



December 22, 2011

**Via Facsimile and U.S. Mail**

Alphy Johnson, COO  
DNC Parks & Resorts, Inc.  
40 Fountain Plaza  
Buffalo, New York 14202

*Re: Complaint of Improper Conduct, Misuse of Authority, Security Violations, and Potential Hatch Act Violations by William Fitzgerald*

Dear Mr. Johnson:

I am writing on behalf of my client, Stilo Development Group, USA, LP, regarding certain prohibited political activities, security violations, and misconduct by William Fitzgerald, an employee of the General Store in Tusayan, Arizona, which is a Delaware North entity and a contracted postal unit of the United States Postal Service ("USPS"). For the following reasons, we request that you take appropriate disciplinary action immediately, including but not limited to issuing a letter to Mr. Fitzgerald notifying him of this complaint and prohibiting him from engaging in further unlawful political activity and improper conduct while on duty. In addition, we request that Mr. Fitzgerald not be permitted to handle any mail, including information pamphlets and early ballots, relating to elections for the Town of Tusayan. Failure to take action pursuant to this complaint may result in the filing of a formal complaint with the USPS and United States Office of Special Counsel ("OSC") pursuant to 5 U.S.C. § 1216(a)(2).

We believe that Mr. Fitzgerald's conduct while providing postal services at the General Store presents serious conflict of interest issues, violates security requirements mandated by the USPS for contracted postal units, constitutes a misuse of authority, and also potentially violates the Hatch Act, 5 U.S.C. §§ 7321-7326. This belief is predicated on specific reports of improper conduct by Mr. Fitzgerald, as well as his general personal involvement in Tusayan politics.

Mr. Fitzgerald is not only a current Councilman on the Tusayan Town Council and an outspoken advocate on a number of political issues in the Town of Tusayan, but he has a personal interest in the outcome of every election that is scheduled to occur in Tusayan in 2012. Mr. Fitzgerald was a major proponent of the recall of three Tusayan Town Council members and circulated petitions for the recall election, which is scheduled to occur in March 2012. He is also the Chairman of a political committee that has organized to support a referendum election on five resolutions passed by the Town Council. If his committee is successful in gathering enough

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petition signatures, the referendum election will occur in May 2012. Then, in August 2012 and November 2012, Mr. Fitzgerald will be up for election himself for a seat on the Tusayan Town Council.

We accept that Mr. Fitzgerald has the right to be a candidate in a non-partisan election and serve as a Councilman, as well as engage in a variety of political activities – provided that he does so as private citizen, when he is on his own time, off government property, and not providing services on behalf of the USPS. However, Mr. Fitzgerald has not limited his political activities to these parameters. As described in more detail below, he has engaged in, and continues to engage in, political activities while on duty providing postal services on behalf of the USPS. Further, he has misused his position as a USPS contracted provider to gain information about the political positions of various residents in Tusayan and has used such information to further his own political agenda.

It is a basic tenet of the USPS that USPS employees and contract postal units preserve and protect the privacy and security of the mail and maintain customer confidences regarding the same. To that end, USPS employees and contract postal units are bound by strict ethical obligations and are prohibited from engaging in conduct that compromises the security of the mail or results in an appearance of impropriety by USPS. Two examples of the types of restrictions imposed on postal services providers are the Hatch Act and the USPS Personnel Security Policies.

The Hatch Act prohibits postal workers from participating in political activities while on duty, while on USPS property, while operating a postal or personal vehicle while on duty, or while wearing a USPS uniform, badge, or other item that identifies them as a postal worker. The Hatch Act further prohibits postal workers from soliciting, accepting, or receiving political contributions from the public, except under specifically defined circumstances.

The USPS Personnel Security Policies require, among other things, that “[p]ersonnel must not be assigned duties that could cause a conflict of interest or present an undetectable opportunity for malicious wrongdoing, fraud, or collusion.” USPS Handbook AS-805, § 6-2.1.

