

(Guidance regarding DoD participation in a military ball sponsored by a non-Federal entity.) Rev: April 14, 2004

To: President of Ball Committee

Dear:

I am following up our telephone conversation of earlier this week regarding the Department's ability to provide support and personnel at the ... Military Ball. As you may know from conversations betweenof my office, the Department of Defense may not officially endorse the Ball.

To reiterate, the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), 5 C.F.R. Part 2635, severely limit the activities of Federal personnel, both civilian and military, in official fundraising for charitable organizations. Section 2635.808 restricts fundraising in an official capacity to those very few activities that are authorized by statute, Executive Order, or regulation. For the Department, we may endorse the fundraising of organizations in section 3-210 of 5500.7-R, the Joint Ethics Regulation (JER). The ... Military Ball is not one of these authorized organizations. Certain DoD facilities and equipment may be provided, at no additional cost to DoD, as logistical support of charitable fundraising events when the factors of paragraph 3-211.b. of the JER are determined by the cognizant Commander.

The Standards acknowledge two activities that are not considered fundraising. One is that personnel may deliver an official speech, meaning one given in an official capacity at an appropriate forum and focused on the responsibilities, or ongoing or announced policy, programs, or operations of the Department. Second, personnel may "merely attend" the event, meaning that they play no official role, are not an active or visible part of the promotion, production, or presentation of the event, and their attendance is not used to promote the event.

This same section of the Standards and subsection 3-300.1. of the JER generally permit Federal personnel to voluntarily participate in the Ball in their personal capacities as long as they act exclusively outside the scope of their official positions and do not personally solicit from organizations that do business with the Department or from subordinates. DoD employees may not permit the use of their official titles, positions, or organization names to further the fundraising effort, but may be identified by their rank and service, *e.g.*, Colonel James Smith, US Army.

I am setting out below guidance on specific matters that have been raised regarding DoD support for the ... Military Ball.

1. Official Speech: If there is a DoD officer who attends in an official capacity and delivers an official speech, that officer may appear in uniform. Personnel who normally travel with the speaker, such as security personnel and aides, may also officially attend in uniform.

2. Active Duty Military Members: They may "merely attend" in either an official capacity upon a determination of agency interest, or in a personal capacity. The determination of agency interest must be made at each member's organization, although it appears likely that a determination of agency interest for attendance at the Military Ball may be made for only a few people, if any, and those most probably in the local area.
3. Federally-Funded Travel: Even when an agency determines that personnel may attend in an official capacity, it does not necessarily follow that appropriated funds may be expended to pay travel expenses to the Ball. That is a separate analysis that must also be conducted at the specific agency level. If members attend in their personal capacities, Federal funds may not be used.
4. Uniforms: Each Military Service establishes rules for the wearing of the uniform of that Service. In general, military personnel may not wear their uniforms to assemblies or activities that imply support of commercial or political interests or official sponsorship of an activity or interest. The regulations generally permit active duty personnel to wear uniforms at social functions and informal gatherings of a military nature, but do not specifically address such events when they are fundraisers. As stated above, if military personnel attend in their personal capacities, they must act exclusively outside the scope of their official positions. Sometimes the wearing of a military uniform at an event is so unique that it constitutes "active and visible participation" in the event, and therefore is not permissible. Because of the overwhelmingly military nature of the Military Ball and attendance by current and former military personnel, I believe that the wearing of military uniforms at the Ball will not constitute such participation.
5. Offers of Free Attendance: Any offers of free attendance to invited DoD personnel must be analyzed according to the capacity in which these personnel are attending. Since I have determined that the Ball is a widely attended gathering, in accordance with 5 C.F.R. 2635.204(g) (2), DoD personnel, in their personal capacities, may accept an unsolicited offer of free attendance (food, refreshments, and entertainment furnished to all attendees as an integral part of the event) if the employee's supervisor determines that there is an agency interest (furthering agency programs and operations) that the employee attend the Ball. Similar offers of free attendance to DoD personnel who are attending in their official capacities, may be accepted as gifts to the agency under 10 U.S.C. 2601.

6. Offers of Travel Accommodations: In an official capacity, the cognizant agency may accept an unsolicited offer of travel accommodations for DoD employees and accompanying spouses under 31 U.S.C. 1353, or if that is not available, as a gift to the agency under 10 U.S.C. 2601. DoD personnel who attend in their personal capacities may accept such offers as long as acceptance of such gifts does not violate the prohibitions of acceptance of gifts from outside sources in 5 C.F.R. 2635, subpart B.
7. Former Military Personnel: Former military personnel, unless they are otherwise current Federal employees, are not constrained by the Standards. Consequently, they may only attend in their personal capacities. Like active duty military personnel, however, their respective Military Services determine when they may wear the uniform. In general, the regulations permit the uniform at events essentially of a military character, such as military balls, parades, weddings, and memorial services, but as with active duty regulations, do not address such events when they are fundraisers.

I hope you find this information useful. Please don't hesitate to contact me if you have further questions. I may be reached by phone at _____ or by email at _____.