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THE POSTAL REORGANIZATION ACT: APPLYING THE LAW TO THE LETTER

The Post Office Department has been in dire need of reform for many years. Last year it carried more than 83 billion pieces of mail—more mail than was moved by all of the other post offices in the world combined.¹ Despite this volume, its archaic organizational structure and outmoded equipment and methods of processing mail were bringing it to the verge of total breakdown under an ever-increasing volume of mail. With over 700,000 employees, the Post Office Department was one of the nation's largest employers.² But labor-management relations within the organization were at an all-time low. Insufficiency of funds and, consequently, massive operating deficits—last year approximately \$1.4 billion³—were incurred as a result of these and other major problems.

Last August, in order to remedy these problems, President Nixon signed into law the Postal Reorganization Act.⁴ In essence, the Post Office Department, which had been a Cabinet level "executive department,"⁵ was disestablished, and the United States Postal Service, "an independent establishment of the executive branch," was established in its place.⁶ This comment will discuss the causes of the current crisis in postal service, evaluate the Reorganization Act, and present possible alternatives to that Act.

I. THE FAILURE OF THE POST OFFICE DEPARTMENT

There has been general agreement among most observers of the postal situation as to the causes of the Post Office Department's problems prior to the enactment of the recent reform legislation. Generally, these problems have been attributed to the labyrinthine statutory framework which has enshrouded every major postal decision and operation in clouds of red tape, and the politics of major mail users and other interest groups. In addition, there are a number of specific major problem areas; for example, political involvement in the appointment of postmasters and the Postmaster General, poor labor-management relations, scarcity of funds for modernization, outmoded methods for procurement of transportation, and congressional control over rates and expenditures.⁷

¹ S. Rep. No. 91-912, 91st Cong., 2d Sess. 2 (1970) (hereinafter cited as Senate Report on Postal Reorganization).

² The Report of the President's Commission on Postal Organization, 15 (1968) (hereinafter cited as the Kappel Comm. Report).

³ H.R. Rep. No. 91-1104, 91st Cong., 2d Sess. 5 (1970) (hereinafter cited as House Report on Postal Reorganization).

⁴ 39 U.S.C.A. § 101 et seq. (1970).

⁵ 39 U.S.C. § 301 (1964).

⁶ 39 U.S.C. § 201 (1970).

⁷ Kappel Comm. Report, *supra* note 2, at 14-31, 35-46; see also, House Report on Postal Reorganization, *supra* note 3, at 4-5.

A. *Political Influence*

The Post Office Department has existed in its present form since the early days of the Republic.⁸ The Postmaster General, a member of the President's Cabinet, has been appointed solely on the basis of political affiliation. In a less busy and complex era, this practice was not of great significance. However, in the twentieth century, and especially since World War II, the Post Office has become a major enterprise, with a corresponding increase in the burdens placed upon the Postmaster General. The Post Office is one of the largest employers in the world;⁹ it moves as much mail as the post offices of all other countries combined.¹⁰ Although in recent years there has been much dispute as to whether this mammoth operation should be run as a business enterprise or as a public service,¹¹ there has been much less dispute over the question of whether the Post Office needs the expert management that such a vast undertaking requires. During this century, the term of office of the Postmaster General has averaged about two and one-half years. Clearly, this is far too short a period of time for one to learn the intricacies of the postal machinery.¹² Even in those few instances where the Postmaster General has mastered the duties of his office, either a change in political control or some other event has caused him to resign. In light of these facts, many observers of the postal scene believe that no structural improvement of the Post Office could be effective so long as the appointment of its chief operating officer is directly related to the political process.¹³ It is their opinion that no matter how hard the Postmaster General might try to be fair and objective, political con-

⁸ Kappel Comm. Report, *supra* note 2, at 46-47; *United States v. Kochersperger*, 26 F. Cas. 803, 808-09 (No. 15,541) (C.C.E.D. Pa. 1860). According to the provisions of the Reorganization Act, Pub. L. No. 91-375, § 15(a) (August 12, 1970), those sections of the Act pertaining to the Board of Governors and the Postal Rate Commission took effect immediately upon date of enactment. Most of the remaining provisions of the Act were to go into effect one year after the date of enactment or on a prior date selected by the Board of Governors and published by them in the Federal Register. On January 16, 1971, the Board published a notice of its intention to commence the operation of the postal system by the Postal Service on July 1, 1971. Until this latter date, the Post Office Department will continue in existence and operate the postal system. 36 Fed. Reg. 785 (1971).

⁹ Kappel Comm. Report, *supra* note 2, at 15.

¹⁰ Senate Report on Postal Reorganization, *supra* note 1, at 2; Kappel Comm. Report, *supra* note 2, at 99.

¹¹ "[T]oday the Post Office is a business." Kappel Comm. Report, *supra* note 2, at 48; "The United States Postal Service shall be operated as a basic and fundamental service. . . ." 39 U.S.C.A. § 101(a) (1970); "[I]t [the Post Office] clearly is not a business enterprise conducted for profit for raising general funds. . . ." 39 U.S.C. § 2301 (5) (1964); "It is hereby declared to be the policy of the Congress . . . that the post office is a public service. . . ." 39 U.S.C. § 2302(b) (1964); "The Postal Service is a public service but there is no reason why it cannot be conducted in a businesslike way and every reason why it should be." House Report on Postal Reorganization, *supra* note 3, at 11-12.

¹² House Report on Postal Reorganization, *supra* note 3, at 12; Kappel Comm. Report, *supra* note 2, at 40.

¹³ Kappel Comm. Report, *supra* note 2, at 40; House Report on Postal Reorganization, *supra* note 3, at 12.

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siderations must necessarily influence his actions, especially in the area of appointments. For these reasons, the President's Commission on Postal Reform (the Kappel Commission), recommended that the Post Office be transformed into a public corporation.¹⁴

Much of the criticism of the postal appointing process has been quite accurately directed. Often, despite the best of intentions, the Postmaster General and the President have been guided in the appointment of postmasters by political considerations rather than by considerations of what would produce the best postal service. Prior to the enactment of the Reorganization Act, the President, with the advice and consent of the Senate, appointed postmasters for class 1, 2, and 3 post offices.¹⁵ According to the terms of the statute,¹⁶ the President was authorized to select the postmaster from the top three candidates on a list prepared by the Civil Service Commission. In practice, however, a system of local "advisors" emerged under which the advisors, usually Congressmen of the same party as the President, (or some other local party official if the incumbent Congressman was of a different party affiliation) would select a person that they wished to fill the position. If the designated individual was not a postal employee, he would be given an examination by the Civil Service Commission and, if necessary, it would be repeated until the designated individual finished among the top three. However, if the particular individual was a postal employee, no examination was required.¹⁷

In addition, in order to become a postmaster, the designated individual must have been a resident of the post office's delivery zone for at least one year.¹⁸ This residency requirement has prevented postmasters who have demonstrated their ability at smaller post offices from being promoted to larger post offices where their abilities might be put to better use. This provision is one example of the usurpation of managerial decisions by Congress which inhibits the most effective use of available personnel resources. It is a system which, although it

¹⁴ "We recommend that a Postal Corporation owned entirely by the Federal Government be chartered by Congress to operate the postal service of the United States on a self-supporting basis." Kappel Comm. Report, *supra* note 2, at 55.

¹⁵ 39 U.S.C. §§ 3311, 3312 (1964). The postmasters in fourth class post offices are appointed by the Postmaster General. 39 U.S.C. § 3311(b) (1964). The statute divides post offices (each post office may have many branch stations) into four classes. The division is made on the basis of the number of revenue units handled by each post office during the fiscal year. 39 U.S.C. § 702(a) (1964). A revenue unit is defined as "that amount of revenue of a post office from mail and special service transactions which is equal to the average sum of postal rates and fees received by the Department during the fiscal year for 1000 pieces of originating mail . . ." 39 U.S.C. § 1 (1964). Assuming an average postal rate of six cents, classification of post offices is as follows: (1) first class post offices do more than \$57,000 of business each year; (2) second class post offices do between \$11,400 and \$57,000 of business annually; (3) third class post offices do in excess of \$2,160 of business annually and (4) fourth class post offices constitute all others.