On information and belief, Mr. Fitzgerald, who is solely responsible for providing postal services pursuant to your contract with USPS, is engaging in prohibited political activity while on duty and is misusing his position to advance his personal political agenda. For example, Mr. Fitzgerald solicited signatures for recall petitions for Town Council members from customers while on duty. Indeed, on or about August 16, 2011, Mr. Fitzgerald was tape-recorded while on duty at the General Store admitting that he “was collecting signatures here at the window” at the General Store. Mr. Fitzgerald was not only the individual responsible for leading the effort to recall three of the five members of the Town Council by taking out recall petitions with the Town of Tusayan, but he was the primary person responsible for circulating petitions and collecting signatures. He did so while on duty at the General Store. Thus, there is no doubt that

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he has a personal interest in the election and voting process, which creates an undeniable conflict of interest and an opportunity and motive for misconduct relating to the handling of election-related mail.

In addition, multiple residents in Tusayan reported that they previously experienced problems with mail delivery (both sending and receiving) relating to political and/or election-related mail. One resident reported that she discovered she did not receive a piece of election-related mail addressed to her when she was informed it was posted on the bulletin board outside the General Store with handwritten comments and scribbling defacing the mail. Others also complained that they requested, but never received, early voting ballots to vote by mail for the incorporation election. Upon further inquiry, these residents were informed by the Coconino County Recorder's Office that their early ballots had been returned as undeliverable by the Tusayan Post Office.

Recently, Mr. Fitzgerald filed a Statement of Organization to open a political committee to advocate for the passage of five referenda relating to resolutions that were recently passed by the Town of Tusayan. He is listed as the committee chairperson. In addition to initiating a political committee, Mr. Fitzgerald has taken out petitions to collect signatures to call a referendum election where voters can vote on five referenda that he is advancing.

Consistent with his prior conduct, we expect that Mr. Fitzgerald will misuse his position at the General Store by soliciting customers to sign the petitions and advocating for the passage of the referenda. In addition, assuming Mr. Fitzgerald collects enough signatures and the referenda are submitted to the voters at an election, we expect that Mr. Fitzgerald will play an integral role in the delivery of early ballots both to and from voters in Tusayan.

However, his involvement in delivering mail relating to the election would not only appear improper, but would be in direct contravention of USPS policy, which prohibits postal service providers from being "assigned duties that could cause a conflict of interest or present an undetectable opportunity for malicious wrongdoing, fraud, or collusion." USPS Handbook AS-805, § 6-2.1. Indeed, his involvement in delivering mail relating to any of the elections that are expected to occur in Tusayan in 2012 raises serious questions about the security of the mail and the reliability of the postal services provided by the General Store.<sup>1</sup>

Based on the foregoing, we believe it is imperative that Delaware North take immediate action to investigate Mr. Fitzgerald's potential violations of the Hatch Act, USPS security

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<sup>1</sup> As we understand, the General Store has previously been the subject of security breaches in connection with its delivery of mail for the residents of Tusayan. On information and belief, just weeks after the March 2010 Tusayan incorporation election, another employee of the General Store was charged with obstruction of mail after stealing residents' mail, including checks, and charging thousands of dollars on credit card mail offers.

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policies, and his general misuse of authority. Further, we request that Delaware North take all necessary steps to prohibit Mr. Fitzgerald from engaging in prohibited political activity while on duty, including but not limited to prohibiting him from handling any election-related mail in the future. By copy to this letter, we are also notifying the Tusayan Town Council and Representative Paul Gosar of our serious concerns regarding Mr. Fitzgerald and our request for immediate action.

If you have any questions, please do not hesitate to call me at 602-224-0999.

Sincerely,



Roopali H. Desai

RHD:slm

cc: Derek Zwickey, RVP  
DNC Parks & Resorts at Yellowstone, LLC  
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United States Representative Paul Gosar

Bill Sims, Tusayan Town Attorney