

Co-Sponsoring an Event With a Non-Federal Entity

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I. Introduction.

This is the third in a trilogy of articles concerning the *Standards of Ethical Conduct* rules for dealing with non-Federal entities. We began with “Army Relationships With Private Organizations (AKA: Non-Federal Entities).” We discussed the different rules that govern our personal and official participation in, and relationships with, non-Federal entities (NFEs). We provided lists of do’s (*e.g.*, it’s okay to appoint an officer as your official liaison to the private organization) and don’ts (*e.g.*, it’s not okay to appoint an officer as a command point of contact for the private organization’s membership drive).

This general treatment of our relationships with NFEs was followed by a second article concerning support to NFE events. We first dealt with the restrictions on those who request support on behalf of a private organization (*e.g.*, officers or employees may not act as agents for non-Federal entities back to the Federal government); and on those who participate in the decision to provide support (*e.g.*, may be disqualified from participating in the decision because of conflicts or appearances of conflicts of interest). We then discussed the specific criteria that must be met before we can decide to speak at an event or provide other support. Finally, we concluded with some thoughts about whether we should provide the support even if all the criteria were met. We suggested that in some cases that it might be more appropriate if the event

was treated as an Army event, or if the event was at least co-sponsored by the Army. We promised to follow-up with another article, this time dealing with the co-sponsorship of events with non-Federal entities.

II. What is a Co-Sponsored Event?

A co-sponsored event is a cooperative effort between the Army (represented by a command or other organization) and some private organization (usually a nonprofit organization) to sponsor and present a scientific, technical or professional event where there is a *bona fide* “mutuality of interest” between the two parties. The event might be a conference, seminar, symposium, educational program, or a similar type of informational event where attendance is not limited to Federal employees.

There are other types of co-sponsored events involving civic and community activities, such as a bicycle rodeo co-sponsored by the installation Provost Marshal Office and the local civilian police department. However, this article will limit itself to the professional type of event. In addition, to belay any confusion, the commercial sponsorship of morale, welfare and recreational (MWR) activities is *not* co-sponsorship and is not a subject of this article.

"Mutuality of interest" means that there is a demonstrable substantive interest in the subject matter of the event by both parties, and it is an essential ingredient to any co-sponsorship. Otherwise, the Army is merely "using" the organization to assist it in putting on

the event thereby creating potential claims against the Army and raising the issue of unlawful supplementation of appropriations. If a true mutuality of interest does not exist, or is only marginal, the lawful approach is to contract for the support that this organization would provide.

III. Are Co-Sponsored Events Permissible?

Department of Defense (DOD) Directives formerly prohibited DOD Components from co-sponsoring events with private organizations. With the advent of the DOD *Joint Ethics Regulation* (JER) (DOD 5500.7-R) on 30 August 1993, however, the rule was changed to permit co-sponsorship, but subject to a number of requirements and restrictions.

First, there must be a finding that the subject matter of the event involves scientific, technical or professional issues relevant to your mission. Who makes this finding? You do as the head of the command or organization which proposes to participate in the co-sponsorship. Second, following closely on the heels of the subject matter requirement, you must also find that the purpose of the co-sponsorship is to transfer federally developed technology or to stimulate wider interest and inquiry into scientific, technical or professional issues, and that the event is opened to interested parties. This cannot be a “closed” event only for Government personnel and members of the NFE.

These first two criteria mean that it must be fiscally and legally proper for the Army to put on this event on its own in the first place. However, we want to do it in conjunction with an NFE because the "mutuality of interest" between the Army and the NFE enhances our ability to transfer the technology or to stimulate this wider interest and inquiry into the issues.

The third requirement is that the NFE must be a recognized scientific, technical or professional organization approved by the Army Designated Agency Ethics Official (DAEO) (the Army General Counsel) for this purpose. As of the date of this article, the DAEO has approved the following as organizations with which the Army may enter into co-sponsorship arrangements:

- Scientific, technical or professional organizations exempt from Federal income taxation under 26 U.S.C. § 501(c)(3);
- Foreign, state and local governments for co-sponsorship of scientific, technical or professional events;
- Armed Forces Communications and Electronics Association, International (AFCEA);
- National Security Industrial Association (NSIA); and

- Army Aviation Association of America, Inc. (AAAA).

