



THE ADVOCATE



The Colorado National Guard OSJA Newsletter January 2018



Welcome to the official newsletter of the CONG Office of the Staff Judge Advocate where you will find discussion of legal issues that affect you and your command, Soldiers, legal updates and newsworthy events, and the work of the OSJA. For more information about the articles you read here contact the OSJA at 720-250-1030 or 720-250-1032. If you have a item to contribute, please contact SGT Conrad Ippolito at

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Ethics Corner – Unit Fundraising

COARNG units often seek fundraising opportunities to offset the costs of official and semi-official activities such as dining-ins, organizational days, farewell gifts, (or simpler things such as Coffee Funds or Unit Cup and Flower Funds). Fundraising is governed by several Army Regulations and the Joint Ethics Regulation (JER). You should always consult with your servicing JAG before embarking on fundraising activities.

Bottom Line: Fundraising is permitted so long as the fundraising:

- Is limited in size, scope, and frequency;
- Is truly voluntary;
- Does not involve solicitations from Commanders or supervisors;
- Does not include inducements or special favors from command authorities;
- Does not track contributors;
- Does not solicit donations from Gov't contractors;
- Strictly limits the use government resources and personnel;
- Does not adversely affect the performance of official duties; and,
- Creates no significant additional cost to the Government.

The fundraising target audience must be composed primarily of COARNG personnel and their families. Fundraising cannot focus on obtaining donations from the public at-large, from Government contractors, or from private businesses. In fact, soliciting funds, gifts, or other donations is prohibited by regulation. Fundraising must be "from our own" or "for us; by us"; meaning limited to asking for contributions from COARNG personnel and their families.

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“If you can keep your head when all about you are losing theirs....”

During a recent visit to the JAG regimental home, the US Army Judge Advocate School and Legal Center, located in Charlottesville, VA, the current TJAG, LTG Charles N. Pede, gave a short speech about a favorite poem of his—“If” by Rudyard Kipling, which is reprinted on the next page. Written in 1895, the poem was meant to be a father’s advice to his son about how to live life (Tragically, his son was later killed in action in WWI, at age 18). The poem is one of his most beloved and it still enjoys wide popularity for its inspirational spirit. During WWI, Kipling was asked to write propaganda for the British Government published in pamphlets and posters. His themes, like many embodied in our own values and in the poem include determination, overcoming hardship, personal sacrifice and humility. Here are some of poem’s key takeaways we thought we would pass on:

- Be confident about decisions you make, and always take responsibility for them.
- Do not lower yourself to the negativity of some of those around you. Be patient with them and encourage them. But stay humble and never think you are above anyone else.
- It’s OK to dream, but dreams shouldn’t control your life.
- Thinking is a good thing, but it’s important to put those thoughts into action.
 - Thinking outside the box – Yes.
 - But what’s important is stepping outside the box – Take a risk.
- You’ll never get the best fruit if you are afraid to go out on a limb, so don’t be afraid to take a risk. If you lose some or everything, that’s ok. Don’t talk or worry, just start fresh again.
- When you experience the highs and lows of life, don’t take either too seriously. They do not represent you; they are extremes.
- Never quit. Know that when you push yourself to the limit, when you are exhausted, you can do more. Focus your mind and your will to push through and move forward.
- Be confident and avoid group think. Know yourself and your beliefs, and do not let others alter what you know to be right, wrong, moral, or immoral. When you serve with and advise power and influence, stay committed to your character and your soul. Don’t lose touch with either.
- Be credible and stay reliable, so others can depend on you. But never let others become dependent on you. Lead them!
- Live every single minute of every single day like it is your last. Don’t worry, be anxious, or compare yourself with others. Simply live life to its fullest.

If you do these things, and show a humble sense of gratitude in the face of all stances – good or bad – then the world is yours. So take it!

If –

By Rudyard Kipling

If you can keep your head when all about you
Are losing theirs and blaming it on you,
If you can trust yourself when all men doubt you,
But make allowance for their doubting too;
If you can wait and not be tired by waiting,
Or being lied about, don't deal in lies,
Or being hated, don't give way to hating,
And yet don't look too good, nor talk too wise:

If you can dream—and not make dreams your master;
If you can think—and not make thoughts your aim;
If you can meet with Triumph and Disaster
And treat those two impostors just the same;
If you can bear to hear the truth you've spoken
Twisted by knaves to make a trap for fools,
Or watch the things you gave your life to, broken,
And stoop and build 'em up with worn-out tools:

If you can make one heap of all your winnings
And risk it on one turn of pitch-and-toss,
And lose, and start again at your beginnings
And never breathe a word about your loss;
If you can force your heart and nerve and sinew
To serve your turn long after they are gone,
And so hold on when there is nothing in you
Except the Will which says to them: 'Hold on!'

