

AMSEL-LG

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Relationships with Non-Federal Entities

Ethical rules governing our relationships with Non-Federal Entities (NFE) are found in the Office of Government Ethics (OGE) *Standards of Ethical Conduct for Employees of the Executive Branch* and the Department of Defense (DOD) *Joint Ethics Regulation (JER)*, DOD 5500.7-R. They are detailed, specific, and complex. This article, an extract from a writing by Mr. Michael Wentink of the Army Standards of Conduct Office, provides an overview of the rules. It is important to understand these rules since they are enforced through Federal criminal statutes and regulations.

The first step in dealing with and resolving any NFE question is to determine whether the relationship is personal or official. The nature of the relationship will guide the analysis and generate the answer, and more often than not, the results will be different depending on whether it is a personal or official situation.

#### **PERSONAL RELATIONSHIPS WITH NFEs**

Army employees are not barred from joining, participating in, or holding office in NFEs. On the contrary, they are encouraged to do so, especially when such activity will promote their professional or personal development, or make them an active part of the local military or civilian communities. However, there are rules that govern this personal participation.

**Conflicts of Interest:** By becoming an officer, director, or employee of a NFE, the Army employee has a relationship with that organization that restricts what he or she can do as an Army official. Specifically, a criminal law implemented in Subpart D of the *Standards of Ethical Conduct* prohibits such employees from participating in official matters pertaining to the same NFE, even though someone else might make the final decision affecting the financial interests of that organization. It does not matter that the Army employee is not paid by the organization, because the law imputes the financial interests of the organization to the officer, director, or employee of the organization.

Even if the Army official is not an officer, director, or employee of a NFE, but rather is an “active participant,” he or she has a “covered relationship” with the NFE. The *Standards of Ethical Conduct* require the official to consider the appearances created by this relationship, and normally the Army employee should not participate in those official matters where the NFE is a party or represents a party to the official matter. Examples of “active participants” include members of the NFE’s rules committee or the NFE’s points of contact for a membership drive. “Active participants” would not include members of a NFE who merely pay their dues, read the monthly newsletter, and attend an occasional function.

This means that an Army official who is an officer, director, or employee of a NFE may not participate as an Army official in such matters as whether to send an employee to a training program sponsored by the NFE, or to provide a speaker or other support to a symposium hosted by the NFE. If the Army official is not an officer, director, or employee of a NFE, but is an “active participant” in the organization, the prohibition is not quite so absolute. Nevertheless, to avoid the appearance of impropriety, the Army employee should refrain from participation in such official Army matters.

**Other Ethical Issues.** Military personnel and civilian employees may not:

- Accept positions as officers, directors, or similar positions in a NFE offered because of their official duty position (*e.g.*, a chief of staff may not accept a position in a local NFE that traditionally offers this position to the incumbent of this duty position).
- Use their office, title, or position in connection with their personal participation with NFEs (*e.g.*, may not show their title or duty position on NFE’s letterhead listing its officers; may not task their subordinates to assist them in their personal participation such as drafting correspondence and running errands).
- Personally solicit subordinates or prohibited sources (generally, DOD contractors), or permit the use of their names in a solicitation that targets subordinates or prohibited sources in NFE membership drives or fundraising campaigns.
- As a matter of personnel policy, the Deputy Secretary of Defense directed on 23 July 1996 that General Officers may not accept compensation for being an officer or a member of the board of a NFE. A couple of very limited exceptions are permitted but only with the approval of the Secretary of the Army.

**Can Do’s.** After all the negatives, we often are asked: “Well, what can we do?”

- DA personnel are free to join NFEs and, if it will not interfere with their official duties because of a conflict of interest, actively participate or even accept an office.
- Military members may use their rank and component designation in connection with their private association activities (*e.g.*, General, U.S. Army; Staff Sergeant, U.S. Army).
- If the “agency designee” (a supervisor or, for a General Officer in command, his Ethics Counselor) determines, after consulting with his or her Ethics Counselor, that it is in the Army’s interest, Army personnel may accept free attendance at a “widely attended gathering” (meaning a large and diverse group) sponsored by a NFE, on their own time or during an excused absence. (If the value of the free attendance exceeds \$250, the Army employee must report this gift on his or her Financial Disclosure Report.) For example, after consulting with his or her Ethics Counselor, a supervisor might conclude that it is in the Army’s interest for a subordinate to attend a free technical symposium, including a cocktail party and dinner, attended by industry and government representatives and sponsored by a professional or technical association.