Finally, there must be a "cooperative agreement." The JER sets out some specific statutory authorities for these agreements. Most events, however, will not fall within the purview of the listed laws. Nevertheless, there must still be a written "cooperative agreement" that covers the following:

- The nature and purpose of the event
- What the Army undertakes to do
- What the NFE undertakes to do
- Funding responsibilities and admission fees
- Disclaimers
- No Endorsement

Nature and Purpose. A clear and comprehensive statement here establishes the “mutuality of interest” referred to above, and also serves as a written record that the mandatory criteria have been satisfied.

Army and NFE Undertakings. This sets out the mutually agreed responsibilities of the parties for obtaining the conference room, making hotel arrangements, printing the brochures,

providing security, notifying and providing speakers and panelists, obtaining and setting up audio-visual aids, communications, and computers, and so on. Experience has shown that this results in a more disciplined approach to the event with less chance of crucial issues not being resolved.

Funding Responsibilities and Admission Fees. It is important to agree ahead of time who is going to incur what costs, and what fees are going to be charged by whom. It is not necessary for the actual fees to be written into the agreement, but the agreement should reflect the following principles. The agreement should take into account that whatever the Army collects must be deposited to the U.S. Treasury. Further, the same rules concerning fees for events that you might want to "support," as we explained in our second article, apply here. If an admission fee is charged, the fee structure should be designed to recover the reasonable costs of putting on the event. Finally, it is appropriate to seek and accept a reduced fee for Army or DOD participants to reflect the extent of the Army participation.

Disclaimers. To avoid Anti-Deficiency Act issues or violations, the agreement should include a provision that the Army is not liable if it decides to reduce the level of its participation or even if it must withdraw entirely, and that the NFE will not file a claim against the Army. Certainly, you would not enter into such an agreement without every intention of carrying it out to the spirit and letter. However, things happen: priorities might change; there might be a freeze on official travel for conferences; a major deployment might become necessary, *etc.* Because of these possibilities, the disclaimer must be included.

No Endorsement. Finally, the NFE must agree that it will not use the fact of the Army's co-sponsorship of the event to imply that the Army endorses the NFE or its other events. The co-sponsorship cannot be used by the NFE in its promotions to attract financing, membership, or attendance at other events. Related to this, the brochure and other publicity that the NFE develops to promote the co-sponsored event should be carefully scrutinized to ensure that it is factual and there are no improper appearances of Army endorsement of the organization. A statement of "no endorsement" should be included in the brochure and other advertising literature.

You might find that the organization with which you want to co-sponsor an event is somewhat reluctant to enter into a "cooperative agreement." First of all, they may never have done this before because, prior to 30 August 1993, co-sponsorships were not permitted. They might also be concerned about entering the morass of Government contracting.

Yes, this is a contract. However, we call it a "cooperative agreement" to distinguish it from the usual contracts signed only by contracting officers that are written, competed, executed and administered according to volumes of laws and regulations. Usually, you or someone who works for you will sign the agreement. With two exceptions, it is not immutable: the disclaimers and the no endorsement provisions must remain. The parties can agree to change any other aspect of the agreement when it serves their needs. Even as to the disclaimers, we can agree to give the NFE notice as early as possible concerning any changes in our participation and work with the NFE to help minimize the impact of any changes.

IV. IN CONCLUSION.

Yes, co-sponsoring an event with a NFE is an option. But, there must be this "mutuality of interest." In addition, the NFE must be "approved" by the DAEO, and you must determine that it meets the other criteria of the *Joint Ethics Regulation*. Finally, the co-sponsorship must be memorialized in a written agreement.

What does this mean? This means that the event is now (also) an Army event. You can endorse it, promote it, direct personnel to support it, and participate in it fully as you would any other Army program. However, it is also an event of the NFE; accordingly, don't forget those rules about conflicts of interest: Army personnel who are officers, directors, trustees, employees, or active participants of the NFE may not participate in these official matters because either the NFE is a party to the matters or they will have a financial impact on the NFE; similarly, Army officers or employees generally may not represent the NFE in dealing with any part of the Federal government.

If you want to co-sponsor an event with an NFE, you should seek the early advice and counsel of your Ethics Counselor to assist you in determining that co-sponsorship is appropriate, ensuring that Army personnel working on the program do not have a conflict of interest, and drafting the agreement.