

## **JOINT ETHICS REGULATION (JER) APPLICABILITY TO ROTC CADETS INFORMATION PAPER**

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1. **PURPOSE.** Provide USACC personnel and cadets with guidance concerning the applicability of the Joint Ethics Regulation (JER) to ROTC Cadets and to some common situations within USACC. The purpose of this information paper is not to eliminate the need to consult with an ethics counselor prior to taking actions that implicate ethical regulations, rather its purpose is to provide an overview of the applicability of the JER to common situations.

2. **BLUF.** The JER is clearly applicable to ROTC cadets when they are performing under the authority of either title 10 or title 32, United States Code, while engaged in any activity related to the performance of such duties, including any time the member uses his standing as a Cadet, or any authority derived therefrom.<sup>1</sup> Violations by Cadets occurring when the JER is directly applicable are punishable by criminal, civil, and administrative sanctions, including punishment under the Uniform Code of Military Justice (UCMJ). Violations by Cadets occurring at times when the JER is **not** directly applicable may be grounds for administrative action, including disenrollment under Army Regulation 145-1.

### 3. APPLICABLE REGULATIONS.

a. The DoD Joint Ethics Regulation (DoD 5500.07-R) provides a single source of standards of ethical conduct and ethics guidance to Department of Defense (DoD) employees.<sup>2</sup> The purpose of the JER is to ensure the public's confidence in the Department of Defense by avoiding even the appearance of impropriety.

b. AR 145-1 - prescribes policies and general procedures for administering the Army's Reserve Officers' Training Corps (ROTC) Program.

3. **GIFTS.** What is a "gift?" A "gift" includes receiving any item or service having monetary value.<sup>3</sup> This definition of a "gift" may not be particularly helpful, so for illustrative purposes it is useful to look at what does not constitute a "gift." Modest items of food and refreshments, items with little intrinsic value, discounts available to a class consisting of all uniformed personnel, rewards and prizes from a contest unless entry in the contest is required as part of a Cadet's official status, and anything for which a person pays market value are generally not "gifts."<sup>4</sup> The following are common situations that arise for ROTC cadets concerning gifts, and the application of the JER to the situation:

a. A Cadet is presented a plaque or other presentation item for an achievement, may they accept this item? Generally, a Cadet may accept such an item. A plaque or other presentation item has little intrinsic (commercial) value and is intended solely for presentation and is not considered a gift. If an item has intrinsic value, however, such as a shotgun or expensive watch,

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<sup>1</sup> JER, 1-211

<sup>2</sup> *Id.*, at 1-100

<sup>3</sup> 5 C.F.R. 2635.203(b)

<sup>4</sup> *Id.*

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then it is considered a gift under the ethics rules. For Cadets in an inactive status, there are generally no limitations on the acceptance of such gifts. For Cadets in a Title 10 or other active duty status (such as CULP, CST, CTLT, Green to Gold), the cadets are covered by the JER and the authority to accept such gifts is limited. Seek ethics advice from the SJA in those situations.

b. An ROTC alumni association wants to award a scholarship of \$300 to honor a Cadet for outstanding performance during Cadet Summer Training (CST); may the Cadet accept the scholarship? Generally speaking, individuals participating in CST are Cadets on Title 10 orders, and as such are directly subject to the JER. The \$300 scholarship clearly has cash value, but so long as the process for awarding the scholarship is correct, a Cadet may in most instances accept the scholarship without violating the JER.<sup>5</sup> A Cadet can accept the scholarship from such a source provided that the scholarship “is made as part of an established program of grants or awards that is funded, wholly or in part, to ensure its continuation on a regular basis and under which recipients are selected pursuant to written standards.”<sup>6</sup> Additionally, while DoD employees may assist in identifying candidates, the association awarding the scholarship must retain an active and independent role in the selection process and ultimately choose the award recipient because DoD employees generally may not act for non-federal entities in their official capacity.<sup>7</sup>

4. **WEAR OF THE UNIFORM.** ROTC cadets may wear the issue uniform when assembled for the purpose of military instruction, traveling to and from the school where they are enrolled, visiting a military station for participation in military drills, and at other functions authorized by the Professor of Military Science. A major concern underlying occasions when ROTC cadets may not wear the issued uniform is the concern that the wearing of the uniform might reasonably be interpreted as an endorsement (or expression of an official sanction) of a non-Federal entity, event, product, service, or enterprise by the Army.<sup>8</sup> While there is no easy litmus test here, generally a Cadet may not wear his uniform to an event if a reasonable person would infer their presence in uniform constituted the Army endorsing or associating itself with an event or cause.<sup>9</sup> For example, a Cadet may not ever wear their uniform to a rally on or off campus to support a political candidate’s election campaign because such action is likely to be perceived as an endorsement by the Army. Similarly, a Cadet may not wear his uniform in commercial endorsements, or in situations that may be perceived as an endorsement.

5. **FUNDRAISING.** ROTC cadets often engage in fundraising to support unit social activities (e.g., Dining-In or Military Ball) or extracurricular events (e.g., Army Ten Miler or Bataan Memorial March travel). Some Military Science departments or Cadet organizations receive support from university funding or private donations. For those that fundraise directly, the

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<sup>5</sup> JER, 2-202(b).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, at 2-202(b), 3-202.

<sup>8</sup> JER, Section 3-209.

<sup>9</sup> *Id.*, at 3-209, 6-202(b).

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primary principle for Cadet fundraising efforts is that they are private activities do not create the appearance of official Army endorsement and that conform to campus rules for student organization fundraising.

a. Endorsement. The Army cannot fundraise or appear to engage in fundraising. Thus, cadets may not fundraise in uniform nor may the PMS provide a fundraising letter for cadet organizations using official position, letterhead, or e-mail. Social media fundraising sites such as “Go Fund Me” are subject to the same endorsement prohibitions. Avoid uniforms, Army logos, ranks, or other indicators of official sanction in campus or social media fundraising.

b. Non-Federal Entities. At some programs, alumni organizations, parent organizations or other outside entities raise funds to benefit students in the school’s ROTC department. When raising funds with these entities, it is still important that cadre ensure that no uniforms or Army logos are used that might create the perception of official Army endorsement of the fundraiser.

6. OTHER SITUATIONS. For situations not covered in this memorandum or for more detailed advice, please consult the JER AND an ethics counselor within the Office of the Staff Judge Advocate. Your ethics counselor will conduct a fact specific inquiry that will ensure compliance with applicable regulations; following the advice of your ethics counselor provides a safe harbor opinion that protects the command representative from criticism.