



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

January 26, 2009

The Honorable William Reukauf
Acting Special Counsel
Office of the Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

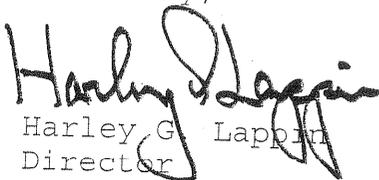
Re: OSC File No. DI-08-1951; ALLEGED VIOLATION OF THE
FEDERAL STATUTE BY BUREAU OF PRISONS EMPLOYEES
ENGAGING IN GAMBLING ACTIVITIES ON FEDERAL
PROPERTY AT FCI MIAMI, FLORIDA.

Dear Mr. Reukauf:

I am in receipt of your correspondence wherein you conclude that allegations raised by an employee of the United States Department of Justice, Federal Bureau of Prisons, constitute a substantial likelihood that a violation of law, rule, or regulation has occurred. Specifically, a federal employee at the Federal Correctional Institution (FCI) Miami, Florida, who has requested anonymity, alleged that FCI Miami staff members participated in gambling activities, including a "Texas Hold 'Em Poker Tournament" on two separate occasions: April 16, and June 20, 2008. These alleged gambling events, which were held on federal property at FCI Miami's Staff Training Center, were in violation of Bureau of Prisons regulations and federal law.

The Office of Special Counsel requested an investigation and report on the allegations. Please accept this correspondence as a summary of our investigation and findings. It should be noted that the Attorney General has delegated to me authority to review and sign the report, in accordance with 5 U.S.C. § 1213 (d).

Sincerely,


Harley G. Lappin
Director

Report of Investigation

OIA Case No. 2009-00157

OSC Case No. DI-08-1951

Subject: ALLEGED VIOLATION OF THE FEDERAL STATUTE BY BUREAU OF PRISONS EMPLOYEES ENGAGING IN GAMBLING ACTIVITIES ON FEDERAL PROPERTY AT FCI MIAMI, FLORIDA.

(1) Summary of the Information with Respect to Which the Investigation was Initiated

This investigation was initiated based upon a whistleblower disclosure that Bureau of Prisons (BOP) employees at the Federal Correctional Institution (FCI), Miami, Florida, engaged in gambling activities on agency property. The whistleblower, a BOP employee who requested anonymity, alleged that FCI Miami staff participated in gambling events, including a "Texas Hold 'Em Poker Tournament," at the Staff Training Center on April 16, and June 20, 2008. The whistleblower alleges that FCI Miami employees participated in gambling events on federal property in violation of BOP regulations and federal law.

(2) Conduct of the Investigation

This investigation commenced in October 2008, upon receipt of an Office of Special Counsel (OSC) letter tasking the Attorney General to conduct an investigation pursuant to 5 USC § 1213. An investigation was conducted by the Department of Justice (DOJ), BOP, Office of Internal Affairs (OIA), at FCI Miami, Florida, during the week of December 8, 2008. The OIA conducted six interviews of BOP employees, collected and examined various memoranda, E-mail, and Employees' Club financial records pertaining to the related events, and researched applicable agency rules and regulations.

(3) Summary of Evidence Obtained from the Investigation

FCI Miami, Florida, is a medium security correctional institution which houses male inmates. There are approximately 250 staff members and many belong to the Employees' Club. This club organizes and funds many functions for staff and their families throughout the year. Some of the functions held in the past include: a holiday party, Correctional Workers' Week activities, and Wednesday night family picnics at the FCI Miami

Training Center. The Employees' Club funds many of these functions through annual dues from members and also by charging a nominal fee to participate in some functions. Additionally, the Employees' Club holds fund-raising events to offset the costs of these functions. All BOP Employees are strongly encouraged during annual training sessions to discuss all fund-raising events with the BOP's Ethics Office prior to conducting the fundraiser. This is to ensure compliance with federal law regarding fund-raising on government property.

