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For 10 other House committees, the House agreed to amendments authorizing no counterpart funds for members of those committees.[8] However, denial of such authorization did not preclude a committee from requesting specific authorization of the Committee on Rules for overseas travel funds for specific purposes.[9]

§ 6.9 Where members of a committee have no authority, under the committee's investigatory resolution, to travel overseas or to use foreign currencies while on committee business, the House may grant such authority when the Speaker appoints members of that committee as delegates to an international conference.

On May 31, 1963, Speaker John W. McCormack, of Massachusetts, appointed several delegates from the Committee on Education and Labor to attend the International Labor Organization Conference in Switzerland.[10] By virtue of that appointment, the delegates were authorized to travel overseas on official business and to use foreign currencies credited to the United States (pursuant to H. Res. 368) although the House Committee on Rules had previously disallowed use of governmental funds for overseas travel by members of the Committee on Education and Labor.[11]

§ 7. Franking

The franking privilege is the statutory right of Representatives to send certain material through the United States' mails without postage cost to themselves,[12] the cost being paid from public revenues.[13] Members, along with

8. *Id.* at pp. 1547–59; see also 109 CONG. REC. 2463, 88th Cong. 1st Sess., Feb. 18, 1963.

9. 109 CONG. REC. 1548, 1549, 1552, 88th Cong. 1st Sess., Jan. 31, 1963.

10. 109 CONG. REC. 9896, 88th Cong. 1st Sess.

11. 109 CONG. REC. 1553, 88th Cong. 1st Sess., Jan. 31, 1963. See § 6.6, supra, for further discussion.

12. For a statutory synopsis, see *House Rules and Manual* § 984 (1973). See also "Law and Regulations Regarding Use of the Congressional Frank," Subcommittee on Postal Service, Committee on Post Office and Civil Service, 92d Cong. 1st Sess. (1971).

Case decisions on the franking privilege are summarized in "The Franking Privilege of Members of Congress," special report of the Joint Committee on Congressional Operations, 92d Cong. 2d Sess. (Oct. 16, 1972).

13. Postage on franked correspondence is paid by a lump-sum appropriation to the legislative branch, which revenue is then paid to the postal service. 39 USC § 3216(a).

other federal officials, have enjoyed the privilege almost continuously from the founding of the Republic.[14] Although the scope and applicability of franking has varied through the history of Congress, only during a brief period in the 19th century was the privilege totally abolished.[15]

Members, Members-elect, House officers, and others entitled to the franking privilege may, until the first day of April following the expiration of their term of office, send free through the mails, under their frank, any matter relating to their "official business, activities, and duties, as intended" under the guidelines set out in title 39 of the United States Code.[16] The controlling statute prohibits franked mail containing certain material that is "purely personal or political" and prohibits "mass mailings" less than 28 days before elections in which the Member is a candidate.[17] It allows franked mailing "with a simplified form of address for delivery" (patron or occupant mail, for example) within certain limits.[18] Another provision (§ 3211)

14. See 1 Stat. 237, Feb. 20, 1792, an act which codified the entitlement of Representatives to use the frank. The passage of the act continued the practice which was established by the Continental Congress (see XXIII Journals of the Continental Congress, pp. 670–679).

15. The Act of Jan. 31, 1873, 17 Stat. 421, effective July 1, 1873, abolished the franking privilege. Limited use of the frank was reinstated in 1875 by 18 Stat. 343, §§ 5, 7, Mar. 30, 1875.

16. Prior to the enactment of Pub. L. No. 93–191, 39 USC § 3210 permitted franked mailing of certain matter on official or departmental business by a government official. That language resulted in uncertainty as to the scope of the privilege, and up until 1968 the Post Office Department, now the United States Postal Service, inquired on occasion into the proper use of the frank (see § 7.2, infra). For interpretation by the House Committee on Post Office and Civil Service prior to the enactment of Pub. L. No. 93–191, see Committee Print, Law and Regulations Regarding Use of the Congressional Frank, Subcommittee on Postal Service, Committee on Post Office and Civil Service, 92d Cong. 1st Sess. (1971).

