

ETHICS, RULES, AND GUIDELINES REGARDING SUPPORT TO NGAUS

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This White Paper provides a brief summary of the most pertinent laws, regulations, and directives that allow you to actively work and promote NGAUS both within your state and on a national level.

The original document was created by Bill Peace, Executive Director, National Guard Association of New Jersey with support from NGAUS JAG and updated by Colonel Jason Evans from Michigan. Information provided in this White Paper is for general informational purposes only and does not constitute legal advice. It is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Further, the views and opinions presented herein are those of the authors and do not represent the views of the DoW, Army, or any other government entity. We recommend consulting with legal counsel for advice on any particular legal matter.

The Good News!

The laws of the United States and related Department of War (DoW) regulations and directives generally allow members of the National Guard to provide support and services to National Military Associations such as NGAUS. Members of your Guard – all the way up to the Adjutant General (TAG) – can actively support NGAUS and NGAUS activities. However, there are some important limitations on how much official support can be given to NGAUS, and this paper outlines those boundaries to help you stay safely within them.

Support for National Conferences

Federal law, 10 U.S.C. §2558, allows your state National Guard to officially provide the following support and services during the hosting of an annual conference:

- (1) limited air and ground transportation;
- (2) communications;
- (3) medical assistance;
- (4) administrative support; and
- (5) security support.

The Chief, National Guard Bureau will typically provide guidance on how this support can be provided by the hosting state. Note that any official support provided under this law must be provided in conjunction with training in appropriate military skills, so be sure to plan ahead to organize appropriate training activities for personnel tasked for annual conference support.

The Chief will also typically issue annual conference attendance guidance for Guard members. This guidance is issued in accordance with ethical principles outlined in the

Joint Ethics Regulation (DoD 5500.07-R) concerning support to non-Federal entities, as well as DoDI 5410.19. The Chief's guidance usually outlines how many officers may attend the annual conference in a paid TDY status as Officer Professional Development (OPD). It also includes special directions on the attendance by officers attending the conference while not on official government travel orders. Those members will typically attend in a leave or permissive TDY status.

DoDI 5410.19 lays out the policy and procedures for National Guard support of the NGAUS annual conference as well as other support to NGAUS.

Statewide Activities

As a member of NGAUS in a state capacity you are an active promoter of both the state National Guard Association and national NGAUS programs. It is at the state level where most ethical questions arise on what is and is not considered ethical. At the heart of most of these ethical questions, is what is and is not ethical as to membership drives, fundraising, and meetings.

Getting the Message Out – General Considerations

The Joint Ethics Regulation (JER), in paragraph 3-102, provides the framework for providing support to non-Federal entities, which includes the distribution of information through official channels (in accordance with applicable service Public Affairs regulations) to notify DoW employees of events of common interest sponsored by non-Federal entities. Official command announcements or bulletins (either electronic or paper) are the most appropriate vehicle to disseminate general information concerning NGAUS meetings or events to all members of a unit.

JER, paragraph 2-301, allows for some limited personal use of government communication systems. Such use must not adversely affect the performance of official duties by the employee or the employee's organization, and whenever possible must be during the employee's personal time, such as during lunch, break, and other off-duty periods. You should not, however, send unofficial messages to large groups of email users instead of targeting specific individuals. So, while official email accounts can be used to keep NGAUS members up-to-date on current information and activities, unit-wide messages and announcements should be sent through formal command message channels.

In sum, you can use your government workplace and email, subject to any local restrictions, to provide information as it relates to NGAUS, but focus on the event that you are promoting and the audience you need to reach and make sure you use the right forum to do so.

