



CITY OF CAMBRIDGE

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March 29, 1990

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Citizen request to take legal action
against the U.S. Postal Service

Dear Mr. Healy:

This is in response to City Council order no. 6, dated January 22, 1990, which essentially asks whether the City can take legal action against the U.S. Postal Service for failure to deliver the mail to Cambridge residents. A copy of the order is enclosed.

In this letter, I will examine first the tort liability of the U.S. Postal Service for negligence in the delivery of mail. See, generally, Note, "Failure to meet their appointed rounds - Tort liability of Postal Service supervisory personnel for lost or mishandled mail," 18 Santa Clara Law Review 241 (1978); Shelby Resources, Inc. v. U.S. Postal Service, 619 F. Supp. 1546 (1985, SDNY); 72 C.J.S., Postal Service, s. 9 (1987).

I note, at the outset, that the Federal Tort Claims Act, 28 U.S.C., s. 1346(b), excludes from its operation "Any claim arising out of the loss, miscarriage, or negligent transmission of letters

or postal matter." 28 U.S.C., s. 2680(b). See 35 Am. Jur. 2d, Federal Tort Claims Act, s. 37 (1967) (and cases cited in 1989 pocket part). Thus, "...Congress has not waived its sovereign immunity with respect to an action for damages for late delivery or non-delivery of mail...." 72 C.J.S., Postal Service, s. 9, p. 83 (1987). See Sportique Fashions, Inc. v. Sullivan, 597 F.2d 664 (1979, 9th Cir.).

The only legal remedy for negligent mail delivery would seem to be provided by 39 U.S.C., s. 3662 (Rate and service complaints), which states:

Interested parties who believe...that they are not receiving postal service in accordance with the policies of this title may lodge a complaint with the Postal Rate Commission in such form and in such manner as it may prescribe....

There is no judicial review, however, if the complaint is not acted on favorably. See Tedesco v. U.S. Postal Service, 553 F. Supp. 1387 (1983, W.D. Pa.), which held that the provisions of the Postal Reorganization Act, 39 U.S.C. ss. 101-5605 (1976), that the Postal Service shall be operated as a fundamental service provided to the people by the government, and setting forth the basic functions and responsibilities of the Postal Service do not create a private cause of action in the district courts for a complaint of inadequate postal service. To the same effect, see also Shelby Resources, Inc. v. U.S. Postal Service, 619 F. Supp. 1546 (1985, SDNY).

I conclude that private citizens and businesses who may be injured through the negligent delivery or non-delivery of mail cannot sue the U.S. Postal Service, and, a fortiori, that the City cannot sue the Postal Service as their representative. An "interested party" can file a complaint under 39 U.S.C., s. 3662 with the Postal Rate Commission.

In my opinion the City would not be an "interested party" within the meaning of 39 U.S.C., s. 3662. As a general rule,

A municipal corporation cannot maintain an action in a matter which does not affect it in its corporate capacity, or in which it has no interest as a unit of local government. Hence, although intervention in proceedings before a public utility commission is sometimes allowed a city cannot intervene in the suit of an individual against a public utility to enjoin the collection of illegal rates....

17 McQuillin, Municipal Corporations, s. 49.02 (1982).

These principles are illustrated by the case of Slama v. Attorney General, 384 Mass. 620 (1981), where the plaintiff Slama and eleven other qualified voters (first signers) signed an initiative petition which would have required the Commonwealth to share its sales, use, storage, consumption and income tax revenues with the cities and towns which generate these revenues. When the Attorney General refused to certify the Initiative, the first signers and the City of Boston sought an injunction from a single justice to compel the Attorney General to certify it. The Court held that Boston lacked standing, either in its own right or in a representative capacity, to join the suit as a plaintiff.

The City argued that it had standing as a representative of

its citizens. In making this argument, the City relied on Wilmington v. Dept. of Public Utilities, 340 Mass. 432 (1960), in which the Boston and Maine Railroad filed a petition with the Department of Public Utilities (DPU) for the discontinuance of certain passenger stations and passenger service in Wilmington. The town was allowed to intervene in the proceedings before the DPU, and, when the DPU decided in favor of the Railroad, the town sought to appeal as "an aggrieved party in interest" pursuant to G.L. c. 25, s. 5.

In holding that the town was "an aggrieved party in interest," the Court in Wilmington noted that "(i)ndividual customers of the utilities as a rule do not have the time or the means to come in as parties and defend their interests or those of the public generally." 340 Mass. at 439.

In Slama, the Court distinguishes Wilmington as follows:

... Representative standing is generally limited to cases in which it is difficult or impossible for the actual rightholders to assert their claims. See Wilmington..., 340 Mass. 432, 437-439.... However, in election cases, it is neither difficult nor impossible for qualified voters to assert their claims.

384 Mass. at 624.

It does not seem to me that it would be difficult or impossible for Cambridge residents or businesses to file a complaint with the Postal Rate Commission under 39 U.S.C., s. 3662. It would certainly be much easier than participating in the full-fledged administrative proceeding which took place in Wilmington.

As an additional reason for denying standing to Boston in the

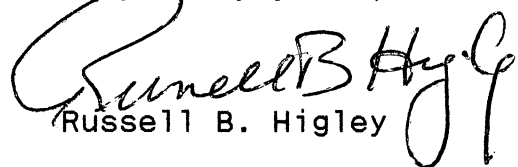
Slama case, the Court stated that, "To have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury. See Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208 (1974)...." 384 Mass. at 624. The Court then held that Boston's allegation of injury was insufficient. Likewise, here I am not aware that the City of Cambridge claims that it is being injured through actions of the U.S. Postal Service.

For the reasons stated above, I conclude that

1. Nobody, including the City, may bring suit against the U.S. Postal Service for "Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C., s. 2680(b).

2. The City does not have standing as an "interested party" to file a claim under 39 U.S.C., s. 3662.

Very truly yours,

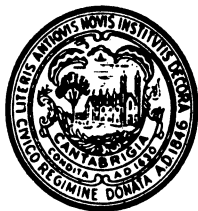

Russell B. Higley

RBH/jm1
Enclosure

cc: Mayor Alice Wolf
Joseph E. Connarton

OPS#2

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CITY OF CAMBRIDGE

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EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

April 23, 1990

To The Honorable, The City Council:

In response to Awaiting Report Item #9, of January 22, 1990, which requests an evaluation of a citizen's request to take legal action against the U.S. Postal Service, attached please find a response from Russell B. Higley, City Solicitor.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", is written over the typed name.

Robert W. Healy
City Manager

RWH/mev
enclosure

Agenda # 3

S-41b

Awaiting Report Item No. 9 regarding
a citizens's request to take legal action
against the U. S. Postal Service.

In City Council,

April 23, 1990

Placed on file