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B-128938, Jan. 17, 1961

Number: B-128938

Date: 1961-01-17

B-128938, JAN. 17, 1961

TO THE POSTMASTER GENERAL:

REFERENCE IS MADE TO LETTER DATED DECEMBER 30, 1960, WITH ENCLOSURES, FROM THE GENERAL COUNSEL OF YOUR DEPARTMENT, CONCERNING A CONTROVERSY BETWEEN THE POST OFFICE DEPARTMENT AND REPRESENTATIVE EDWIN B. DOOLEY BECAUSE OF AN ALLEGED VIOLATION OF THE CONGRESSIONAL FRANKING PRIVILEGE.

THE VIOLATION IN QUESTION IS SAID TO ARISE OUT OF A NEWSLETTER (AUTUMN 1960 (14) (, TRANSMITTED BY MR. DOOLEY TO HIS CONSTITUENTS THROUGH THE MAIL IN ENVELOPES BEARING HIS FRANK. AN ADDRESSEE REFERRED A COPY OF THE NEWSLETTER TO THE POST OFFICE DEPARTMENT FOR A RULING AS TO THE LEGALITY OF THE USE OF PUBLIC FUNDS FOR THE MAILING OF SUCH A LETTER. THE DEPARTMENT DETERMINED THAT THE NEWSLETTER WAS NOT AUTHORIZED TO BE TRANSMITTED THROUGH THE MAIL FREE OF POSTAGE UNDER THE FRANKING LAWS AS SET FORTH IN 39 U.S.C. 4161-4163 FOR REASON THAT IN THE DEPARTMENT'S OPINION A PART OF THE NEWSLETTER DID NOT RELATE TO OFFICIAL BUSINESS.

YOUR DEPARTMENT THEREUPON MADE DEMAND ON MR. DOOLEY FOR PAYMENT OF A SUM EQUIVALENT TO THE FIRST CLASS RATE OF POSTAGE FOR THE NEWSLETTERS MAILED. MR. DOOLEY REMITTED HIS CHECK FOR THE AMOUNT OF POSTAGE DUE AND EXPRESSED A DESIRE TO CONTEST THE DEPARTMENT'S RULING IN THE MATTER CONTENDING THAT IT IS ERRONEOUS. THE GENERAL COUNSEL REQUESTS ADVICE AS TO WHETHER THE DEPARTMENT'S RULING ON MR. DOOLEY'S NEWSLETTER IS IN ACCORD WITH OUR INTERPRETATION OF THE LAW AND THE DEPARTMENT'S RESPONSIBILITY IN THE MATTER.

THE SPECIFIC FRANKING LAW APPARENTLY INVOLVED HERE, NAMELY 39 U.S.C. 4161, PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"THE VICE PRESIDENT, MEMBERS AND MEMBERS-ELECT OF CONGRESS, THE SECRETARY OF THE SENATE, AND THE SERGEANT AT ARMS OF THE SENATE UNTIL THE THIRTIETH DAY OF JUNE FOLLOWING THE EXPIRATION OF THEIR RESPECTIVE TERMS OF OFFICE, MAY SEND AS FRANKED MAIL---

"/1) MATTER, NOT EXCEEDING FOUR POUNDS IN WEIGHT, UPON OFFICIAL OR DEPARTMENTAL BUSINESS, TO A GOVERNMENT OFFICIAL; AND

"/2) CORRESPONDENCE, NOT EXCEEDING FOUR OUNCES IN WEIGHT, UPON OFFICIAL BUSINESS TO ANY SON.'

IN APPLYING THIS STATUTE THERE ARE ALSO FOR CONSIDERATION THE PROVISIONS OF 5 U.S.C. 22, WHICH AUTHORIZE THE HEAD OF EACH DEPARTMENT TO PRESCRIBE REGULATIONS,

NOT INCONSISTENT WITH LAW, FOR THE GOVERNMENT OF HIS DEPARTMENT, AND 39 U.S.C. 501 (5) REQUIRING THE POSTMASTER GENERAL TO SUPERINTEND GENERALLY THE BUSINESS OF THE DEPARTMENT AND EXECUTE ALL LAWS RELATING THERETO.