¹⁶ 39 U.S.C. §§ 3311, 3312 (1964).

¹⁷ Kappel Comm. Report, *supra* note 2, at 41.

¹⁸ 39 U.S.C. § 3312(a) (1964).

has some defenders,¹⁹ runs contrary to the needs of any large enterprise, whether it is designated a public service or not. It is not certain, however, that this problem, at least as it relates to the appointment of postmasters, could not have been alleviated within the framework of the former Title 39.

A significant problem which is actually an unmentioned part of all of the problems outlined below, is the fact that prior to the enactment of the Reorganization Act the Postmaster General, although charged by statute with responsibility for the operation of the Post Office,²⁰ was hemmed in by a maze of statutes which severely restricted his discretion. Key managerial decisions were often made for him by statute²¹ so that there were large areas in the management of the Post Office over which he had virtually no control.²² These restrictions on the discretion of the Postmaster General made it almost impossible for the Post Office to adapt to the constantly changing needs of the consumers of postal services.

B. *Labor-Management Relations*

The influence of partisan politics on the selection of postmasters has had an adverse effect in another area—labor-management relations. For years, low morale among postal employees has been a critical problem, and the method of appointment of postmasters has had a direct bearing on it. The majority of postal workers have felt that it was hopeless to aspire to higher positions in their respective post offices because they expected that regardless of how hard they strived to earn a promotion to postmaster, political influence would, in large part, be

¹⁹ 91 Cong. Rec. 5586, 5592 (daily ed. June 16, 1970); 91 Cong. Rec. 5681-687 (daily ed. June 17, 1970).

²⁰ 39 U.S.C. § 302 (1964).

²¹ 39 U.S.C. § 6402(5) (1964) requires the Post Office to use Post Office-owned trucks to transport airmail to and from airports if the airport is less than 35 miles from the post office. 39 U.S.C. § 3339 (1964) forbids consolidation of rural routes except when the carrier's post is vacant on account of death, retirement, resignation or dismissal on charges.

²² See Hearings on the Post Office Appropriations Bill Before the Subcomm. on Post Office Appropriations of House Comm. on Appropriations, 90th Cong., 1st Sess. 27-28 (1967) in which the following testimony was given:

Mr. Steed: General . . . would this be a fair summary: that at the present time, as the manager of the Post Office Department, you have no control over your workload, you have no control over the rates of revenue, you have no control over the pay rates of the employees that you employ, you have very little control over the conditions of the service of these employees, you have virtually no control, by the nature of it, of your physical facilities, and you have only a limited control, at best, over the transportation facilities that you are compelled to use—all of which adds up to a staggering amount of "no control" in terms of the duties you have to perform. . . .

Mr. O'Brien: Mr. Chairman, I would have to generally agree with your premise . . . that is a staggering list of "no control." I don't know [whether] it has ever been put that succinctly to me. If it had been at an appropriate time perhaps I wouldn't be sitting here.

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the decisive factor.²³ Although not the most important cause of labor-management stress, this system of promotion served as an important and ever-present irritant.

The most important aspect of any employer-employee relationship is meaningful bargaining over wages and other conditions of employment. With respect to the Post Office Department, this relationship simply did not exist. Congress alone set the wages and other benefits for the postal workers. Postal unions were not given any opportunity to deal with postal management on these issues; they had to go directly to the Congress and lobby there for pay increases.²⁴ By the time the Post Office and the unions actually sat down to negotiate, all that was left to negotiate were local working conditions, and even in this area, management had little authority if the solution to any grievance required the expenditure of money.²⁵ The result was that neither labor nor management had any incentive to develop responsible attitudes towards collective bargaining.²⁶

Numerous other problems in the area of labor-management relations existed. One major source of complaint was the absence of any "area wage differentials" for areas in which the cost of living was above the national average. The result was that while in some rural areas postal appointments were among the best paid positions available (in fact, rural mail routes are highly prized), in areas such as New York City, postal workers lived at or near the poverty level.²⁷

Another irritant among postal workers was the length of time it took to reach the highest rung in the postal rate scale for any class of employee. Prior to the passage of the Reorganization Act, it took twenty-one years to attain maximum seniority;²⁸ under the Reorganization Act it will take only eight years.²⁹ This change should go part of the way towards alleviating another major problem, namely, the lack of incentive either to seek promotion or to accept it when offered. Until now, there were two major difficulties in this area. One was that when an employee accepted a promotion, very often the increase in his rate of pay was not commensurate with the increase in responsibility.³⁰ This meant that employees with the most experience were the ones with the least to gain financially from a promotion. This difficulty is alleviated to some degree under the new Act since the top of a pay class will be reached much more quickly.

The great emphasis placed upon seniority in assigning tours of

²³ Kappel Comm. Report, *supra* note 2, at 15.

²⁴ *Id.* at 18.

²⁵ *Id.* at 16.

²⁶ *Id.* at 20-22.

²⁷ Hearings on H.R. 7 and Related Bills Before the Subcomm. on Position Classification of the House Comm. on Post Office and Civil Service, 90th Cong., 1st Sess. 8, 68, 78, 92, 93 (1967). 91 Cong. Rec. 5587 (daily ed. June 16, 1970).

²⁸ 39 U.S.C. § 3552 (1964).

²⁹ Pub. L. No. 91-375 § 10(6) (1970).

³⁰ Kappel Comm. Report, *supra* note 2, at 106, 109-10.

duty also militated against acceptance of a promotion. In this system, the longer an employee remained in one occupational classification, the better his chance of getting his first choice of tour of duty assignment. Conversely, the employee who accepted a promotion started out at the bottom of the seniority ladder in his new occupational classification. Thus, when a senior employee accepted a promotion, not only did he have a minimal increase in salary, but he also had to return to the bottom of the seniority "ladder" and take the least desirable tours of duty.³¹ The result was that over 80 percent of postal employees retired from the Post Office in the same position in which they had begun.³²

The hiring process has also been a source of much irritation. On the average, a prospective employee had to wait thirteen weeks to be hired.³³ It is hardly surprising, then, that quite often by the time he was informed of his selection for employment the applicant had already taken another job. Frequently applicants were required to start out as "area substitutes," a status which was, in many cases, continued for weeks, months, or even longer, and which involved only part-time work only when needed.³⁴

C. Failure to Modernize

The Post Office has long been burdened with outmoded and inefficient equipment. Its methods for processing the mails have not changed significantly in several generations.³⁵ For years, the Post Office did not construct any new postal facilities of any significance,³⁶ and until 1960, the Post Office did not have a research and development program.³⁷ The responsibility for this situation can be placed directly on Congress which has never appropriated enough funds to carry out an effective modernization program. This has led to a situation in which the productivity of the postal worker has lagged far behind that of workers in almost every other major field of employment in the United States.³⁸

³¹ *Id.* at 106.

³² "[E]ight out of every ten postal workers enter and retire from the service at the same grade level." *Id.* at 106.

³³ *Id.* at 16.

³⁴ *Id.* at 102.

³⁵ *Id.* at 24; "Most of today's mail, therefore, is collected, processed, and delivered by the same methods employed a century ago." Cordtz, *It's Now or Never for the Post Office*, *Fortune*, vol. 75, 134, 136 (March 1967).

³⁶ 91 Cong. Rec. 5590 (daily ed. June 16, 1970).

³⁷ 39 U.S.C. §§ 2231-34 (1964).

³⁸ See Kappel Comm. Report, *supra* note 2, at 24, where the following comparisons are made:

Output Per Man-Hour (Percentage Change Per Year, 1956-1966)	%
Communications	6.2
Transportation	4.0
Mining	3.7

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While industry, including the utilities, to which the Post Office is often compared, has invested heavily in labor-saving devices, the Post Office has not. Moreover, most postal facilities are outdated³⁹ and located in central cities near major rail facilities.⁴⁰ This was acceptable in the days when mail volume and wages were lower and most inter-city mail moved by train; but in an era of ever-increasing wages and of the demise of the inter-city passenger train, it could lead only to poor service and enormous deficits. Congress has apparently been more willing to expend scarce funds on more glamorous or highly visible projects than to spend money to develop and improve what has been called "the chief artery of our Nation's commerce."⁴¹

Even when Congress was willing to loosen the purse strings for the construction of new facilities, it took inordinately long periods of time to get a project from the planning stage to completion.⁴² This delay resulted from the fact that the Committees on the Post Office and Civil Service, which oversee the Post Office, did not control construction of post offices. Rather, control was vested in the Committee on Public Works, which has led to extensive delays in the planning and construction process. Often, under this system, Congressmen had an important if not the final voice in questions of design and location when a new facility was destined for their district.⁴³

In the area of inter-city transportation of mail, the Department's efforts to secure the fastest and least expensive mode of transportation were often stymied by a web of restrictive statutes surrounding the procurement of such transportation. Restrictions were placed upon procurement procedures, and certain modes of transportation were preferred over others.

