
Office of Government Ethics

97 x 3

Letter to a General Counsel dated March 21, 1997

This is in reply to your letter of March 12, 1997, in which you request a formal written opinion concerning the “ethical implications” of National Guard members or military Reservists, employed by [a] Department, using official time and Government equipment at that agency for National Guard or Reserve duty purposes. Although your request does not meet the criteria for the rendering of a formal advisory opinion, we are pleased to provide the following information to you.

Subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), 5 C.F.R. part 2635, contains provisions addressing “Misuse of Position,” including provisions relating to the proper use of Government property and official time. These provisions incorporate an acknowledgment that there may be circumstances when an employee may properly use Government property or official time for activities other than the performance of the official duties of the employee's position.

Under 5 C.F.R. § 2635.704, an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for purposes other than those for which it is made available to members of the public or those authorized in accordance with law or regulation. The wording of this section was intended to make it clear that authorized purposes may be purposes that do not strictly relate to the performance of official duties. See the analysis of the comments on this section, in the preamble accompanying the publication of the Standards of Conduct as a final rule, at 57 *Fed. Reg.* 35032 (August 7, 1992).

Use of Government property under certain circumstances (*e.g.*, in support of a professional association, pursuant to 5 C.F.R. § 251.202(a)(1)) could be “authorized,” even though not specifically related to performance of an employee’s official duties.

Under 5 C.F.R. § 2635.705, unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use his official time in an honest effort to perform official duties; and shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation. Like section 2635.704, the wording of section 2635.705 was intended to ensure that the provision would not be construed to limit any authority an agency may have to permit its employees to use official time for appropriate purposes (*e.g.*, for certain representational activities on behalf of labor organizations, pursuant to 5 U.S.C. § 7131). *See 57 Fed. Reg.* 35032-35033.

Thus, a threshold question in applying sections 2635.704 and 2635.705 of the Standards of Conduct to an employee’s use of Government property or official time, for activities other than the performance of the official duties of the employee’s position, is whether there is authority for the particular use. In this regard, correspondence you enclosed with your letter to this Office seems to indicate that you have been unable to find such authority for the personnel and other resources of the [Department] or another civilian agency to be used there to perform National Guard or Reserve functions. According to that correspondence, a possible exception might be present where an individual, who as a condition of his Federal civilian employment is required to maintain active membership in a United States Reserve unit or in a National Guard unit, and therefore his civilian position is considered to be “connected” service. A finding that an employee’s use of Government property or official time is not authorized would be necessary before section 2635.704 or section

2635.705 could be invoked against an employee to restrict such use.

Thank you for the opportunity to comment in writing on this matter. We trust that this information will be of assistance.

Sincerely,

Stephen D. Potts
Director