For two notable judicial decisions on the scope of the franking privilege (decided prior to the passage of Pub. L. No. 93–191, clarifying the use of the frank), see *Hoellen* v *Annunzi*, 468 F2d 522 (7th Cir. 1972), cert. denied, 412 U.S. 953 (1973) and *Schiaffo* v *Helstoski*, 350 F Supp 1076 (D.N.J. 1972), rev'd 492 F2d 413 (1974).

17. 39 USC § 3210(a) (5).

18. 39 USC § 3210(d). Such mailings, within certain requirements, are also allowed to Members-elect, Delegates and Delegates-elect, and Resident

permits the officers as well as Members of the House to send and receive public documents through the mail until the first day of April following the expiration of their terms of office. And the *Congressional Record*, or any part or reprint of any part thereof, including speeches and reports contained therein, may be sent as franked mail, if consistent with the guidelines for such mail set out in section 3210. Seeds from the Department of Agriculture may be sent under the frank pursuant to section 3213.

In the event a Member, Delegate, or Resident Commissioner dies in office, the surviving spouse may send under the frank nonpolitical correspondence relating to the death for a period of 180 days thereafter under section 3218. In preparing material to be sent out under his frank, a Member is entitled to the services of the Public Printer.[19] The person entitled to the use of a frank may not loan it to another (§ 3215).

Cross References

Postage stamp allowance, § 8, infra.

Application of constitutional immunity to material mailed under the frank, §§ 15–17, infra.

Collateral References

Committee Print, Law and Regulations Regarding Use of the Congressional Frank, Subcommittee on Postal Service, Committee on Post Office and Civil Service, 92d Cong. 1st Sess. (1971).

The Franking Privilege of Members of Congress, Special Report of the Joint Committee on Congressional Operations, 92d Cong. 2d Sess. (Oct. 16 1972).

The Franking Privilege of Members of Congress, Committee Print, Joint Committee on Congressional Operations, 92d Cong. 2d Sess., Identifying Court Proceedings and Actions of Vital Interest to the Congress (Oct. 16, 1972).

Congressional Guidelines on Franking

§ 7.1 In the 93d Congress, the Congress passed into law a bill to clarify the proper use

Commissioners and Resident Commissioners-elect.

For judicial decisions, prior to the enactment of Pub. L. No. 93–191, relating to the area within which a Member of Congress could send such franked mail, see *Hoellen* v *Annunzio,* 468 F2d 522 (7th Cir. 1972), cert. denied, 412 U.S. 953 (1973); *Rising* v *Brown,* 313 F Supp 824 (D.C. Calif. 1970).

19. Under 44 USC § 733, the Public Printer furnishes printed blank franks for mailing of public documents, and prints on official envelopes the Member's name, date, and topic, not to exceed 12 words.

Under 44 USC § 907, the Public Printer furnishes Members with envelopes for mailing the *Congressional Record* or parts thereof.

of the franking privilege, restricting judicial review of franking practices, and creating an advisory and investigatory commission on the use of the frank.

Public Law No. 93–191 (87 Stat. 737), originally reported as H. R. 3180 by the Committee on Post Office and Civil Service, amended title 39 of the United States Code to clarify the proper use of the franking privilege by Members of Congress, and established a special commission of the House of Representatives entitled the "House Commission on Congressional Mailing Standards."

The law amended title 39, section 3210 to define the scope of permissible use of the frank in assisting and expediting the conduct of the "official business, activities, and duties of the Congress of the United States."[20] The commission provides guidance to Members, promulgates regulations, and renders decisions on the use of the frank. Under the controlling statute, the jurisdiction of courts to inquire into the permissible use of the frank is limited.

Postal Service Interpretation and Enforcement

§ 7.2 Beginning in 1968, the Post Office Department and its successor, the U.S. Postal Service, discontinued the interpretation and enforcement of statutes regulating the franking privilege.