UNDER THE TERMS OF 39 U.S.C. 4161, QUOTED ABOVE, IT IS CLEAR THAT THE CONGRESS QUALIFIED THE USE OF THE MAILS, UNDER THE FRANK OF A MEMBER OF CONGRESS SO FAR AS MATERIAL HERE, FOR CORRESPONDENCE NOT EXCEEDING FOUR OUNCES IN WEIGHT UPON "OFFICIAL BUSINESS" TO ANY PERSON. AS A COROLLARY, IT FOLLOWS THAT WHEN SUCH CORRESPONDENCE OR A PART THEREOF RELATES TO OTHER THAN OFFICIAL BUSINESS OF THE MEMBER IT IS NONFRANKABLE AND, THEREFORE, NOT AUTHORIZED TO BE MAILED AT PUBLIC EXPENSE. THE FACT THAT THE CONGRESS ANNUALLY APPROPRIATES A LUMP SUM TO REIMBURSE THE POST OFFICE DEPARTMENT FOR PAYMENT OF THE POSTAGE ON MAIL SENT UNDER THE FRANKING PRIVILEGE DOES NOT OPERATE TO RATIFY THE UNAUTHORIZED USE OF THE FRANK OR RELIEVE THE SENDER OF MAIL NOT OTHERWISE ENTITLED TO THE FRANKING PRIVILEGE FROM FINANCIAL RESPONSIBILITY THEREFOR.

IN DECISION DATED AUGUST 16, 1956, B-128938, TO YOU, WHICH IS CITED IN THE LETTER, WE STATED THAT THE CONGRESS IMPOSED UPON THE POSTMASTER GENERAL THE DUTY AND RESPONSIBILITY TO SUPERINTEND GENERALLY THE BUSINESS OF THE DEPARTMENT AND TO EXECUTE ALL LAWS CONCERNING THE POSTAL SERVICE. IN ADDITION, WE CONCLUDED THAT UNDER THE LAW THE RESPONSIBILITY FOR DETERMINING WHAT MATTER MAY BE ADMITTED TO THE MAILS UNDER A CONGRESSIONAL FRANK IS A DUTY DEVOLVING ON THE POST OFFICE DEPARTMENT.

WE RECOGNIZE THAT THE TERM "OFFICIAL BUSINESS"--- AS DISTINGUISHED FROM PRIVATE OR POLITICAL BUSINESS--- CONTAINED IN 39 U.S.C. 4161, IN RELATION TO THE USE OF THE FRANKING PRIVILEGE BY MEMBERS OF CONGRESS IS SUBJECT TO DEBATABLE INTERPRETATION IN VIEW OF THE PUBLIC RESPONSIBILITIES OF MEMBERS ON MATTERS WITHIN THEIR JURISDICTION. ALSO, WE APPRECIATE THAT, IN ADDITION TO THE ADMINISTRATIVE DIFFICULTIES ENCOUNTERED IN ADMINISTERING THE CONGRESSIONAL FRANKING LAWS, COMPLAINTS RECEIVED FROM ADDRESSEES ALLEGING VIOLATION OF THESE LAWS OFTEN RESULT IN PLACING A MEMBER OF CONGRESS IN AN INEQUITABLE POSITION. IN THIS CONNECTION, IT IS MENTIONED THAT MR. DOOLEY'S CASE IS REPRESENTATIVE OF20 OTHER CASES OF ALLEGED VIOLATIONS UPON WHICH THE DEPARTMENT WAS REQUIRED TO PASS JUDGMENT DURING THE RECENT ELECTION CAMPAIGN. HOWEVER, WE BELIEVE THAT ANY CLARIFICATION OR DEFINITION OF THE PHRASE "OFFICIAL BUSINESS" MUST COME FROM THE CONGRESS RATHER THAN FROM THIS OFFICE.

SINCE, AS INDICATED ABOVE, IT IS THE LEGAL RESPONSIBILITY OF THE POST OFFICE DEPARTMENT, RATHER THAN THE GENERAL ACCOUNTING OFFICE, TO DETERMINE WHAT MATTER MAY BE ADMITTED TO THE MAILS UNDER A CONGRESSIONAL FRANK, THERE IS NO LEGAL BASIS UPON WHICH THIS OFFICE WOULD BE AUTHORIZED TO QUESTION YOUR DEPARTMENT'S DETERMINATION IN CONGRESSMAN DOOLEY'S CASE.