Our investigation revealed that in early 2008, several discussions occurred among the members of the FCI Miami's Employees' Club regarding fund-raising activities they were considering to raise money to fund the upcoming years' activities. Several fund-raising activities were discussed, including a "Texas Hold 'Em Poker Tournament." Several members of the Employees' Club recalled they thought that this type of fundraiser would be considered gambling on government property and could not be approved. However, another employee indicated that while working at another BOP institution this type of poker tournament was held as a fundraiser. The Employees' Club consulted with the Warden, who directed the Employees' Club President to contact the BOP Ethics Office for guidance and possible approval of their request.

On February 10, 2008, the Employees' Club President drafted a memorandum to the BOP Ethics Officer requesting guidance and providing limited details of the proposed poker tournament. The memorandum was never forwarded, but rather was used as written notes by the Employees' Club President during a telephone call with the Ethics Officer. According to the Employees' Club President, he did not forward the memorandum as there was a "typo" and an error regarding "donated prizes."

The Employees' Club President recalled telephonically discussing the specifics of their proposed poker tournament with the Ethics Officer some time during February 2008. He recalled informing the Ethics Officer that they were considering a poker tournament and that they wanted to award "electronic prizes" to the top players. The Employees' Club President could not specifically identify how many or what type of "electronic prizes" would be awarded as it would be based upon how many staff participated and how much money was collected. (A percentage of the collected money was used to purchase the "electronic prizes" and to purchase food and beverage items. The remaining money was deposited in the Employees' Club account to fund future staff activities.) He recalled that he was given permission to hold a "Texas Hold 'Em Poker Tournament" as long as prizes and

certificates of participation were awarded, but that no cash or gift certificates could be awarded or exchanged. The Employees' Club President indicated that he informed the other members of the Employees' Club and they informed the Warden that the Ethics Office approved the fundraiser with the specific guidelines addressed above.

On April 16, 2008, the first tournament was held at the Staff Training Center (government property) with approximately 26 participants. Several of the top prizes awarded at the end of the tournament were: an Insignia hi-definition flat screen television, a surround sound stereo system, and a digital camera. Food, beverages, plaques, and certificates of participation were also purchased and provided to the participants. The cost to the 26 participants was an initial \$30 "buy in" fee. Participants were limited to two additional "buy ins" for a potential total of \$90. (According to the Ethics Officer, the additional "buy in" fees were not discussed during the telephone call and they were not aware of additional "buy ins" to the poker game.)

After the first tournament in April 2008, an E-mail message was forwarded from the Employees' Club to all FCI Miami staff members announcing the winners of the tournament. Photographs were also attached showing the staff members displaying their prizes. The photographs revealed that staff were awarded plaques/certificates and electronic items. An Insignia high-definition television and a Phillips stereo can be seen in the photograph. Another "Texas Hold 'Em Poker Tournament" was held in June 2008, and staff were allowed to purchase additional \$30 "buy ins" beyond the initial \$30 entrance fee. Approximately 20 staff participated. Prior to this date, the Employees' Club again forwarded an E-mail to all employees stating that they received "nothing but positive feedback" (from the April 16, 2008, event) and that they would "probably be doing this again." The anonymous whistleblower indicated that these events are part of a series of gambling events at FCI Miami, Florida.

On June 20, 2008, the second tournament was held at the Staff Training Center and approximately 20 employees participated. The top prizes awarded during this event were similar to the first event (a television, a surround sound system, and a camera) with the addition of a GPS electronic device. Food, beverages, and miscellaneous items (plaques/certificates of participation) were also purchased and provided to the participants. The cost to the 20 participants was an initial \$30 "buy in" fee and participants were limited to two additional "buy ins" for a potential total of \$90.

Each staff member who played paid, at a minimum, \$30 to pay for food and beverages and to participate in the tournament. Additionally, the participants were able to purchase up to two additional "buy ins" of \$30 each. There was no indication that any portion of the money collected in the second or third "buy ins" was used for food, beverage, or any other items to coordinate the event. The additional money increased the participant's chances of winning and the additional money was used to purchase prizes of greater value, which were based entirely on how much money was taken in at the beginning of the poker tournament.