On Dec. 26, 1968, the General Counsel of the Post Office Department issued a memorandum[1] to Congress stating that the department would no longer interpret the laws on the use of the congressional frank,[2] and would no longer attempt to enforce the statutes and regulations by requesting payment of postage for material allegedly improperly franked.[3] The memorandum also

20. Prior to the enactment of Pub. L. No. 93–191, a variety of federal court decisions inquired into the permissible use of the franking privilege and limited the scope of "official business" in relation to the use of the frank. See, for example, *Hoellen* v *Annunzio,* 468 F2(522 (1972), cert. denied, 412 U.S. 953 (1973); *Schiaffo* v *Helstoski,* 350 F Supp 1076 (1972), rev'd 492 F2d 413 (1974).

1. Reprinted in "Law and Regulations Regarding Use of the Congressional Frank," Subcommittee on Postal Service of the Committee on Post Office and Civil Service, Committee print No. 14, 92d Cong. 1st Sess., p. 1 (1971).

2. For an example of Post Office Department interpretations issued prior to 1968, see "The Congressional Franking Privilege," publication No. 126, Post Office Department (Apr. 1968).

3. See publication No. 126, *id.* at p. 1. According to a Comptroller General

stated that the department would continue to tender to individual Members, on their request, advisory opinions on particular material sought to be franked.

After the Post Office Department was converted in 1971 to an independent U.S. Postal Service,[4] the General Counsel of the Postal Service informed the Chairman of the House Committee on Post Office and Civil Service that the new service would not only refrain from enforcement of statutes and regulations on the congressional frank, but would also cease rendering advisory opinions.[5]

Franking "Patron" Mail

§ 7.3 Where a Senate amendment to a legislative appropriation act prohibited the sending of "patron" mail under the frank of any Member of Congress,[6] the House concurred in the Senate amendment with an amendment prohibiting such mail under a Senator's frank but permitting a House Member to use his frank for mail addressed to patrons within his own congressional district.

On Dec. 17, 1963,[7] the House was considering a Senate amendment to a legislative appropriation bill which prohibited the use of the franking privilege by any Member of Congress for delivery of mailings to postal patrons ("occupant" mail). The House amended the Senate amendment by prohibiting that use of the franking privilege by Senators but not for Members of the House. The amendment limited such mailings to the Representative's immediate congressional district.

The Senate agreed to the amendment on the following day,

decision, No. B128938, Aug. 16, 1956, the Post Office Department had authority to collect postage which should have been paid on material not properly franked.

4. See the Postal Reorganization Act, Pub. L. No. 91–375, 84 Stat. 719, Aug. 2, 1970 (effective July 1, 1971).

5. Letter of Mr. David Nelson to Chairman Thaddeus Dulski (N.Y.) Aug. 12, 1971, reprinted in "Law and Regulations Regarding Use of the Frank," Subcommittee on Postal Service, Committee on Post Office and Civil Service, Committee print No. 14, 921 Cong. 1st Sess., p. 6 (1971).

6. "Patron" mail is mail identified with the Member's frank, with neither a name or address but marked "occupant" or "patron," and distributed by postal carriers to every postal patron on an established route. See the testimony of Postmaster General Day, Hearings Before a Subcommittee of the Committee on Appropriations, U.S. Senate, 88th Cong. 1st Sess., p. 256 (1963).

7. 109 CONG. REC. 24831, 24832, 88th Cong. 1st Sess.

and the provision became permanent law.[8]

Franking and the Congressional Record

§ 7.4 The Solicitor General informed a Member of Congress that the franking privilege extended to any material printed in the Congressional Record.[9]

On Jan. 28, 1944,[10] there was inserted in the Record a letter from the Solicitor General of the Post Office Department stating that all material in the *Congressional Record*, regardless of the place of printing or the style of type, could be sent out under the franking privilege. The latter added that extracts from the *Congressional Record* should bear identifying marks to clearly demonstrate that they appeared in the *Congressional Record*.

