue of 39 U.S.C. § 3216(a). Postal revenue is required by law to be deposited to the Postal Service Fund, 39 U.S.C. § 2003(b)(1), and immediately appropriated to the Postal Service, 39 U.S.C. § 2401(a). Since the fund is a no-year revolving fund, it is available to pay all expenses incurred by the Postal Service in carrying out its authorized functions no matter when they are incurred. Thus the appropriation for "Official Mail Costs" once paid to the fund is available for payment of expenses of the Postal Service no matter when they were incurred.

We also note that 39 U.S.C. § 410(a) provides that Federal laws "dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds" do not apply to the exercise of powers by the Postal Service unless as provided by 39 U.S.C. § 410(b) or some other provisions of title 39, U.S.C. The Antideficiency Act is not one of the laws listed in 39 U.S.C. § 410(b). No other provision of title 39, U.S.C. expressly makes the Antideficiency Act applicable to the Postal Service.

Thus it is clear that the Antideficiency Act is inapplicable to the Postal Service when billing Congress for handling franked mail.