D. *Postal Rates and Expenditures Prior to the Reorganization Act*

Probably the greatest problems were caused by the exclusive control which Congress exercised over the purse strings of the Post Office Department. Congress regulated both income and expenditures. The Department's receipts were paid into a Treasury fund earmarked for the Post Office, but the Department had no control over the fund.⁴⁴

Manufacturing	3.2
Wholesale and retail trade	3.4
Finance, insurance, and real estate	2.7
Services	1.9
Post Office	0.23

³⁹ Fortune, *supra* note 35, at 136, where it is pointed out that even if the Post Office were to obtain new equipment, many of its existing buildings are so old and outdated that they could not accommodate such equipment. "[W]e did not construct one post office throughout this great Nation, from the 1930's through to the 1950's." 91 Cong. Rec. 5590 (daily ed. June 16, 1970).

⁴⁰ Fortune, *supra* note 35, at 136; Kappel Comm. Report at 169.

⁴¹ 91 Cong. Rec. 5591 (daily ed. June 16, 1970).

⁴² Kappel Comm. Report, *supra* note 2, at 35.

⁴³ 91 Cong. Rec. 5686 (daily ed. June 16, 1970).

⁴⁴ 39 U.S.C. §§ 2201, 2202(a) (1964).

With certain exceptions, funds could be expended only as they were authorized and appropriated by the various congressional committees involved. This practice severely limited the discretion of the Postmaster General in allocating funds according to the Department's needs. He could only reallocate up to five percent of the Post Office budget to purposes different from those for which the funds were appropriated, and then only if the appropriation act permitted such a reallocation.⁴⁵ Thus, it was almost impossible to meet unexpected contingencies without a supplementary appropriation from the Congress.

Moreover, the need to resort to the congressional appropriation process introduced further distortions into the Post Office's fiscal structure. In private industry, budget planning is normally done four to six months in advance of spending; the Post Office had to plan its budget for each fiscal year one and one-half years in advance. Accurate estimates are almost impossible to make that far in advance. In addition, this approach induced overestimation of expected needs from fear of budget cuts.⁴⁶

Congressional control over postal rates has been an even greater obstacle to sound postal management. The Department has been unable to alter the rates and classes of mail, with the exception of fourth class mail,⁴⁷ to meet the changing needs of its patrons. The Post Office's accounting system, the Cost Ascertainment System, was imposed on it by Congress, and the Department used a "fully allocated" method for determining the costs attributable to each class of mail. This system does not take into account many intangible factors which should affect the cost of a given service, making it impossible to determine which, if any, class of mail is actually "paying its way."⁴⁸ Thus, even if Congress had wished to set some or all postal rates according to cost per unit, it would have been unable to do so. The matter of rate making was further complicated by the indecision of the Congress on the question of whether the Post Office should be operated as a public service or pay its own way.⁴⁹ The members of the Kappel Commission believed that since most mail is sent by business, there was actually very little of the public service element left in the Post Office.⁵⁰ Many members of Congress, on the other hand, still feel that certain classes of mail and certain classes of customers are deserving of subsidies, for example, publications, non-profit organizations, the blind, and members of the Armed Forces, and they have consistently voted

⁴⁵ 39 U.S.C. § 2202(b) (1964).

⁴⁶ Kappel Comm. Report, *supra* note 2, at 37.

⁴⁷ Provided that the consent of the Interstate Commerce Commission is secured, the Postmaster General is authorized to reform the rates of postage and conditions of mailability for fourth class mail. Act of Feb. 28, 1925, Pub. L. No. 68-368, § 207, 43 Stat. 1067. This authority is restricted by 39 U.S.C. § 4554 (1964) for educational and certain other types of material.

⁴⁸ Kappel Comm. Report, *supra* note 2, at 29-31.

⁴⁹ *Id.* at 55.

⁵⁰ *Id.* at 50.

public service subsidies for these groups.⁵¹ The result has been that, according to Post Office figures, only first class mail has paid its own way, and the other classes have run up deficits of various sizes, including a staggering loss for second class mail.⁵² In any case, the Congress has not really been consistent in its rate policies and has granted subsidies where it has not so intended.

During the nineteenth century, legislative rate making was common, but it has all but disappeared today. The Post Office, in fact, is the last utility to have its rates set legislatively.⁵³ Rate making is a complex process involving difficult judgments in many highly technical disciplines; it is hardly an activity that is suitable for a legislative body involved in making important policy decisions. Most reform plans have provided for another body to set postal rates, with Congress retaining at most a veto over rate increases.⁵⁴ In any case, congressional rate making has led to an irrational rate structure in which one class more than pays its share, and some other classes do not even cover the costs that are unique to that class. This jumbled rate structure has caused much of the confusion that has brought on the current crisis.

Thus, it can be seen that the Post Office urgently needed vital and far-reaching reforms. The Reorganization Act deals with most of the problems that confronted the Post Office, but the question of whether it has dealt effectively with these problems remains. In the remainder of this comment an attempt will be made to show that Congress could have used alternative methods to deal more effectively with the problems that afflicted the Post Office.

II. THE REORGANIZATION ACT—PROSPECTS FOR THE FUTURE

A. Structure

On August 12, 1970, the Postal Reorganization Act⁵⁵ was signed into law by the President, disestablishing the Post Office Department as an executive department and re-establishing it as the United States Postal Service, "an *independent* establishment of the executive branch."⁵⁶ (Emphasis added.) The significant word in this description is "independent." Most of the reform proposals submitted to the Congress contained one common feature, namely, some method of removing the postal system from political influence and control. The motivating principle of the reform effort was that the delivery of the mail is a nonpartisan affair, and decisions affecting the Post Office

⁵¹ See, e.g., 39 U.S.C. §§ 4045, 4351-69, 4421-22, 4454, 4653-54 (1964); 91 Cong. Rec. 5585-586, 5592 (daily ed. June 16, 1970).

⁵² The Report of the President's Commission on Postal Organization, 31 (1968) (hereinafter cited as Kappel Comm. Report).

⁵³ Id. at 39.

⁵⁴ "We recommend that the Board of Directors after hearings by expert Rate Commissioners, establish postal rates, subject to veto by concurrent resolution of the Congress." Id. at 61; see also 91 Cong. Rec. 5585 (daily ed. June 16, 1970).

⁵⁵ 39 U.S.C.A. § 101 et seq. (1970).

⁵⁶ 39 U.S.C.A. § 201 (1970).

should be made on the basis of what will promote the best and most efficient postal service and not what is best for a given political party or interest group.⁵⁷

The Kappel Commission recommended that a public corporation be chartered to replace the Post Office Department.⁵⁸ The TVA and other government corporations would be used as models, and ultimately the postal corporation would, as the others have done, be able to operate on at least a "break-even" basis. The Commission felt that the Post Office was actually a public utility and should be run in the same way—for a profit.⁵⁹ They demonstrated that the difference between the actual cost per piece for public service mail and the current rates was so small that the difference could easily be covered by small increases in rates.⁶⁰ Moreover, since most of the mail today is business oriented, the Commission felt that there was very little reason for any subsidies.⁶¹

The Congress, however, did not agree with this assessment. The first reform bill filed during the Ninety-first Congress provided for a continuation of the present department along with extensive reforms in its structure.⁶² After the postal strike of April, 1970, the President's bill, which encompassed most of the Kappel Commission's recommendations, was filed. Because many members of Congress believed that a corporation would not be sufficiently responsive to the will of the people through their elected representatives,⁶³ the United States Postal Service emerged as a compromise. The feeling of the majority was that so long as the Postmaster General continued to be appointed by the President, there would always be a political tinge to decisions no matter how diligent an effort was made to exclude political considerations from executive decisions.⁶⁴ On the other hand, it was felt that the Post Office is a public service, and that it is too important an instrument of public policy to be completely abandoned. The remedy to this dilemma provided by the Reorganization Act is a structure which is intended to remove the Post Office from direct political con-

⁵⁷ Kappel Comm. Report, *supra* note 52, at 42, 51.