If you can talk with crowds and keep your virtue,
Or walk with Kings—nor lose the common touch,
If neither foes nor loving friends can hurt you,
If all men count with you, but none too much;
If you can fill the unforgiving minute
With sixty seconds' worth of distance run,
Yours is the Earth and everything that's in it,
And—which is more—you'll be a Man, my son!

ASK THE JAG

Have a question? [Email us.](#)

Q: “I’ve been tasked to organize and plan a military ball for my unit. What’s the easiest, safest, and most legal method to do this?”

A: “Good question! Two of the daunting words a commander can utter as he or she makes you the action officer/NCO are “Military Ball.” After you salute your commander, confidently exclaim, “Too easy!”, you thank him or her for picking you for this most important detail. Just a little extra duty, right? No big deal. But as the concept of organizing a military ball starts to sink in, you realize you have no idea what you’re doing and you may even start to feel sick. How do I pay for it? Do we sell tickets? Where are we going to host this thing? How do I pay for everything? Do I have sign the contract with the hotel? Can I even sign a contract? What about the menu, the alcohol, the band/DJ, color guard, and hospitality suite (and the potential legal issues that could entail). And on and on. Official funds cannot be expended to fund military balls. Ethical rules and fiscal law also prevent you from signing a contract on behalf of the government or military, from soliciting donations, and greatly restrict your ability to fundraise. With these restrictions, organizing a military ball without outside help is nearly impossible. So where can you find help?

The best place to look for help is a private military association, such as one associated with Field Artillery, Military Police, Aviation, and Infantry as well as the Colorado National Guard Association or Colorado National Guard Foundation. These private organizations (POs) are not subject to federal ethics rules or fiscal law that restrict solicitation and fundraising. They can request donations from private entities, for sponsorship, or for items for door prizes or auctions. Further, contracts for the hotel, meals, entertainment, etc., can be signed in the name of the association, so no one person is personally liable. A PO can also sell tickets and can use the event to raise money or recruit members. POs are also eligible for logistical support and can request a band, color guard, static displays, etc. through the normal Military Support Operation (MSO) channels.

If you are successful in partnering with a PO to organize and plan a military ball, keep in mind that unit members will have to volunteer to help out. When working with a PO, military members must do so in their private capacity. When talking to sponsors, donors, hotels, etc. you should not use your official military title or rank, you should not wear your uniforms (if it can be avoided) and you should always remember that you are working on behalf of the PO, not the National Guard. Finally, remember that even though a military ball has a military theme and is attended primarily by members of the military, they are private affairs—planned, organized, sponsored by, and paid for by POs. Keep these rules in mind and you will stay out of trouble. Remember that you can always contact your servicing JAG if you have any questions.

“Seen” in Court. Allegedly...

PHILADELPHIA - Apparently there was a good reason why this Philadelphia man's eyes appeared glassy on the night he was arrested for drunk driving, and it wasn't from booze. Michael McMillian was arrested when his car struck a bicyclist on Broad Street. The arresting officer claimed his breath smelled like alcohol, his speech was slurred and his eyes were glassy. During a recent court hearing, public defender Kevin Birley reportedly reached right into McMillian's eye socket and plucked his glass eye right out of his head to demonstrate why his eyes appeared glassy. In spite of such an in'sight'ful defense, Municipal Judge Morton Kruse found McMillian guilty of driving under the influence of alcohol, simple assault and reckless endangerment. He was sentenced to 90 days in prison.

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Colorado Code of Military Justice (CCMJ) to be Updated

The Colorado State Legislature will be considering a bill this session to update the CCMJ. Among other changes, the bill provides for:

- An increase in the amount of fine or forfeiture of pay and allowance which may be imposed under a commanding officer's nonjudicial punishment (NJP).
- Reduction to the lowest pay grade for E-4 and below, and up to two military grades for E-5 and above under a commanding officer's NJP.
- Punitive article for possession, use, manufacture or distribution of controlled substances to include marijuana.
- Classification of misdemeanor and felony offenses.
- A more streamlined process for prosecuting a summary courts-martial.