According to the BOP Ethics Officer, the Ethics Office has routinely received requests for approval for "faux" poker tournaments, casino nights, etc. as fundraisers. The Ethics Office has generally approved these events with the understanding that no actual gambling would take place. The Ethics Office believed that these "faux" games did not meet the definition of gambling based upon their understanding of how these games were played. The Ethics Office defines gambling as a "game of chance which is played for money. There is an element of risk and the outcome is not based upon skill. The final outcome is not known at the time play begins." The Ethics Office has approved events at BOP institutions when employees paid an entrance fee to the event (in this case the initial \$30) and if the money was primarily used toward a night of entertainment. It was the Ethics Office's understanding that the entrance fee included the cost of food, beverages, and a night of entertainment and fun (which may include poker chips, "Monopoly money" or some other type of tokens used to play games).

The Ethics Office staff indicated they would never have approved large and costly "electronic prizes" since the prizes themselves would have cost more than the "entrance fee" and would have required additional wagers. The Ethics Officer assumed the "electronic prizes" proposed by the FCI Miami Employees' Club President would be small prizes or tokens of participation (e.g., small desk clocks, small MP-3 players, BOP memorabilia, and other "nominal" items) and would have been purchased along with the food and beverages with the initial \$30 paid by participants. The Ethics Office further understood that the winners or "high scorers" would receive prizes of nominal value (i.e., less than approximately \$15). The prizes which the Ethics Office considered appropriate included: recognition/participation plaques, trophies, mugs, CDs, DVDs, or similar prizes of "nominal" value, and would be considered "door prizes." The Ethics Office is certain that they never discussed the additional "buy ins" and the high value of the prizes which were to be awarded to participants during the tournaments as described in

this allegation. They opined that additional "buy ins" could entice a participant to risk additional money for an opportunity to win a prize of greater value (i.e., more than a "nominal" prize). Conversely, if only "nominal value" prizes (i.e., less than \$15) were offered, this would not encourage participants to risk more money to win a prize because the prizes would be worth less than the initial participation fee (i.e., \$30).

(4) Violation or Apparent Violation of Law, Rule or Regulation

The BOP violated the Code of Federal Regulations (CFR) by allowing its employees to conduct and participate in gambling activities on Government-owned property. Property (i.e., a television, stereo system, digital camera, plaques, and certificates) was awarded to the winners of the gambling activities. Pursuant to 5 CFR 735.201, "While on Government-owned or leased property or on duty for the Government, an employee shall not conduct or participate in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket."

The BOP also violated its own policy. Specifically, Program Statement 3721.05, Employee Organizations, states in pertinent part:

Employee organizations are subject to 28 CFR 45.735-17, the Department of Justice regulation on gambling on Government property. The regulation provides:

No employee shall participate, while on Government-owned property or while on duty for the Government, in the operation of gambling devices, in conducting an organized lottery or pool, in games for money or property, or in selling or purchasing numbers tickets.

(5) Action Taken or Planned as a Result of the Investigation

The BOP Ethics Office will be issuing a memorandum to all Chief Executive Officers at BOP facilities reminding them that gambling activities constitute a violation of the Code of Federal Regulations and shall not be conducted on Government-owned or leased property. The BOP Ethics Office will also no longer permit "faux" gambling activities at BOP facilities. Although they have permitted such activities previously on the premise that no actual gambling by or financial risk to participants



U.S. Department of Justice

RECEIVED
FEDERAL BUREAU OF PRISONS
EXECUTIVE SECRETARIAT

1487224 VI

2008 NOV -3 PM 3:07

Office of the Director

Washington, DC 20534

October 31, 2008

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *ML/AR 11/5/08*

Harley G. Lappin
Harley G. Lappin
Director

FROM: Harley G. Lappin
Director

SUBJECT: Delegation of Authority

PURPOSE: To obtain delegation of authority pursuant to 5 U.S.C. § 1213 (d) in order to provide response to request for investigation by the Office of Special Counsel

TIMETABLE: Immediately

SYNOPSIS: The Office of Special Counsel (OSC) has requested the Attorney General to investigate allegations of violations of law, rule or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety at the Federal Correctional Institution in Miami, Florida.