⁵⁸ *Id.* at 3, 58.

⁵⁹ *Id.* at 57, 61-62, 128-29.

⁶⁰ *Id.* at 62, 137. The rates for certain classes of mail such as second class mail only take into consideration the special expenditures incurred by this type of mail. Fully allocated costs such as overhead are not considered when setting the particular rates. Public service mail is a subclass of mail within these classes and enjoys an even lower rate. Using the Kappel Commission's figures, the subsidy for these classes of mail, which subsidy the Commission considers to be the difference between the usual rate and the special rate, represents only 3.8% of postal costs. According to the Commission's figures, the special rates can be maintained without any subsidy, but rather, by a small increase in rates for general mail service.

⁶¹ *Id.* at 48-49.

⁶² H.R. 4, 91st Cong., 1st Sess. (1969).

⁶³ "[M]uch evidence was presented which indicated that a corporation was not the final answer to true postal reform." 91 Cong. Rec. 5591 (daily ed. June 16, 1970).

⁶⁴ H.R. Rep. No. 91-1104, 91st Cong., 2d Sess. 12 (1970) (hereinafter cited as House Report on Postal Reorganization).

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trol but not from the overall supervision of policy by the elected representatives of the people.⁶⁵ The congressional intent that the Post Office continue to be operated as a public service and not as a profit-making venture is enunciated in the statement of postal policy contained in the Act. In that statement, Congress declares that the "Postal Service shall be operated as a basic and fundamental service. . . ."⁶⁶ The primary mission is to serve the people. The only provision relating to costs is that they be apportioned fairly and equally.⁶⁷

The new postal establishment will be "directed by a Board of Governors composed of 11 members. . . ."⁶⁸ Nine of the Governors are to be "appointed by the President, by and with the advice and consent of the Senate . . ."⁶⁹ for staggered nine-year terms.⁷⁰ The Postmaster General, the tenth member, is to be selected by the Board and shall be a voting member of the Board.⁷¹ The eleventh member, the Deputy Postmaster General, shall be selected by the other ten members.⁷² In order to reduce political influence to a minimum, a provision was included which limits to five the number of appointed members who may be of one political party.⁷³ As the ultimate source of power within the Postal Service, the Board has the complete range of powers usually possessed by corporate boards of directors including among others the power to sue and be sued,⁷⁴ enter into contracts and expend money,⁷⁵ acquire and operate property, both real and personal,⁷⁶ take property by eminent domain,⁷⁷ and all other powers necessary to carry on its functions.⁷⁸ The Board may delegate these powers to the Postmaster General or to one of his committees.⁷⁹ There is also a statement of the Service's general duties which are to "plan, develop, promote and provide adequate and efficient postal services at fair and reasonable rates and fees."⁸⁰

B. Rates

In the important area of rates and fees, the Postal Service has the power "to prescribe . . . the amount of postage and the manner in which it is to be paid."⁸¹ This power is limited and shared with the

⁶⁵ *Id.* at 5, 12-13.

⁶⁶ 39 U.S.C.A. § 101(a) (1970).

⁶⁷ 39 U.S.C.A. § 101(d) (1970).

⁶⁸ 39 U.S.C.A. § 202(a) (1970).

⁶⁹ *Id.*

⁷⁰ 39 U.S.C.A. § 202(b) (1970).

⁷¹ 39 U.S.C.A. § 202(c) (1970).

⁷² 39 U.S.C.A. § 202(d) (1970).

⁷³ 39 U.S.C.A. § 202(a) (1970).

⁷⁴ 39 U.S.C.A. § 401(1) (1970).

⁷⁵ 39 U.S.C.A. § 401(3) (1970).

⁷⁶ 39 U.S.C.A. § 401(5) (1970).

⁷⁷ 39 U.S.C.A. § 401(a) (1970).

⁷⁸ 39 U.S.C.A. § 401(10) (1970).

⁷⁹ 39 U.S.C.A. § 402 (1970).

⁸⁰ 39 U.S.C.A. § 403(a) (1970).

⁸¹ 39 U.S.C.A. § 404(a) (1970).

Postal Rate Commission.⁸² The Commission consists of five members⁸³ who serve staggered six-year terms,⁸⁴ and no more than three of whom may be of one political party.⁸⁵ The Rate Commission is a completely independent body, but its expenses are paid by the Board of Governors. Normally, this position would give one body great influence over the other. However, the powers of the Board over the Rate Commission's budget are severely limited, and it is hoped that in this manner the independence of the Postal Rate Commission will be preserved.⁸⁶

The Board of Governors establishes rates and classifications of mail,⁸⁷ but it may not make any changes in the rates or classifications of mail until the Rate Commission has submitted to it a recommended decision on proposal changes pursuant to a request from the Board for such a ruling.⁸⁸ In making its recommended decisions, the Rate Commission must consider a variety of factors which have an effect upon the rates to be charged and classifications to be assigned to the various types of mail.⁸⁹ Board requests for changes in rates or classifications must be promptly considered, but the Commission must hold a public hearing, at which the Postal Service, mail users, and one officer of the Commission representing the public may present views prior to rendering a recommended decision.⁹⁰ The recommended decision is submitted to the Board which may approve it, allow it to take effect under protest and seek judicial review in any U.S. court of appeals, or resubmit its proposed changes to the Commission.⁹¹ In the

⁸² 39 U.S.C.A. § 3601 (1970).

⁸³ *Id.*

⁸⁴ 39 U.S.C.A. § 3602 (1970).

⁸⁵ 39 U.S.C.A. § 3601 (1970).

⁸⁶ The Board of Governors may only accept the budget presented to it by the Rate Commission or reduce the entire amount requested by the Commission. The Board may not reduce or eliminate any specific item contained in the budget. 39 U.S.C.A. § 3604(c) (1970).

⁸⁷ 39 U.S.C.A. § 3621 (1970).

⁸⁸ 39 U.S.C.A. § 3622(a) (1970).

⁸⁹ 39 U.S.C.A. § 3622 (1970) provides in part:

[T]he Commission shall make a recommended decision . . . in accordance with . . . the following factors:

- (1) the establishment and maintenance of a fair and equitable schedule;
- (2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient . . . ;
- (3) the requirement that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type;
- (4) the effect of rate increases upon the general public, business mail users, and enterprises . . . engaged in the delivery of mail matter other than letters;
- (5) the available alternative means of sending and receiving letters and other mail matter at reasonable costs;
- (6) the degree of preparation of mail for delivery . . . performed by the mailer and its effect upon reducing costs to the Postal Service;
- (7) simplicity of structure for the entire schedule . . . ;
- (8) such other factors as the Commission deems appropriate.

⁹⁰ 39 U.S.C.A. § 3624(a) (1970).

⁹¹ 39 U.S.C.A. § 3625(a)-(c) (1970).

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case of an approval under protest, the Board must make this appeal a preferred matter, but it may only either approve the decision or return it to the Commission for further consideration. In the event of judicial review, a court may not issue a temporary restraining order, nor may it alter the recommended decision.⁹²

When the Board has returned the recommended decision to the Rate Commission, the Board may, if it is still dissatisfied, modify the second recommended decision by a unanimous written vote. However, the Board must conclude in a written decision that such modification is in accord with the record established by the Commission and the policies of the Act, and that the revenues are needed to cover the costs of the Postal Service.⁹³

If the Commission is too slow in considering a request for a decision or a resubmitted decision, the Board may, on ten days notice, place into effect temporary changes in rates or classes. Such changes shall be effective for no more than thirty days beyond the date of the Commission's recommended decision.⁹⁴

C. Labor-Management Relations

Since the Postal Service may now control its income and expenditures, one of the major obstacles to effective labor-management relations has been removed because postal management may now bargain over the full range of concerns usually included in collective bargaining, including wages and other benefits.