## OFFICIAL RELATIONSHIPS WITH NFEs

**Participation in Events.** Army organizations may provide speakers or logistical support (*e.g.*, space, security, public address systems, *etc.*) for a NFE event if certain criteria in the JER are met. For example, it is generally inappropriate to support a NFE event if the charge for admission exceeds the event's reasonable costs. The Army may even cosponsor an event (such as a technical symposium) with a NFE if certain criteria and conditions are met, to include a written agreement. Often, however, cosponsorship is inappropriate when it is the Army that is really sponsoring the event with some assistance from a NFE. In this case, the assistance should be provided pursuant to contract, and it must be clear that the Army, not the NFE, is sponsoring the event.

The manner and degree of Army participation in any event determines what kind of event it is, *i.e.*, Army sponsored, cosponsored, or Army supported. Additionally, if the Army cosponsors an event with a NFE or supports a NFE's event, it must be clear that the Army is not endorsing the organization.

The JER authority to participate in, support, or cosponsor events by and with NFEs is not a license for the Army to expend time and resources in support of a NFE above and beyond that permitted, or to help the NFE conduct its business. We must ensure that the expenditure of time and resources is of direct benefit and interest to the Army, and commensurate with that benefit and interest. The conclusion that a NFE is "friendly" to the Army and supports its goals and objectives is not sufficient justification to direct employees, using official Army time, to do such things as: assist the NFE with a membership or fundraising campaign; assist the NFE with a NFE seminar beyond providing speakers and other limited support; help the NFE fix its computer system; assist the NFE with auditing its books.

**Endorsement.** The *Standards of Ethical Conduct* prohibit government employees from using their title, office, or position to officially endorse a NFE or its activities beyond that permitted in JER para. 3-210 (*e.g.*, fundraising for the Combined Federal Campaign and Army Emergency Relief). However, certain activities which encourage professional, community, and other involvement are permissible so long as they do not violate the rules that prohibit official bias, endorsement, favoritism, or unlawful support.

Specifically, commanders and supervisors may encourage Army personnel to take an active part in their military and civilian communities, to include joining, supporting, and participating in service and benevolent organizations. They may publicize and describe organizations that seem to share and support national defense, Army and community goals and ideals, and/or that help promote excellence in military or other skills. Finally, they may publicize events sponsored by such organizations.

The following are some specific "do's and don'ts" for official relationships.

### **Some Specific Don'ts:**

- Don't designate a point of contact in a directorate or unit for a NFE's membership drive.
- Don't address subordinates in formation or on Army letterhead to extol the virtues of a particular NFE.

- Don't require subordinates to attend a NFE meeting so that they can learn about and join a NFE.
- Don't engage in coercive tactics such as requiring a subordinate to explain a decision not to participate in or join a NFE.

**Some Specific Do's:**

- Commanders and supervisors may encourage subordinates to join and become active in professional, technical, community, or other types of organizations. Within this context, it would be permissible and not a prohibited endorsement of any one organization to identify and describe various organizations that support professional development or the military community, or that are part of the civilian community and worthy of consideration. It would even be permissible to briefly inform Army personnel concerning the goals, objectives, and activities of some of the organizations. It would also be acceptable to inform Army personnel, in a neutral manner, of an ongoing membership drive.
- Commanders and supervisors may require subordinates to attend a professional development training session sponsored by a NFE. For example, commanders may require soldiers to attend a seminar concerning financial responsibility hosted by AAFMAA. However, the NFE may not try to gain members or to market any of its products during the seminar.

**CONCLUSION**

The laws and regulations regarding official and personal relationships with private organizations are complex. This article is not all inclusive. Officials acting in their official or personal capacities in matters involving private organizations should actively seek legal advice from their Ethics Counselors to ensure they are acting properly. Finally, if they are acting as "agency designees" to approve a course of conduct, the JER requires that they consult with their Ethics Counselor.

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