DISCUSSION: In order to respond to the OSC request for investigation, the Director of the Bureau of Prisons must receive delegation of authority from the Attorney General.

RECOMMENDATION: Written approval of delegation of authority.

APPROVE: *[Signature]*

DISAPPROVE: November 12, 2008

OTHER: _____

Attachment

March 6, 2009

U.S. Office of Special Counsel
Disclosure Unit
Attn: Edward F. Flood, Attorney
1730 M Street N.W.
Suite 218
Washington, DC 20036-4505

Re: OSC File No. DI-08-1951 Comments

Edward F. Flood,

The purpose of this letter is to comment on the report from the Office of Internal Affairs and the response from the Director of the Bureau of Prisons, Harley G. Lappin.

In regards to the report of the investigation conducted by the Office of Internal Affairs it appears that very little information or evidence was uncovered in addition to that which was reported in my disclosure. The investigator clearly did not investigate the actions of the leadership of the Bureau of Prisons, specifically the Warden and Associate Warden of the FCI. There was no attempt to consider any wrong doing on the part of these government officials despite their direct oversight of the Employees Club and responsibility they possess in the management of the Property of the United States Government. While it was characterized that the individual club members were acting in "good faith", in actual fact, all were involved in criminal violations of Chapter 849, Florida Statutes. It is undeniable that "ignorance of the law is no defense", and similarly, following the ignorance of another, in this case, following the leaders, gives no justification.

According to the Department of Justice, and I quote "The mission of the Department of Justice is to enforce the law and defend the interests of the United States according to the law, to ensure public safety against threats foreign and domestic, to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior, and to ensure fair and impartial administration of justice for all Americans." I do not see evidence of "good faith" on the part of the Warden, Jorge L. Pastrana or the Associate Warden, Rob Wilson to preventing and controlling crime or in punishing unlawful behavior. Both of these government officials have taken no responsibility for allowing these activities despite receiving email and pictures of events and being aware that some employees felt the activities were questionable. There is clearly ignorance of Agency policy and federal law in their inability to live up to the mission of the Department of Justice and serve the public trust. In addition, the report states the a Memorandum will be issued from the Ethics Office to remind CEO's (Wardens) regarding how gambling constitutes violations of the Code of Federal Regulations. This response is so minimal that it is really no action at all on the part of the Agency to correct the issue especially when the Federal law was violated. There is no honor or integrity, nor transparency in the Agency's corrective action. This lack of accountability is the very reason that Government loses the public trust.

The Director of the Bureau of Prisons, Harley G. Lappin, included a response to the Special Counsel where it is admitted that there was a violation of the Bureau of Prisons regulations and Federal law. Considering the action and report issued by the Office of Internal Affairs, I wonder did Mr. Lappin read the report or consider the obvious widespread disregard for Federal Law on the part of CEO's of the Bureau of Prisons. It is my contention after many years of service that the Bureau of Prisons disregards the misconduct of CEO's and Executive level leadership just as this report demonstrates. However, individuals at the lowest level are investigated, intimidated, and demoralized under the guise of "efficiency of the service".

It should be an honor to serve the Bureau of Prisons and the United States Government. There should be pride and trust in the leadership that all employees see each day when they enter the facility, passing by the photos of The President, Attorney General, Director, Regional Director and the Warden in order to serve and protect society. However, I see photos of individuals that do not deserve to hang on the wall next to The President of the United States, and that are not held accountable to the mission of service of the government. The Leadership should be held accountable and required to respect the same regulations and laws as all employees.