With respect to the hiring of employees, the Postal Service possesses almost the full range of privileges and prerogatives possessed by any private concern.⁹⁵ The Board of Governors or its designee appoints all officers and employees and fixes the procedures for appointment and promotion.⁹⁶ Although the Act makes postal employees civil servants, the power of the Postal Service to set its own employment standards independently of the Civil Service Commission effectively removes them from civil service.⁹⁷

⁹² 39 U.S.C.A. §§ 3625(c), 3628 (1970).

⁹³ 39 U.S.C.A. § 3625(d) (1970) provides:

[W]ith the unanimous written concurrence of all of the Governors . . . the Governors may modify any such further recommended decision of the Commission under this subsection if the Governors expressly find that (1) such modification is in accord with the record and policies of this chapter, and (2) the rates recommended by the Commission are not adequate to provide sufficient total revenues so that total estimated income and appropriations will equal as nearly as practicable estimated total costs.

See also 39 U.S.C.A. § 3625(e) (1970).

⁹⁴ 39 U.S.C.A. § 3641(a) (1970).

⁹⁵ 39 U.S.C.A. § 1001(a) (1970).

⁹⁶ 39 U.S.C.A. § 1001(b) (1970).

⁹⁷ During the hearings in the House on the Postal Reorganization Act, Representative William Scott solicited the opinion of the Comptroller General on the effect which the legislation would have on employee rights and benefits. The Comptroller replied: We believe the intent of subsection [1001(b)] is to remove postal employees from the competitive service. In the competitive service appointments and pro-

In Section 1002 of the Act, Congress has made an attempt to remove political influence from the processes of appointment and promotion.⁹⁸ Appointments shall be made without regard to recommendation of members of Congress, elected state or municipal officials, political party officers, or any other individuals or organizations. Not only are these persons prohibited from making any such recommendations,⁹⁹ but the employee is also prohibited from soliciting them.¹⁰⁰ Should such a recommendation be submitted, the Postal Service may not consider it.¹⁰¹ In addition, it may punish any employee who violates these provisions.¹⁰² The Postal Service may, however, solicit recommendations from former employers when they relate *only* to the qualifications and the character of the applicant.¹⁰³

The newly established Postal Service is to be a career service.¹⁰⁴ It is the declared policy of Congress that the Service should encourage promotion from within, and that there shall be freedom to transfer to other positions within the Service.¹⁰⁵ The residency requirement for postmasters has also been removed to encourage career mobility. An improvement in employee morale should follow as a consequence of these changes.

Despite the many changes in the new law, certain provisions of the old employment system remain. When the new law took effect, employees were transferred to the new service with all of their old seniority privileges intact, including accumulated sick and vacation leave.¹⁰⁶ They retain accumulated benefits in the Civil Service retirement fund,¹⁰⁷ and there may be no variation in fringe benefits if the result will be a diminution of the program of benefits now in existence.¹⁰⁸ On the other hand, the ban on strikes by federal employees is retained for postal employees.¹⁰⁹

otions are based upon merit and fitness as determined by examinations. However, as stated, subsection . . . [1001(b)] provides that appointments and promotions shall be in accordance with procedures established by the Authority. It is evident, therefore, that such personnel actions are not to be subject to the laws and regulations governing the competitive service. Moreover, we note that the provisions of title 5, United States Code, pertaining to the competitive service are not specifically made applicable to employees of the Authority.

House Report on Postal Reorganization, *supra* note 64, at 68.

⁹⁸ 39 U.S.C.A. § 1002 (1970).

⁹⁹ 39 U.S.C.A. § 1002(a)(1-4) (1970).

¹⁰⁰ 39 U.S.C.A. § 1002(c) (1970).

¹⁰¹ 39 U.S.C.A. § 1002(b)(1) (1970).

¹⁰² 39 U.S.C.A. § 1002(f) (1970).

¹⁰³ 39 U.S.C.A. § 1002(e) (1970).

¹⁰⁴ 39 U.S.C.A. §§ 1001(b), 1006 (1970).

¹⁰⁵ 39 U.S.C.A. § 101(c) (1970).

¹⁰⁶ 39 U.S.C.A. § 1005(e) (1970).

¹⁰⁷ 39 U.S.C.A. § 1005(d) (1970).

¹⁰⁸ 39 U.S.C.A. § 1005(f) (1970).

¹⁰⁹ Since employees of the Postal Service are federal employees by virtue of 39 U.S.C.A. §§ 101(c), 1001-11 (1970), 5 U.S.C. § 7311 (Supp. II, 1967), prohibiting strikes by United States employees, should also apply to them. However, it should be noted that § 7311 is not explicitly made applicable to the postal service, so there may be

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Aside from the above mentioned denial of the right to strike, the postal unions have been granted almost the full range of rights accorded to labor unions by the Labor Management Relations Act.¹¹⁰ The National Labor Relations Board (NLRB) is given the authority to determine in each case the unit appropriate for collective bargaining, and the Postal Service shall recognize exclusively in each unit so determined the organization selected by the majority of its employees.¹¹¹ Elections are to be conducted under the NLRB's supervision,¹¹² and all questions of representation shall be decided by that body.¹¹³ Under the Reorganization Act, those portions of the Labor Management Relations Act that deal with unfair labor practices also govern the Postal Service and the postal unions.¹¹⁴

In the area of collective bargaining, the Reorganization Act contains a provision for binding arbitration.¹¹⁵ However, arbitration is to be the final step in a rather lengthy bargaining process. Under the new system, it could possibly take as long as 180 days until the arbitration board is established, and the board has an additional 45 days before it must render a decision.¹¹⁶

One feature of the Act that aroused storms of protest when it was presented to Congress was the provision that would have permitted a union shop to become a reality as a result of bargaining between labor and postal management. Much of the debate in both Houses of Congress centered on this point.¹¹⁷ Many Congressmen and Senators

some doubt on this matter. In addition, the collective bargaining procedure set out in 39 U.S.C.A. § 1207 (1970) would seem to preclude the right to strike because binding arbitration is the culmination of this process. In the words of the House Committee on the Post Office and Civil Service, "the Postal Service is too important to the people and economy of this Nation for us to tolerate postal strikes." House Report on Postal Reorganization, *supra* note 64, at 14.

¹¹⁰ 39 U.S.C.A. § 1209(a) (1970) incorporates by reference 29 U.S.C. §§ 151-68 (1964), which is the Labor Management Relations Act.

¹¹¹ 39 U.S.C.A. § 1202 (1970).

¹¹² 39 U.S.C.A. § 1204 (1970).

¹¹³ 39 U.S.C.A. § 1203 (1970).

¹¹⁴ 29 U.S.C. §§ 158, 160 (1964).

¹¹⁵ 39 U.S.C.A. § 1207(c) (1970).

¹¹⁶ 39 U.S.C.A. § 1207 (1970).

¹¹⁷ H.R. Rep. No. 91-1104, 91st Cong., 2d Sess. 61, 63 (1970) (hereinafter cited as House Report on Postal Reorganization); Representative Latta feared that the provision for a union shop would eventually give labor control over the government. 91 Cong. Rec. 5580 (daily ed. June 16, 1970); Senator Javits favored giving the postal unions the same rights as other unions, including the right to negotiate for a union shop. Senator Goldwater was opposed. 91 Cong. Rec. 10331-0332 (daily ed. June 30, 1970); Senator Mondale supported the concept of a union shop, while Senator Baker feared that some industrial unions might be legislated out of existence. *Id.* at 10332; Senator Cooper stated, "I hold also that no citizen of the United States should be required to be a union member to be a Government employee." *Id.* at 10333; Senator Fanin stated his opposition to the existence of a union shop and, in so doing, quoted from a speech given by former Secretary of Labor Arthur Goldberg at a convention of the American Federation of Government Employees in which the former Secretary said, "I know you will agree with me that the union shop and the closed shop are inappropriate to the Federal government." *Id.* at 10335. The anti-union shop provision was adopted by the

believed that employment by the federal government should never be conditioned upon membership in a union.¹¹⁸ As a result of this furor, a section was added to the Act protecting the rights of employees to join or refrain from joining unions.¹¹⁹ Also, no union may negotiate a contract which provides for compulsory deduction of union dues from the wages of union members; this is a matter which is subject to agreement between the Postal Service and the individual employee. The Postal Service may not deduct union dues from an employee's wages unless the employee signs a written assignment.¹²⁰

