



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

June 30, 2016

To:

Hon. Juan B. Colás
Circuit Court Judge, Br.10
Dane County Courthouse
215 South Hamilton, Rm. 7103
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
215 South Hamilton, Rm. 1000
Madison, WI 53703

Abigail Potts
Assistant Attorney General
P. O. Box 7857
Madison, WI 53707

Terry D. Mueller 349673
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

You are hereby notified that the Court has entered the following opinion and order:

2015AP2625

State of Wisconsin ex rel. Terry D. Mueller v. Edward Wall
(L.C. # 2014CV3416)

Before Kloppenburg, P.J., Lundsten, and Blanchard, JJ.

Terry D. Mueller appeals pro se from circuit court orders dismissing his petition for a writ of certiorari and denying his motion for reconsideration. This matter arises from Mueller's inmate complaint contending that the increased price of embossed envelopes sold in his prison's canteen runs afoul of agency policy. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ Because we conclude that the agency acted according to law in raising the price of its embossed envelopes, we affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Stanley Correctional Institution advised inmates that it was increasing the cost of its embossed envelopes from fifty-six to sixty cents. Specifically, Mueller, an inmate, was provided with a memorandum explaining:

The Department of Corrections decided that due to the addition of tax on postage, some institutions may need to increase the cost of their stamped envelopes. It was determined that when the new policy increasing the canteen spending limits is implemented ..., the cost of 60 cents will be universal for the #10 stamped envelopes.

Mueller filed an inmate complaint asserting that the increased envelope cost violated a Division of Adult Institutions (DAI) policy which provides that:

All goods, except stamps and embossed envelopes, shall be marked up approximately 10% over cost before any required sales tax is collected. The 10% mark-up applies to canteen whether operated by the facility or contracted vendor.

See DAI Policy No. 309.52.01 at I.C.

The Inmate Complaint Examiner recommended that the complaint be dismissed because “[t]he increase was not a 10% increase,” but instead was the result of “the addition of tax on postage” and in order to make the costs “universal for all institutions.”² The warden adopted the examiner’s recommendation and dismissed the complaint. After the Corrections Complaint Examiner and the Office of the Secretary upheld the dismissal of Mueller’s complaint, Mueller filed a Petition for Writ of Certiorari in the circuit court. The circuit court issued a decision and order upholding the agency’s decision and denied Mueller’s subsequent motion for reconsideration. Mueller appeals.

² The Inmate Complaint Examiner also noted that “the price for an embossed envelope through institution canteen is less than the price from the vendor catalogs” and “less than the price of an embossed envelope purchased directly from USPS, which is \$0.62.”

Our scope of review is identical to the circuit court's on certiorari. *State ex rel. Staples v. DHSS*, 136 Wis. 2d 487, 493, 402 N.W.2d 369 (Ct. App. 1987). "Judicial review on certiorari is limited to whether the agency's decision was within its jurisdiction, the agency acted according to law, its decision was arbitrary or oppressive and the evidence or record substantiates the decision." *Id.* (citation omitted).

We conclude that Mueller's petition was properly dismissed because the agency acted according to law when it increased the cost of embossed envelopes to sixty cents. The DAI policy on which Mueller relies provides a standard mark-up of "approximately 10%" for goods other than stamps and embossed envelopes. *See* DAI Policy No. 309.52.01 at I.C. Nothing in the policy's language addresses the permissible mark-up for stamps and embossed envelopes.

Further, the circuit court properly exercised its discretion in denying Mueller's reconsideration motion. *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853 (a trial court's reconsideration decision is reviewed for an erroneous exercise of discretion). The circuit court correctly determined that Mueller's motion did not establish either newly discovered evidence or a manifest error of law or fact. *See id.*, ¶44.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals