

SOCO ADVISORY

Department of Defense
Office of General Counsel
Standards of Conduct Office

July 12, 2019
Number 19-03
OSD.SOCO@MAIL.MIL

1. Fundraising & Gifts Between Employees – GoFundMe¹

The following is an update and clarification to the guidance provided in SOCO Advisory 18-01, Item 2. That advisory was in response to an inquiry concerning use of GoFundMe sites and thus addressed both fundraising and gifts between employees. However, it was recently brought to our attention that the distinction between these two areas was not as clear as it could have been in the previous advisory. Therefore, we are issuing the following guidance, which updates and, to the extent it contains any conflicting information, supersedes our prior issuance:

Question Asked: Can personnel utilize GoFundMe sites to collect funds in the Federal workplace for themselves or for other Federal personnel?

This question necessarily implicates two separate areas of law: fundraising and gifts between employees.

A. Fundraising – This area is complicated because no comprehensive fundraising regulation exists. Instead, it is governed by independent, overlapping, and unrelated regulations. Answering the following questions facilitates accurate and consistent analysis of questions involving fundraising.

- 1) Is it within the definition of “fundraising”?
- 2) What kind of “fundraising” is this?
- 3) Are DoD personnel being asked to provide cash or gifts-in-kind?

Generally, the Combined Federal Campaign (CFC), which is held annually, *is the only authorized solicitation* of Government personnel *in the Federal workplace* on behalf of charitable organizations. See 5 C.F.R. Part 950 and 5 C.F.R. § 2635.808. The CFC is intended to reduce disruptions in the Federal workplace by consolidating all approved solicitations into a single, annual, officially supported campaign. *Except as permitted by the CFC regulations, no other solicitations on behalf of charitable organizations may be conducted in the Federal workplace or on a Federal installation.* See 5 C.F.R. § 950.102(a)-(d).

¹ While the initial question focused on use of GoFundMe, the analysis in this advisory should be applied to any similar site or technology sought to be used to facilitate collection of funds in the Federal workplace.

One of the exceptions discussed in the OPM regulations is for solicitations conducted by organizations composed of Federal personnel among their own members for organizational support or the benefit of welfare funds for their members, in accordance with policies and procedures established by the pertinent agency (5 C.F.R. § 950.102(d)) – this is commonly referred to as “by your own, for your own fundraising.” It would include things like “cup and flower funds” and fundraising for events to which all personnel being solicited are invited, such as agency picnics or holiday parties. The JER at 3-210 permits official participation in fundraising by organizations composed primarily of DoD employees or their dependents *when fundraising among their own members for the benefit of welfare funds for their own members or their dependents* when approved by the head of the DoD Component command or organization after consultation with the Designated Agency Ethics Official (DAEO) or designee. See JER 3-210(a)(6). Additionally, for “by your own, for your own” to apply, the entire group solicited must stand to benefit, which would not be the case for an employee soliciting funds for themselves or for a specific individual.

- B. Gifts Between Employees - Occasionally, personnel will make collections for items like flowers, a book, or gift cards for ill co-workers, or for those with a death in the family. They are collecting for individuals, not on behalf of a charitable organization or to benefit the entire group, so the activity is not considered fundraising. Rather, this is simply a special infrequent occasion group gift between employees, and as such, is governed by the gift rules at 5.C.F.R. § 2635.302 and 304 and 5.C.F.R. § 3601.104. Even where funds or items collected are given to charitable organizations related to the illness of the co-worker or in memory of the decedent, etc., the collection does not become fundraising for the charitable organization as long as the circumstances make it clear that the gift is really to the co-worker and the donation is made on behalf of the co-worker.
- Note: Remember that a gift between employees, including a collection made via an online tool, is subject to the regulations in 5 C.F.R. § 2635.302 and 5 C.F.R. § 3601.104. Thus, anyone organizing a gift collection that includes employees earning less pay/subordinate to the recipient should consult with ethics counsel to ensure that an appropriate exception, such as for special infrequent occasions, applies and that the solicitation and gift are in compliance with any applicable limitations (e.g., for a group gift in DoD, suggested donation does not exceed \$10 and the gift value does not exceed \$300.)**
- C. GoFundMe – As outlined above, collection of funds in the Federal workplace is limited to specific permissible purposes, such as “by your own, for your own” fundraising or collecting for a group “special infrequent occasion” gift. GoFundMe is merely an online tool to facilitate the collection process. Whether the site may be used depends on two things:
- 1) Whether the fundraising/gift rules permit collecting funds for the stated purpose/circumstances in the first place; and

2) Whether GoFundMe is capable of being structured in a way that meets the applicable requirements and limitations for those purposes. For example, fundraising for a “cup and flower fund” might be a permissible purpose, but if there is no way to restrict or identify contractor contributions in GoFundMe, then the site is not capable of being used in a way that complies with the ethics rules. Likewise, if there is no way to cap contributions for a group gift at \$300, then the site could not be used to collect for that purpose.

Note: Solicitations can never include or be directed toward contractors, regardless of whether the collection is for a fundraiser or a group gift. On an unsolicited basis, a contractor employee may purchase goods/services sold as part of a fundraiser (e.g., a bake sale). However, cash donations to a fundraiser from a contractor may not be accepted. When collecting for a gift, unsolicited contributions toward a gift from a contractor would be subject to the rules on gifts from outside sources. For example, a group gift purchased with funds that included an unsolicited contractor donation would be limited to \$20 vice \$300.

2. Post-Government Employment

Section 207 of title 18 of the United States Code places post-government employment restrictions on former federal employees and criminalizes certain post-government activities performed by former Federal personnel. Although ethics counseling and advice are given by DoD attorneys and involve interpretation of law and regulation and rendering of legal opinions, no attorney-client or other confidential relationship is created. Ethics counseling and advice are personal to the current or former DoD employee. They do not extend to anyone else, including his business, employer, or prospective employer.

In order to ensure that the client, the U.S. Government, has an attorney giving the best possible advice, SOCO requires that all DoD ethics officials use the DD Form 2945. This form includes all possible questions necessary to be answered in a post-government opinion letter that are raised in the criminal or related post-government laws and regulations.

The form is available on the SOCO website under Resources for Ethics Officials / Post Government Employment / Forms:

http://ogc.osd.mil/defense_ethics/ethics_counselors/topics/post_govt_employ.html

Employees subject to section 847 of the National Defense Authorization Act for Fiscal Year 2008 must complete the online form in the After Government Employment Advice Repository (AGEAR) system accessed via the Financial Disclosure Management system at <https://www.fdm.army.mil/>.

The ethics official may rely upon the facts presented in the DD 2945. If challenged, rather than be put in a “he said, she said” position, the ethics official may refer to the completed form for what he or she relied upon to draft the letter. This protects the

interest of the Government, and ensures reliance on a document prepared by the former employee if challenged by the former employee or a third party.

DISCLAIMER: The purpose of this advisory is to disseminate relevant information and sources of general guidance, policy and law on Government Ethics issues to the Department of Defense ethics community. Advisories are not intended to be and should not be cited as authoritative guidance, DoD policy, or law

DoD Standards of Conduct Office

http://www.defenselink.mil/dodgc/defense_ethics