Adjutant General's Support

The Adjutant General's endorsement and support of NGAUS can often be the linchpin that determines the level of success of your state's NGAUS program and membership. The best way to show a TAG's support is through their involvement in NGAUS activities. The TAG should not just get up and try to "sell" NGAUS directly to Guard members; rather TAGs should use their consistent presence and involvement in NGAUS activities to demonstrate their support for NGAUS. Savvy membership committee members actively convey the level of TAG support through the publishing of agendas and presentations, formal and informal, which detail the NGAUS activities of their TAG. Because the TAG is a dual status officer, that is both a state and federal officer, the TAG does have to recognize when the JER and other federal rules apply. However, by having a TAG in a state status extol the professional virtues and benefits of NGAUS without ever pressuring anyone to join, they can display positive support for NGAUS. Furthermore, because NGAUS is an organization "composed primarily of DoD employees or their dependents," the JER allows for a certain level of official support, such as logistical support and fundraising, under the limited circumstances described in JER, paragraph 2-400. However, DoW personnel must always adhere to the strict prohibition on endorsing any non-Federal entity, as outlined in JER, paragraph 3-102d. Nevertheless, while in Federal status a TAG would rarely ever be called upon to actively promote NGAUS unless directly involved in a NGAUS event, in which case TAG support is readily apparent.

Support at Echelons Below

TAG support aside, subordinate commander and officer leader support is vital to allowing membership committee personnel the ability to promote NGAUS and collect officer dues. Note that it is unlawful for leadership or supervisors to apply direct or indirect pressure to subordinates to join any non-Federal organization. Again, the savvy membership committee representative influences leaders and supervisors to pay their dues on time and uses their examples to inspire others to follow suit. Disseminating information in the official company newsletter on who the committee membership representative is in the unit, that dues are up soon, and when approved lunch/after hour activities will be all implicitly show command support; securing your commander's attendance at those events further enhances that support.

The No-no's

The JER, in paragraph 3-102d, states that DoW employees, which includes National Guard members in both a Title 32 and Title 10 status, shall not officially endorse or appear to endorse any non-Federal entity. Separately, JER, paragraph 2-400 governs fundraising and membership drives. Although NGAUS may qualify as an organization for which limited on-base fundraising is permitted, you should consult with your servicing SJA or ethics counselor before officially supporting a particular NGAUS membership or funding drive or other event. In all cases, however, JER, paragraph 2-402 makes it clear that no member of the National Guard may be ordered, coerced, or compelled to participate in or contribute to any fundraising or membership drives.

What Does That Mean????

The JER pretty means what it says. A superior cannot order, coerce or compel any subordinate to participate or contribute to any fundraising or membership drive, even if the drive or charity is an officially sanctioned DoW charity or organization. This means:

- No written lists posted for all to see on who is/is not a member or who has/has not paid their membership dues;
- No announcements at formation on who has paid or who has yet to pay their membership dues;
- No special treatment for those who have paid their membership dues, nor unfavorable treatment for those who haven't;
- No statements on formal Evaluation Reports about lack of support to NGAUS or basic NGAUS membership—statements of performance or achievement in NGAUS or NGAUS events is permitted if relevant to leadership, service, self-development, and etc;
- No counseling subordinates on why one should join NGAUS or pay his/her dues, etc; encourage anyone interested in joining to talk to a more junior member for such information.

In short, you should be vigilant to ensure that NGAUS doesn't become an informal auxiliary of the unit. It is, and must always be, a private organization without any formal relationship to the unit.

The Yeses

The yeses have it. In other words, find a way to get to yes that shows the command supports NGAUS. While too numerous to mention all the ways to get there from a membership committee representative perspective, there are some key factors that you can use to get support from senior leadership.

- Educate upwards. Nothing prohibits a subordinate from selling NGAUS to a superior, and likewise, convincing that superior to further sell NGAUS upwards.
- Effectively promote NGAUS events. Have senior leaders address NGAUS meetings, even if they're not an official NGAUS member, and publish the agenda that shows senior leaders addressing the meetings.
- Show your senior leaders that DoW allows members of the National Guard to provide support and services to National Military Associations such as NGAUS.
- Reinforce the Officer Professional Development that NGAUS offers and get senior leadership to help set the criteria for sending Guard members in an official TDY status to the National Convention.
- Encourage superior leadership at all levels to attend local, statewide and national NGAUS Conventions.

Conclusion

Depending on your state Guard's leadership, support of your state's National Guard Association program will reflect on your overall membership and support of NGAUS. By positively sharing with senior leadership at all levels the benefits of NGAUS membership, coupled with the fact that DoW does in fact recognize and authorize limited support to NGAUS, you have the ability to ethically and legally educate, and even better, energize future senior leaders of NGAUS activities and programs.