

The Army Leaders Ethics Advisory Determinations (The Army LEAD)

The Army Leaders Ethics Advisory Determinations (The Army LEAD) is a compilation of recent ethics determinations of the Army's Office of General Counsel (Ethics & Fiscal) or the Office of The Judge Advocate General, Standards of Conduct Office. Because ethics issues are of importance to Army leaders, we compiled these ethics determinations as a resource for you and the members of your staff. Any questions about the items included in this edition of the Army LEAD, please contact the Office of General Counsel (Ethics & Fiscal) at 695-4296. For general ethics advice, contact your local ethics counselor. For general ethics information, visit our website at <http://www.hqda.army.mil/ogc/eandf.htm>.

Prohibited Endorsements of Non-Federal Entities.

This office is sometimes asked whether the Army or an Army employee has improperly endorsed a non-federal entity, event, product, service, or enterprise. Joint Ethics Regulation (JER) provides that DoD or DoD employees in their official capacities, titles, positions, or organization names are prohibited from stating or implying an official endorsement or preferential treatment of any non-federal entity that is otherwise unspecified in the JER. Further, with respect to advertising campaigns and promotions, such non-federal entities must be granted approval by the Office of the Assistant Secretary of Defense (Public Affairs) prior to use of DoD material, to include uniforms and insignia. In considering such approval, OASD(PA) must consider whether the interests of DoD is enhanced; whether the advertising promotion is in good taste; whether the implication of a DoD endorsement has been avoided; whether the material contains a disclaimer; and whether there is any possibility that claims made or implied in the material could be misleading. (*Code of Ethics Principles #8, 9, and 14*)

Misuse of funds and lack of authority to contract on behalf of the Army continue to be problems with Army-sponsored conferences.

Our office continues to receive requests for fiscal and ethics advice for agency-sponsored conferences. In the majority of requests, organizations seek approval to purchase items for which the use of appropriated funds is impermissible. Specifically, many organizations seek to include in their conference plans the purchase of light refreshments and meals for all attendees, regardless of whether those attendees are in a travel status. The Comptroller General has issued many decisions on the use of funds to purchase refreshments and meals for attendees that are in a local status and has found the same to be in violation of fiscal law. Furthermore, there have been instances where individuals are signing agreements and contracts with hotels, conference facilities, and other companies to provide supplies and services for these conferences. With limited exceptions, only duly appointed contracting officers have the authority to enter into agreements or contracts that bind the government. Government agents who fail to possess this contract authority risk personal liability for the entire cost of the contract should the Army fail

to recognize the contract as valid. (*Code of Ethics Principles #6 and 9*).

Use of Permissive TDY to Commence Post-Government Employment is Improper.

Conflicting guidance exists on the use of permissive TDY to commence post-government employment. While military members may commence post-government employment while they are on transition or terminal leave (with any authorizations or waivers that are required), it is improper to request and grant permissive TDY if the individual intends to use such TDY to **commence** post-government employment. Army Regulation 600-8-10, paragraph 5-35, provides that permissive TDY is an authorization versus an entitlement and is to facilitate transition into civilian life for house- and **job-hunting**. Permissive TDY may be requested and granted to assist an individual who is retiring, involuntarily separating from military service, or separating under the VSI or SSB programs with **seeking** new employment. The regulation's language precludes requesting and authorizing permissive TDY if the military member intends to use the permissive TDY to begin working. (*Code of Ethics Principles #9 and 14*)

Gifts of Travel from Non-Federal Sources - 31 USC § 1353.

The General Services Administration (GSA) issued an amendment to its regulation, 41 C.F.R. Part 300-2 and Chapter 304, regarding payment of travel expenses from a non-Federal source for meals, travel, and/or lodging. The most significant change is to permit after-the-fact agency acceptance of payment from a non-Federal source for travel expenses to a meeting under certain conditions. 41 C.F.R. 304-3.13. Personnel using this authority must request authorization for acceptance from the non-Federal source within 7 working days after the trip ends. Penalties for violation of the rule are

found at 41 C.F.R. 304-3.18 and include reimbursing the Treasury for the amount of the payment accepted. Before any acceptance of travel benefits pursuant to 31 USC § 1353 may be approved, the travel approval authority must determine that the travel will result in a significant and direct benefit to the Army. Additionally, conflict of interest analysis must be conducted to determine that acceptance under the circumstances would fail to cause a reasonable person with knowledge of all the relevant facts to question the integrity of Army programs or operations. **Prior to granting approval, the approval authority must obtain concurrence from the command's designated ethics counselor.** Section 1353 applies to gifts of travel offered by non-federal sources only. This excludes offers made by another government agency to pay the travel expenses of an Army employee or soldier. Additionally, section 1353 involves gift offers from non-federal sources for travel and related expenses for "meetings or similar functions." Such events are defined in 41 CFR Part 304-1(c) as a "conference, seminar, speaking engagement, symposium, training course, or similar event." Excluded from this definition are social events, such as Army Balls and icebreakers. While other authority may exist to allow acceptance of free attendance at social functions, such acceptance pursuant to section 1353 is improper. (*Code of Ethics Principle #4*)

Code of Ethics Principle #14: *Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards. Whether particular circumstances create an appearance that the law or standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.*