



THE U.S. POSTAL SERVICE IS A GOVERNMENT CORPORATION: SO WHAT?

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November 2006

ABOUT THE AUTHOR

Murray B. Comarow was elected as a Fellow of the National Academy of Public Administration in 1974 and served on the organization's board of directors. An attorney, he was executive director of President Johnson's Commission on Postal Organization in 1967-1968, and executive director of President Nixon's Advisory Council on Executive Organization in 1970-1971. Additionally, he served as senior assistant postmaster general, distinguished adjunct professor in residence at American University, partner at Booz, Allen, and Hamilton, executive director of the Federal Power Commission, and acting deputy general counsel in the Office of the Secretary of the Air Force.

This article should be of interest to the Executive Office of the President, senior management of the Postal Service, congressional committees and staff, the Academy, and private sector organizations and interest groups. It is a sequel to Murray Comarow's September 2006 essay, "The Postal Conundrum," and to his April 2006 essay, "How Not to Reform Government." The views expressed in this document are those of the author alone. They do not necessarily reflect the views of the Academy as an institution.

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So treat it like a government corporation, that's what. Congress creates government corporations for agencies that sell a commercial product or service. They operate on customers' revenues, not on taxes. Government corporations have been around for a long time. Eighteen such agencies are listed in the March 23, 2006 Congressional Research Service Report for Congress. The CRS report quotes President Truman's 1948 budget message on the corporate option: "As a rule, the usefulness of a [government] corporation rests on its ability to deal with the public in a manner employed by private enterprise for similar work." This organizing principle was at the heart of the Kappel Commission's 1968 report. Congress has given it rhetorical support, but its actions are inconsistent with its rhetoric.

While the law describes the Postal Service as "an independent establishment of the executive branch," it meets the criteria for a government corporation in all respects. That is why CRS and other authorities disregard the statutory label. The "independent establishment" language came about because postal unions objected to the corporate language in the Nixon administration's postal reform bill, and inflamed their members with dire warnings about governance by a "soulless corporation." The Postal Service, like all government corporations, is responsible to the public, not shareholders.

Conversely, some agencies called "corporations" in their founding statutes are not. The CRS study notes that such entities as the Legal Services Corporation and the Corporation for Public Broadcasting don't perform commercial functions and are therefore not government corporations. Nor are "government sponsored enterprises," like Fannie Mae, government corporations. GSEs are federally chartered private businesses, primarily responsible to shareholders, not the public.

If the President and the Congress respected the nature of a government corporation, their positions on postal matters might be different. I wouldn't bet the farm on it, but it's possible. They know that the Postal Service depends entirely on revenues from customers. They know that the law requires it to break even. But they do not seem to know, or do not want to know, that logic and equity demand that customers should cover only postal costs. They should not be taxed for costs that are not postal-related. The latter costs should be borne by the public.

Congress and the President reject this equitable principle. Perhaps we should not be surprised. David S. Broder, the extremely moderate dean of Washington political commentators, wrote recently that the Congress has "failed to deliver" on immigration reform, energy policy, health insurance, or retirement security: "It worked fewer days—and accomplished less—than any Congress in recent history." It has been ripped by the

bipartisan Committee for a Responsible Federal Budget for adjourning without a formal budget resolution. Broder quotes the committee's president: "Congress is tasking itself with spending millions of dollars while flying blind. That is no way to run a country." Why should we expect better in the postal arena which has infinitely less visibility and political sex appeal?

Let's review the bidding. Postal bills before the House and Senate, similar but not identical, have been passed by both houses, although the vast majority of members have neither read it nor fully understand it. Speaker Hastert, obedient to White House demands for a "budget neutral" outcome, and currently distracted by other concerns, has not named House conferees to resolve Senate-House differences.

Many mailers publicly support these bills while privately expressing severe doubts. They are enchanted by the "hard rate cap" provisions in both bills, but this is illusory. The cap is not all that hard. Labor arbitrators are free to award wage increases beyond the cap. The postal Board of Governors, on September 13, 2005, said that it would lack authority to run the Postal Service if some form of the bills was enacted. On February 7, 2006, seven of the nine commissioners of President Bush's own appointed 2003 commission, came to the same conclusion, in letters to the relevant Congressional committees.

The governors and commissioners are right that shifting de facto power to the Postal Rate Commission would reduce the Board to something like an advisory body. They are also right in their views on the escrow and military pension issues. These are the hard realities:

- Escrow. Mailers were overcharged for many years. That money should be returned. It has nothing to do with the budget.
- Military pensions. These have nothing to do with postal operations and should be borne by the public.

In both cases the White House position, if enacted into law, may be unconstitutional under the Fifth Amendment's Takings Clause: "...nor shall private property be taken for public use without just compensation." Federal courts may hold that customers who finance a government corporation may not be compelled to contribute more money to activities that are irrelevant to that agency's operations.

Mailers, postmasters, and unions should temporarily set aside their plans for general postal reform, and focus on the escrow and pension issues. Buying into bad legislation to achieve those goals and an ephemeral rate cap will turn out to be a Faustian bargain.