D. Transportation

The Post Office was substantially restricted in the selection of the means available to it for transporting inter-city mail. The Reorganization Act gives the Postal Service almost unfettered discretion in its choice of carriers and modes of transportation. The Act also gives the Postal Service greater control over the rates it must pay for such transportation. Prior to the Reorganization Act, the railroads were the focal point of the mail transportation system.¹²¹ Only a small section of the former Title 39 was devoted to air mail,¹²² and practically nothing was said about highway transportation of mail.¹²³ Moreover, the Department could negotiate long-term contracts of up to four years with railroads for transportation of mail at rates above or below those set by the Interstate Commerce Commission (ICC), thus giving the Department some flexibility.¹²⁴ In contrast, the Department could only obtain highway transportation by long-term contracts since it was not able to ship mail by highway common carrier.¹²⁵ Air mail could be shipped only on Civil Aeronautics Board (CAB) certified carriers¹²⁶ except when surface transportation was determined to be inadequate.¹²⁷ In that case, the Department could contract for "air star routes," if the CAB would certify "that the proposed route does

House, rejected by the Senate, and finally adopted by the conference committee. 39 U.S.C.A. § 1209(c) (1970).

¹¹⁸ During the debate in the House, Representative Purcell stated, "[T]he right of a U.S. citizen to work for his own Government approaches an absolute right. It is not, nor should it be conditioned upon the payment of union dues." 91 Cong. Rec. 5594 (daily ed. June 16, 1970).

¹¹⁹ 39 U.S.C.A. § 1209(c) (1970).

¹²⁰ 39 U.S.C.A. § 1205(a) (1970).

¹²¹ 39 U.S.C. §§ 6201-15 (1964).

¹²² 39 U.S.C. §§ 6301-05 (1964).

¹²³ 39 U.S.C. §§ 6401-02a, 6402(a) (1964).

¹²⁴ 39 U.S.C. § 6215 (1964). The ICC sets rates on mail sent by rail on a common carrier basis. 39 U.S.C. § 6208 (1964).

¹²⁵ 39 U.S.C. § 6402(a) (1964); "Unlike ordinary shippers and other Government agencies, the Post Office is prevented by law from purchasing transportation on a common carrier basis from the thousands of trucking firms which move freight over the nation's highways." The Report of the President's Commission on Postal Organization, 171 (1968) (hereinafter cited as the Kappel Comm. Report).

¹²⁶ 39 U.S.C. § 6301 (1964).

¹²⁷ 39 U.S.C. § 6303(a) (1964).

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not conflict with the development of air transportation as contemplated under . . . title 49,¹²⁸ and if certain other stringent conditions were met.

The Reorganization Act, on the other hand, places the greatest stress on road and air transportation. In the cases of road, rail and air transportation, the Postal Service may compel a common carrier to carry the mail at rates set by the ICC and CAB, respectively.¹²⁹ If a common carrier refuses to carry the mail, the Postal Service may impose a fine on it.¹³⁰ In addition, the Postal Service has wide discretion in the matter of contracting with carriers for longer terms if it finds that to be desirable.¹³¹ This discretion is limited somewhat in the area of air mail. While the Service may ship unlimited amounts of letter mail by certified air carriers at rates set by the CAB, when such a carrier is under long-term contract, only ten percent of the mail by weight may be letter mail.¹³² The purpose of this restriction is to protect the airlines from being forced to carry mail at uneconomical rates. Some members of the Senate felt that postal officials were more interested in saving money on transportation costs than they were on speeding mail service, and that an unlimited authority to contract for air transportation of mail would be used to pressure airlines into granting uneconomical rates. The feeling was that this attitude would continue to prevail under the Postal Service.¹³³ It is not clear though that the airlines are so dependent on revenues from the carriage of mail that they would agree to such contracts regardless of the terms. In addition, the Postal Service cannot require a carrier to enter into such a contract, and the CAB may disapprove these contracts if it finds that they are contrary to the policy set forth in the Civil Aeronautics Act.¹³⁴

The Postal Service may contract for air carriage of mail by air carrier under such terms and conditions as it deems appropriate between points when no carrier has been certified for carriage of mail between those points. Such contracts shall be canceled if the CAB later authorizes such service.¹³⁵ In a case in which the Postal Service feels that air carriage of mail between cities already served by certified air carriers is inadequate, it may contract with air taxi operators to

¹²⁸ 39 U.S.C. § 6303(b) (1964).

¹²⁹ 39 U.S.C.A. §§ 5203(b), 5207 (1970) (trucks and railroads); 39 U.S.C.A. § 5403 (1970) (aircraft).

¹³⁰ 39 U.S.C.A. § 5206 (1970) (trucks and railroads); 39 U.S.C.A. § 5403 (1970) (aircraft).

¹³¹ 39 U.S.C.A. §§ 5212, 5214 (1970).

¹³² 39 U.S.C.A. § 5402(a) (1970).

¹³³ "The administration proposal . . . indicates to some students of postal administration that the primary goal of the postal service is to save money without regard to the impact on mail service or the need of the transportation industry for revenues sufficient to maintain adequate, reliable and safe transportation." S. Rep. No. 91-912, 91st Cong., 2d Sess. 18 (1970) (hereinafter cited as Senate Report on Postal Reorganization).

¹³⁴ 39 U.S.C.A. § 5402(a) (1970).

¹³⁵ 39 U.S.C.A. § 5402(b) (1970).

carry the mails, if it deems that appropriate.¹³⁶ Such a contract may be canceled if sufficient service is later instituted by certified carriers under CAB authorization.¹³⁷ This portion of the Act provides an adequate foundation on which a good system for the transportation of mail may be based. Except for the restriction on the carriage of letter mail by certified air carriers under contract, the Postal Service now has the discretion it needs to function efficiently in this key area.

E. *Modernization*

The methods that the Post Office Department uses to process the mail have not changed significantly in several generations. The meager increases in the productivity of postal workers has been attributed to this factor.¹³⁸ The reason that productivity is so low is that Congress has acted niggardly in appropriating funds for the construction of modern postal facilities and for research and development of mail processing machinery and the installation of that machinery.¹³⁹ The new Act provides a method for financing the needed modernization—the issuance and sale of bonds. The question remains, however, whether sufficient sums of money can be raised by bond financing to conduct a thoroughgoing modernization of the postal establishment. The Postal Service is authorized to sell up to \$10 billion of its own bonds; it may issue a maximum of \$1.5 billion annually for modernization and \$500 million annually to defray its expenses.¹⁴⁰ It may pledge its assets and revenues as security for the obligations¹⁴¹ and issue the bonds in the manner and form that it deems most desirable.¹⁴²

Since most investors do not like to invest in losing propositions, and since at present the Post Office is exactly that, it is unlikely that the Postal Service's bonds will prove attractive investments unless there are "sweeteners" added to make them more attractive. One possibility is to make the bonds the obligations of the United States. However, the Act directly provides against this possibility,¹⁴³ unless the Postal Service asks the Treasury to pledge the credit of the United States, and the Treasury agrees to do so.¹⁴⁴ Another "sweetener" that was included in the Act is that Postal Service's obligations shall "be exempt both as to principal and interest from all taxation now or hereafter imposed by any State or local taxing authority except estate, inheritance, and gift taxes. . . ."¹⁴⁵ The sponsors of the Act hope that this provision will be enough to make the bonds attractive to investors.

¹³⁶ 39 U.S.C.A. § 5402(c) (1970).

¹³⁷ *Id.*

¹³⁸ Kappel Comm. Report, *supra* note 125, at 24-26.

¹³⁹ *Id.* at 27-28.

¹⁴⁰ 39 U.S.C.A. § 2005(a) (1970).

¹⁴¹ 39 U.S.C.A. § 2005(b) (1970).

¹⁴² 39 U.S.C.A. § 2005(c) (1970).

¹⁴³ 39 U.S.C.A. § 2005(d)(5) (1970).