Abuse of Frank as Question of Privilege

§ 7.5 Public charges of misuse of the franking privilege give rise to a question of personal privilege.

On Jan. 28, 1944,[11] Speaker pro tempore John W. McCormack, of Massachusetts, ruled that a

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8. 109 CONG. REC. 25025, 25026, 88th Cong. 1st Sess.

In the two preceding fiscal years, the Senate and House had disagreed over the inclusion of patron mail within the franking privilege (see Pub. L. No. 87–332, 75 Stat. 747, Sept. 30, 1961 and Pub. L. No. 87–730, 76 Stat. 694, Oct. 2, 1962). A Senate report (S. REPT. NO. 88–313), 88th Cong. 1st Sess. explained in part the 1963 compromise as follows at p. 6: "While in the past the [Appropriations] Committee has voted to bar the use of the simplified and occupant mailing privileges to all Members of Congress and has not changed its opinion, it is believed in the interest of comity and understanding that the committee should make the prohibition applicable solely to the U.S. Senate." The report added: "The Constitution provides that each House may determine the rules of its proceedings. While the mailing privilege does not specifically come under the rules of either body, in view of the past history of this legislation the committee believes each House should make its own determination in this regard."

9. See 39 USC § 3212, as amended by Pub. L. No. 93–191, 87 Stat. 741, which allows the sending of the Record, or any part thereof, or speeches or reports contained therein. See also *Straus* v *Gilbert*, 193 F Supp 214 (S.D.N.Y. 1968) (under 39 USC § 3212, Congressmen could send as franked mail, within and without his congressional district, material reprinted from the *Congressional Record*, even if mailed for election campaign purposes) .

10. 90 CONG. REC. 879, 880, 78th Cong. 2d Sess.

11. 90 CONG. REC. 879, 78th Cong. 2d Sess.

question of personal privilege had been stated when a Member presented a newspaper article quoting a book containing an accusation that a Member permitted the use of his frank by one of questionable character.[12]

§ 8. Office and Personnel Allowances; Supplies

Congress has established a variety of allowances and allotments which enable Members to equip, staff, and operate offices, both in the Capitol and in the home district.[13] Some allotments are furnished in kind with no dollar limit, such as office space in federal buildings.[14] Other allotments are limited to a certain dollar value, such as postage stamps[15] and electrical office equipment furnished to Members.[16] Other expenses of Members are reimbursed by the House up to a certain limit, such as telephone service[17] and home district office space in nonfederal buildings.[18] Another method of financing prevails over clerk-hire, which is paid directly by the House of Representatives to employees of the Member.[19] If an allowance may be withdrawn in cash as needed, as may the stationery allowance,[20] the allowance is taxable income to the Member.[1]

All office allowances are drawn from the contingent fund of the House.[2] Measures and regulations relating to such expenditures, and to the clerk-hire and office space of Members, are within the jurisdiction of the Committee

12. 39 USC § 3215, enacted into law by Pub. L. No. 91–375, 84 Stat. 754, Aug. 12, 1970, prohibits a Member from lending or permitting another to use his frank.

13. The allowances and allotments discussed in this section apply to the Delegates from the District of Columbia, Guam, and the Virgin Islands and to the Resident Commissioner from Puerto Rico, unless otherwise indicated.

14. See 40 USC §§ 177–184 (House office buildings) and 2 USC § 122 (home district office buildings).

15. See 2 USC § 42c.

16. See 2 USC § 112e. The Committee on House Administration may prescribe the dollar value limit of mechanical office equipment.

17. See 2 USC §§ 46g and 46g–1.

18. See 2 USC § 122 and § 8.6, infra (power of Committee on House Administration to adjust the home district office allotment).

19. See 2 USC § 92.

20. See 2 USC § 46b.

1. The Revenue Act of 1951, 65 Stat. 452, § 619(d), Oct. 20, 1951, which became effective Jan. 3, 1953, rendered cash allowances of Members accountable as taxable income.

2. See 2 USC § 57(b).