Ethics Corner – Unit Fundraising

The purpose of the fundraising should to benefit an informal welfare fund "for our own" members. The purpose of the funds collected must be very specific; for example, to offset the overall cost and thus the individual cost of a dining-in; to offset the cost of producing a unit t-shirt; to purchase greeting cards, flowers, etc., for unit members significant life events (marriage, birth of child, retirement); pay for coffee and supplies for an office coffee service. All the funds raised must be limited to these types of expenses. It is NOT permissible to transfer funds for one purpose to another fund. Informal funds should have a Standard Operating Procedure or By-laws outlining the purpose of the fund, membership, and how the funds will be spent. FRGs are required to have an informal fund SOP per AR 600-8, Appendix J-7.

The fundraising activity must provide a truly free choice and have the appearance of a free choice to contribute or not. No lists of contributors or non-contributors may be generated. No Commander, First Sergeant, or anyone may seek a report as to who has and has not contributed. No sales-pitch or otherwise coercive activity by any person may be used to encourage contribution. No superior or supervisor may inquire as to whether his or her subordinates have contributed. In practice, only one individual should be responsible for fund custody, accounting, and documentation, which may be subject to command review to ensure solvency.

Does the fundraising activity involve gambling? Gambling is not permitted as a fundraising means for informal funds. Selling tickets for a chance to win an item of value constitutes gambling. While door prizes or opportunity draws may be permitted at fund raising events, tickets for the drawing must be made available to anyone wishing to participate, and participants cannot be required to make a purchase to receive a ticket.

How are "door prizes" obtained? Unit Commanders may accept donated items for use as door prizes; however, the donation cannot be solicited in an official capacity, and may require a legal review before it may be accepted.

Use of Federal resources, materials, supplies, property, or personnel to engage in the fundraising activity. If significant amounts of personnel, time, space, supplies, resources, or other assets are expended in support of a fundraiser, then the activity may violate the JER. If only a limited number of personnel will spend a minimal amount of time, consuming little to no amount of Government resources, then the activity is probably acceptable. A legal review can help determine the permissibility of a proposed use of Government time or resources.

How often is the intended fundraising activity scheduled to occur? Daily? Weekly? One time only? [AR 600-29, DOD 5500.7-R]. A one or two day bake sale or car wash falls within the traditionally acceptable realm of local fundraising activity; however, selling baked goods every Friday, or holding a car wash every weekend goes beyond a limited activity and enters into the realm of becoming an established competitive venture. The more often the unit seeks to conduct the activity, the less likely the activity comports with the references.

Conclusion: Check any proposed fund raising activity against the questions above. It is best to draft your proposed fund raising activity and submit to your servicing JAG. Units should have also have Informal Funds By-laws and an SOP. If you would like templates, please contact the COARNG Office of the Staff Judge Advocate.

THINGS TO KNOW... about Flags

1. **Flags are not to be used for punishment or restriction, but only as an administrative tool.**
2. **The Flag is not the final disposition. A Flag is emplaced during some type of disciplinary or administrative action until that action is concluded.**
3. **The Flag should be initiated within 3 working days after identification of the Soldier's unfavorable status and removed within 3 working days after determination of the final disposition.**
4. **The suspension of favorable actions on a Soldier is mandatory when military or civilian authorities initiate any investigation or inquiry that may potentially result in disciplinary action, financial loss, or other loss to the Soldier's rank, pay, or privileges.**
5. **Commanders must Flag Soldiers who are suspects or subjects of an investigation or are designated as respondents in a board. The term "investigation" is to be interpreted broadly to include any action that may result in disciplinary action, financial loss, or other loss to the Soldier's rank, pay, or privileges.**
6. **Commanders must Flag Soldiers titled as possible subjects or suspects by the U.S. Army Criminal Investigation Command (USACIDC) (or Service equivalent), military police, or civilian law enforcement during the course of an investigation. Effective date of the Flag is the date of offense or the date law enforcement identifies or titles the Soldier as a subject or suspect.**

Source: AR 600-8-2, para 2-2

NEED LEGAL ASSISTANCE?

Landlord Tenant Issues?

Debtor/Creditor Problems?

Family Law Questions?

Need a Will, Powers of Attorney or Estate Planning?

Want to know more about your Servicemember Rights?

**Contact Your Servicing
Judge Advocate for Help**