¹⁴⁴ 39 U.S.C.A. § 2006(c) (1970).

¹⁴⁵ 39 U.S.C.A. § 2005(d) (1970).

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There are, however, some who believe that unless the Postal Service demonstrates an ability to put an end to the chronic postal deficits, it will find that its bonds will not sell irrespective of the "sweeteners."¹⁴⁶

III. PROBABILITY OF SUCCESS AND ALTERNATIVES

A. *The Outlook for the Postal Service*

Major reform legislation on any matter is generally very difficult to pass. When such legislation establishes an entirely new agency, it is usually even more difficult to administer successfully. The Postal Reorganization Act is no exception to this rule. The Board of Governors and the administrators of the new Postal Service are expected not only to operate the Post Office efficiently, but also to operate it on a "break-even" basis. In view of the long history of postal deficits, this should prove a formidable task.

The Post Office has been a chronic money loser; it has not operated profitably since 1945.¹⁴⁷ A major part of the problem has been the defects in the Department's administrative structure. A more difficult problem is presented by the fact that the Postal Service is a "labor intensive" industry requiring prodigious numbers of employees to operate the system efficiently.¹⁴⁸ It is anticipated that even with the expected operating economies of modernization, there will not be a substantial reduction in the number of postal employees.¹⁴⁹ The significance of these facts in an era of high labor costs cannot be overestimated. According to Post Office estimates, it is expected that without an increase in postage rates this year, the deficit will be over \$2.5 billion on account of the latest postal pay raise.¹⁵⁰ This alone does not augur well for the financial well being of the Postal Service. The Kappel Commission often compared the proposed corporation to other

¹⁴⁶ Mr. William Simon, a "major bond dealer," speaking at the annual National Postal Forum, stated that the Postal Service would have trouble selling its bonds in today's crowded bond market without a government guarantee unless the Service quickly became a financial success. In fact, such a guarantee could be necessary even if the Postal Service is financially successful. Mr. Simon said that in addition to rate increases, other steps should be taken to increase revenues and to improve the Post Office's public image. *N.Y. Times*, Oct. 28, 1970, at 29, col. 8. The Act protects the Postal Service from losses incurred during the transition years. During its first ten years, the Postal Service will receive a subsidy of ten percent of its 1971 fiscal year appropriation. The subsidy will then be diminished one percent per year until 1984, at which time it will be at five percent of the 1971 figure. The subsidy will then continue at that level until such time as the Postal Service no longer requires it. 39 U.S.C.A. § 2401 (1970). Since the Post Office is currently recovering only about eighty percent of its expenses from its revenues, the ten percent subsidy will still leave one-half of the deficit unfunded.

¹⁴⁷ Hearings on Post Office Appropriations Bill Before the Subcomm. on Postal Appropriations of the House Appropriations Comm., 89th Cong., 2d Sess. 53 (1966).

¹⁴⁸ Kappel Comm. Report, *supra* note 125, at 156.

¹⁴⁹ *Id.* at 7. Since over 80% of the Post Office's budget is allocated for manpower needs, without a significant reduction in the total number of postal employees, there can be little reduction in costs.

¹⁵⁰ 91 Cong. Rec. 5682 (daily ed. June 17, 1971).

successful government corporations;¹⁵¹ however, none of them started out with a legacy of deficits. It is only logical to wonder how high postal rates must go if costs are to be covered.

In addition, Congress has added to the burden the Postal Service must bear by providing that certain classes of mail should continue to have preferences.¹⁵² The Postal Service has the discretion to raise some or all of the special rates in question, but it must do so gradually. In no case may the rates be raised above the total of the direct and indirect costs attributable to mail of that class. When the rates for a class entitled to special rates do not equal the direct and indirect costs of that class, Congress may appropriate a sum sufficient to cover the difference.¹⁵³ If the Congress fails to appropriate an amount sufficient to cover the deficiency, the Postal Service may gradually adjust the rates.¹⁵⁴

Finally, the Congress has expressly reserved for itself the power to amend or repeal any provision of this Act.¹⁵⁵ Supporters of the Act contend that if anything goes wrong, Congress has the power to rectify the situation, including even the power to abolish the Postal Service.¹⁵⁶

It is submitted that Congress could have made all but one of the improvements contained in the Reorganization Act without having abolished the Post Office Department. It could have provided for merit promotions within the postal establishment as high as Deputy Postmaster General, provided a flexible transportation system, vested complete discretion for labor-management relations, including the setting of wages, in the Post Office Department's management, and provided adequate funding for a modernization program without having disestablished the Department. The only change that could not have been made without a major alteration in administrative structure would have been the removal of the Postmaster General from partisan politics. This point, however, raises the question whether a certain amount of political influence is really a liability after all. The Act declares that the Post Office provides a fundamental public service.¹⁵⁷ In a system

¹⁵¹ Kappel Comm. Report, *supra* note 125, at 54.

¹⁵² 39 U.S.C.A. § 3626 (1970). Special rates will be continued for newspapers, controlled circulation publications (generally publications of non-profit organizations), and special third class mail for non-profit organizations. While the direct and indirect costs of these services will be recovered either from postage or from Congress, they will not pay their share of the Postal Service's overhead. See also note 60 *supra*.

¹⁵³ 39 U.S.C.A. § 2401(c) (1970).

¹⁵⁴ 39 U.S.C.A. § 3627 (1970).

¹⁵⁵ 39 U.S.C.A. § 208 (1970).

¹⁵⁶ In the latter situation, if the Postal Service issues bonds without the backing of the credit of the United States, some questions of validity could be raised on behalf of the bond holders.

¹⁵⁷ 39 U.S.C.A. § 101(a) (1970). Many members of Congress, especially in the House, expressed the fear that the profit motive would bring on the demise of many public services rendered by the Post Office without any consideration of profit. Several Congressmen announced that they had heard of a five-year plan to eliminate money-losing services. In the House, Representative Mink of Hawaii stated:

Reportedly, a "5-year plan" has already been developed by the administration to

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that is to be operated on a break-even or even a profit-making basis, the consideration that must receive priority is, "does it pay its own way?" If an item is an unprofitable proposition, it must be eliminated or the financial stability of the whole enterprise will be imperiled. However, if an operation is to be a public service, there may well be certain classes of services that may cause loss of profits, but which must be provided in any case. This contradiction can best be resolved by retaining the Post Office as an executive department. The Board of Governors of the Postal Service might, in the face of a popular demand for preferential treatment for certain types of service, refuse to provide such services. Indeed, it would be proper for it to do so since the Board is charged with the responsibility of maintaining the financial health of the postal system. The Postal Service would probably be reluctant to accept a subsidy to provide such a service since that would undermine its autonomy.¹⁵⁸ Congress would probably be reluctant to intervene since a pattern of congressional intervention in postal affairs, once established, would upset the autonomy, efficiency, authority, morale and stability of the Postal Service. In this way, a fundamental public need might not be fulfilled.

If the postal establishment were still an executive department, the service would probably be provided since the Postmaster General, in his capacity as a politically attuned official, would attempt to meet the demands of the popular will. He could then deal with Congress, which is also politically attuned, to provide a public subsidy from the government's general revenues. Thus, the cost of such a service would be spread equally among all of the people for whose benefit it is intended. This is probably what George Meaney, a member of the Kappel Commission, had in mind when he dissented from the Commission's recommendation that a postal corporation be chartered. He stated that "the status of the Post Office as a Cabinet Department has a positive value that should not be discarded lightly."¹⁵⁹

B. *Dismantle the Postal Monopoly*

Repeal of the postal monopoly as an alternative to the Reorganization Act was discussed briefly in Congress.¹⁶⁰ The Kappel Commission noted that if a postal system were being instituted today, it would probably be operated by an investor-owned corporation.¹⁶¹ This would make the ownership structure of the postal utility similar to that of

be enforced as soon as this bill is passed. While details are being kept secret, we are informed that it includes elimination of all Saturday delivery service and window service, consolidation of existing postal facilities, curtailed mail delivery service to colleges and universities, reduced clerical hours, discontinued air taxi service . . . and numerous other cancellations.

