

JOINT FORCE HEADQUARTERS

Office of The Staff Judge Advocate

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NGND-SJA

14 April 2014

MEMORANDUM FOR The Adjutant General; Attn: MG David Sprynczynatyk

FROM: Maj Michelle Hagel

SUBJECT: Ethics Opinion on Support to the National Guard Association

1. The issue is what kind of support may the North Dakota National Guard (NDNG) provide to the North Dakota National Guard Associations (NDNGA) on the state level?

2. It is the State level where more of the ethics issues arise. Most of these issues involve the use of government resources, membership drives, fundraising, administrative leave/official time, collection of dues and meetings/events. The applicable rules are found in the Joint Ethics Regulation. (DoD 5500.7)

3. Use of Government Resources.

a. *Government Computer System.* One of the main issues is the use of Government computers for pushing out messages to NDNGA group and the entire force. Government systems are for "Official use", but there are "Authorized purposes as well. Authorized purposes include personal communications from the workplace that are most reasonably made while at the workplace when the Agency Designee determines that such communications:

1. Do not adversely affect official duty performance;
2. Are of reasonable duration and frequency, and, whenever possible, made during personal time (such as after duty hours or lunch periods);
3. Serve a legitimate public interest (such as keeping employees at their desks, enhancing professional skills of the employees; job searching in response to Government downsizing).
4. Do not reflect adversely on DoD; and
5. Do not overburden the communication system and create no significant additional cost to DoD (including long distance telephone charges).

Prohibited Uses prohibit unofficial advertising, soliciting, or selling via E-mail. JER, para. 2-301a(2)(d), AR 25-1, para. 6-1f, AR 25-2, para. 4-5r(7). See also AFI 33-100, para. 3.9.1.1 through 3.9.1.14.

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The organization may use official e-mail to notify DoD personnel of events of common interest sponsored by non-Federal entities. Email contents must be factual (who, where, when) and should not contain expressions of support of a particular non-Federal entity, which may be construed as official DOD endorsement of the NFE. JER, para. 3-208; para. 3-209.

b. **Official Time.** Employees shall use official time in an honest effort to perform official duties, unless authorized under law or regulation to use official time for other purposes. 5 C.F.R. § 2635.705(a). Employees may take care of personal business when it is of reasonable duration and frequency. The personal business must not bring discredit to the organization. An association member may, with reasonable duration and frequency, take care of association business; however, if possible this should be on breaks, lunches or after/before work hours.

c. **Excused Absence (administrative leave):** Each department or agency has discretion to excuse employees from their duties without loss of pay or charge to leave. Office of Personnel and Management advises that the granting of excused absence for volunteer activities should be limited to those situations in which the employees absence, in the departments or agency's determination, is not specifically prohibited by law and satisfies one or more of the following criteria: (1) the absence is directly related to the department or agency's mission; (2) the absence is officially sponsored or sanctioned by the head of the department or agency; (3) the absence will clearly enhance the professional development or skills of the employee in his or her current position; or (4) the absence is brief and is determined to be in the interest of the agency. Ultimately, it is the responsibility of each department or agency head to balance support for employees volunteer activities with the need to ensure that employees work requirements are fulfilled and that agency operations are conducted efficiently and effectively.

d. **Summary:** NDNGA may use Government resources on very limited bases to inform or educate only. If the recipient is being asked to do something (attend, pay, join) then it becomes an improper solicitation. We also have to be cognizant of the appearance issue as well. For example, it would be problematic for a senior leader to send out information about an event of common interest and imply attendance or lack thereof would be noticed. For an excused absence (admin leave) there must be strong justification supporting solid professional development that would be a benefit to the organization. Use of resources and time must be reasonable in time and duration, therefore an exception, when it cannot be accomplished during breaks, lunch or after hours.

4. **Endorsement:** Personnel may not (in their official capacity) endorse the NFE. Nor may they use, or permit the NFE to use, their official titles, positions, or organization names in connection with the NFE, which includes on the NFE's website, or any list, letterhead, or promotional materials. Active military members may use their rank and Service when identifying themselves in connection with the NFE. (5 C.F.R. 2635.702(c) and JER 3-300 a (1)). The organization may thank NFE's for past contributions,

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services or assistance to DoD or its personal if it is factual and limited to the purpose of recognizing the contributions. However, do not expand the acknowledgment into an endorsement or solicitation on behalf of the organization, and guard against overstatements and expressions of future success.

6. Fundraising/Membership Drives: Government resources (computer) may not be used to solicit. The JER 3-209 and 3-210 state that DoD employees, which includes National Guard members in both a Title 32 and Title 10 status, shall not officially endorse or appear to endorse membership drives or fundraising for any non-Federal entity unless otherwise excepted. JER further states in 3-210(a)(7) that no member of the National Guard may be ordered, coerced, or compelled to participate in or contribute to any fundraising or membership drives. It is unlawful for leadership or supervisors to apply direct or indirect pressure to subordinates to join any non-Federal organization. The NDNGA may not, using official or unofficial channels, disseminate a comprehensive list of members who owe dues. Supervisors, in an official or an unofficial status, should never solicit dues from a subordinate, though a lower ranking member may solicit up (out of the work place). Supervisors should not counsel members on the importance of joining NDNGA nor may it be reflected in an evaluation.

4. The Adjutant General (TAG): as TAG is usually a State employee and General Officer, his or her participation is viewed differently. It is very difficult for TAG to be in an unofficial status, even out of uniform the cloak of authority is not removed in the eyes of the subordinates. The best way for TAG to support NDNGA is by being involved. TAG should not "sell" NDNGA, but be a consistent presence and remain involved to show support without inadvertently applying any pressure to join. The organization may also officially thank the NDNGA for past contributions when based on fact.

5. NDNG MAY NOT:

- Use Government time to conduct work for the NDNGA or attend its events
- Endorse, or imply endorsement, of NDNGA
- Provide preferential treatment to NDNGA or its members
- Use Government resources or facilities to solicit memberships, collect dues, solicit for fundraisers; for endorsement purposes, or
- Solicit subordinates – not ever

6. NDNG MAY:

- Use Government resources for reasonable duration and frequency as long as the personal business does not bring discredit upon the service;
- Use Government resources to inform or educate members of items of common interest to all, remember who, what and where only – if you are asking the recipient to do something you probably have gone too far;
- Use Government time through excused absences when there is an actual professional development benefit to the organization;
- Promote NDNGA through attendance and participation, TAG may say thank you and participate

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- Educate up – subordinates may solicit supervisors (not using federal resources)

7. If there are any questions or concerns, please contact the under signed at 701-333-2019 or michelle.i.hagel.mil@mail.mil.

A handwritten signature in black ink that reads "Michelle Hagel". The signature is written in a cursive style with a large, looped initial "M".

MICHELLE I. HAGEL, Maj, NDANG
JFHQ Staff Judge Advocate