



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

March 8, 2012

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-10-3098

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), enclosed please find the agency report based on disclosures made by a whistleblower at the Department of the Army (DA), Directorate of Logistics/Directorate of Public Works (DOL/DPW), Fort Leavenworth, Kansas. Mr. Phillip Nelson, an Electrician, disclosed that DOL/DPW employees were engaging in conduct that constitutes a violation of law, rule, or regulation. Mr. Nelson consented to the release of his name.

Specifically, Mr. Nelson alleged that DOL/DPW employees engaged in gambling activities on Fort Leavenworth property during duty hours, and the DOL/DPW management was aware of, and permitted, these activities. According to Mr. Nelson, during the 2008 and 2009 professional football seasons, numerous employees participated in a football pool on a weekly basis, and Mr. Dan Howard, a DOL/DPW employee, coordinated the pools and used his government-owned vehicle to distribute the betting sheets to and collect money from participating employees. 5 C.F.R. § 735.201 prohibits federal employees, while on Government-owned or leased property or on duty for the Government, from conducting or participating in any gambling activity, including conducting a lottery or pool, a game for money or property, or selling or purchasing a numbers slip or ticket. Football pools fall within this prohibition.

On August 17, 2010, the Office of Special Counsel (OSC) referred Mr. Nelson's allegations to the Honorable John McHugh, Secretary of the Army, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary McHugh delegated the authority to approve the investigation and report the findings to OSC to the Honorable Thomas R. Lamont, Assistant Secretary of the Army, Manpower & Reserve. Mr. Nelson declined to comment on the agency report. As required by law, 5 U.S.C. § 1213(e)(3), OSC is now transmitting the agency report to you.

The agency investigation substantiated the allegation that during the 2008 and 2009 professional football seasons, numerous Fort Leavenworth employees, including those from DOL/DPW, engaged in gambling activities on Fort Leavenworth property during duty hours by participating in a football pool on a weekly basis. According to the report, Mr. Daniel

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Howard, a DOL/DPW maintenance mechanic, admitted to operating the betting pool on government time for the past three years. However, the agency investigation did not substantiate the allegation that Mr. Howard used his government vehicle to distribute betting sheets and collect money from participants.

The agency investigation also substantiated the allegation that DOL/DPW management was aware of, or did permit, these activities. The investigation established that betting activity was clearly open and apparent in the workplace and, of the 22 employees who engaged in gambling activities while on duty, three were in supervisory positions. Based on these findings, the Report of Investigation was referred to the Fort Leavenworth Garrison Commander for corrective action. Mr. Howard received a 14-day suspension for operating and participating in illegal gambling activity. The three supervisory employees, Messrs. William Biesterfeld, Dennis Large, and Glen Weishaar, each received a one-day suspension and were not given discretionary performance awards in 2011. The remainder of the civilian employees involved received letters of reprimand. The Combined Arms Center (CAC) Commander issued the one active-duty soldier included as an "employee," Major Avery E. Stemmons, a written admonition. In addition, the New Employee Handbook and training materials were updated to educate employees on the prohibition found in 5 C.F.R. § 735.201.

I have reviewed the original disclosure and the agency's report. Based on that review, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the unredacted agency report to the Chairmen and Ranking Members of the Senate Committee on Armed Services and the House Committee on Armed Services. I have also filed a redacted copy of the report in our public file which is now available at www.osc.gov, and closed the matter.¹

Respectfully,



Carolyn N. Lerner

Enclosure

¹The Department of the Army provided OSC with a revised report, which redacted the names of individuals referenced therein, excluding the whistleblower. The Army cited the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) as the basis for this revision to the report produced in response to 5 U.S.C. § 1213. OSC objects to the Army's use of the Privacy Act to remove the name of each Army officer and civilian employee on the basis that the application of the Privacy Act in this manner is overly broad.