91 Cong. Rec. 5788 (daily ed. June 22, 1970).

¹⁵⁸ Kappel Comm. Report, *supra* note 125, at 62.

¹⁵⁹ *Id.* at 2.

¹⁶⁰ 91 Cong. Rec. 5804-10 (daily ed. June 17, 1970).

¹⁶¹ Kappel Comm. Report, *supra* note 125, at 2, 53.

other utilities. It concluded that since we have a postal system with a huge investment, it would not be feasible to transfer the Post Office to private ownership for reasons of financing. In other words, the Commission seems actually to have favored investor ownership of the postal system, but it could not see how that end could be practically achieved.

It has long been an established article of faith that the postal monopoly must be protected in order to protect the public revenues. Several decided cases have used that contention as a justification for the postal monopoly.¹⁶² The argument has been that if competition is permitted, the private operators will appropriate to themselves the cream of the mail business (e.g., mail between major cities), and leave the residue to the Post Office. The Kappel Commission demonstrated the fallacy of this argument (although it subscribed to it) when it showed that rural post offices are actually not a source of losses since there is a positive value to having nationwide service.¹⁶³ For example, it is probable that a large mailer sending mail to all parts of the country would prefer to deal with one organization that could deliver all of his mail rather than deal with several, each of which could deliver only a part. It would cost him more to sort mail for each carrier than to deliver an entire mailing to one carrier who could handle the entire task. Moreover, if the government monopoly were removed, and one or more competitors to the Post Office developed, a regulatory body might then be established. This body could conceivably order a private carrier or carriers to provide service in rural areas even if it proved to be unprofitable, just as is often done with other utilities. Higher rates could be permitted to make up for any loss thus sustained. In any case, it is a mistake to assume that private post offices would find it unprofitable or undesirable to serve rural areas. The Post Office has two competitors in the field of parcel carriage, United Parcel Service and Railway Express Agency, and both of them service rural areas.

The Kappel Commission seemed to feel that ending the postal monopoly must necessarily be accompanied by a termination or phasing out of the Post Office. This result does not necessarily follow. Just as the Post Office continues to operate in the field of parcel delivery despite competition, so too, it could continue to operate even with competitors in the delivery of mail. Competition might, in fact, bestow some benefits on the Post Office. First, it would offer a true standard of comparison for speed of delivery, costs, wages, and other areas. Second, it would relieve the Post Office of some of the crushing burden of the ever-increasing volume of mail, thereby providing the Post Office with a "breather" during which it could modernize its facilities without substantial disruption of service. If, as a result of the competition, there were a reduction in the volume of mail the Post Office handled, the number of postal employees could be correspondingly reduced with-

¹⁶² *United States v. Hall*, 26 F. Cas. 75, 78 (No. 15281) (C.C.E.D. Pa. 1884); *Blackham v. Gresham*, 16 F. 609, 612 (C.C.S.D. N.Y. 1883).

¹⁶³ Kappel Comm. Report, *supra* note 125, at 50.

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out much difficulty since the Post Office has a 23 percent annual employee turnover rate.¹⁰⁴ Retention of the Post Office would also provide a yardstick by which the private concerns could be measured. One general benefit of having more than one mail delivery service is that it would ensure continuation of mail delivery despite a strike in either the Post Office or the private competitor. Since "no strike laws" for government employees are notoriously ineffective, as the April, 1970 postal strike once again demonstrated, the mail would continue to go through.

At the present time, the postal monopoly is not complete. As noted above, the Post Office has two competitors in the field of parcel delivery. The monopoly is limited to a much narrower field than the full range of services provided by the Post Office. Competition is excluded only from the carriage of "letters or packets" over post routes.¹⁰⁵ A letter has been defined as "a message in writing . . . a packet is two or more letters under one cover" (i.e., in a bundle or package).¹⁰⁶ Post routes are basically those routes over which the mail is carried (including letter carrier routes) and parallel routes.¹⁰⁷ These definitions leave certain areas in which private firms may compete. The term "letter" may also embrace the term "circular,"¹⁰⁸ but a circular which is not addressed to any person is not considered to be a letter.¹⁰⁹ This latter type of mail is known colloquially as "junk mail," and formally as third class mail. The Post Office has not been able to make a profit on third class mail, and, therefore, it has not been interested in extending its monopoly to that class of mail. At least one entrepreneur is currently making a profit delivering this type of mail at rates lower than those charged by the Post Office.¹⁷⁰ Competitors of the Post Office have encountered another less well known aspect of the postal monopoly, that is, the Post Office's statutory monopoly on the use of mail boxes.¹⁷¹ The monopoly also does not extend to publications and certain types of first class mail which do not transmit information or are not primarily for the transmission of information (e.g., exact copies, bonds, and other commercial papers which are primarily indicia of title, legal papers and official records).¹⁷² In addition, firms may pick up and deliver their own mail outside of the postal monopoly if the persons employed in that function are employees of the firm.¹⁷³ They may not hire another

¹⁰⁴ *Id.* at 6.

¹⁰⁵ 39 U.S.C.A. § 601 (1970); 18 U.S.C. §§ 1694, 1699 (1964).

¹⁰⁶ *Dwight v. Brewster*, 18 Mass. (1 Pick.) 50, 56 (1822); see also *Chouteau & Valle v. Steamboat 'St. Anthony'*, 11 Mo. 226 (1847).

¹⁰⁷ 39 U.S.C.A. 5003 (1970).

¹⁰⁸ *Restrictions on Transportation of Letters*, Post Office Dept. Publication 111, 7 (1967).

¹⁰⁹ *Id.* at 10.

¹⁷⁰ 91 Cong. Rec. 5808 (daily ed. June 18, 1970).

¹⁷¹ 18 U.S.C. § 1725 (1964).

¹⁷² *Restrictions on Transportation of Letters*, *supra* note 168, at 9-10.

¹⁷³ *Id.* at 17.

firm to perform this service because that falls directly within the postal monopoly. The statute also permits private firms to engage in the delivery of mail for hire if the proper amount of postage is also paid to the Post Office.¹⁷⁴ Some businesses find it worthwhile to hire the services of firms engaged in private messenger service to expedite the handling of mail which requires rapid delivery.¹⁷⁵

CONCLUSION

It is submitted that all but one of the reforms which the Reorganization Act made in the structure of the postal establishment could have been accomplished within the structure of the Post Office Department. It is questionable that the one that could not be made without disestablishment—removal of the *leadership* of the postal establishment from the sphere of partisan politics—is actually desirable. If the purpose of the Post Office is, as is stated in the Act, to be a basic and fundamental public service, then this purpose could be more easily served if postal leadership is involved with politics and aware of the desires of the people. These desires would, of course, be transmitted to the postal authorities by the elected representatives of the people. The Board of Governors, on the other hand, will be isolated from the popular will. Moreover, it is doubtless true that the spirit of public service will be diminished or lost in the push of the Postal Service to at least break even, if not to earn a profit. While efficient operation of the postal establishment is a praiseworthy objective, the nation should not fear a postal deficit if by that route better postal service will be provided. This is a point of view that will be unacceptable to the Postal Service. In those cases in which the choice is between improvements in service and economies which will reduce expenses to a minimum, the latter course will be chosen to the profound detriment of the people of the United States. It is submitted that the people would have been better served if the Congress had made the needed reforms within the existing structure of the Post Office Department.

Finally, the notion that competition in business activities is in the best interest of all of the people has long been a guiding principle of our nation. Postal service is not one of the few truly natural monopolies to which no competition may reasonably be permitted. Rather, it is an enterprise, not unlike the transportation industry, in which competition rightly should be encouraged.¹⁷⁶ The current monopoly only masks the inefficiency of the Post Office since there is no standard to which it may be compared. Consequently, Congress would

¹⁷⁴ 39 U.S.C.A. § 601 (1970).

¹⁷⁵ See 91 Cong. Rec. 5807 (daily ed. June 18, 1970).

¹⁷⁶ Postal service is not like telephone service where, in order to have more than one company serving one area, each home would need more than one instrument. It is more like parcel delivery service by which three services currently serve each address.

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be acting in the best interests of the American people and for improved postal service if it would re-establish and reform the Post Office Department and remove the limited monopoly on the carriage of mail currently enjoyed by the postal establishment.

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