



DEPARTMENT OF THE ARMY
OFFICE OF THE INSPECTOR GENERAL
1700 ARMY PENTAGON
WASHINGTON DC 20310-1700

AUG 25 2010

US ARMY INSPECTOR GENERAL AGENCY
REPORT OF INVESTIGATION
(Case 10-025)

NAME/POSITION: Colonel (COL) John E. Walsh, The Adjutant General (TAG), and Director of Military Affairs, Montana National Guard (MTNG), Fort Harrison, Helena, Montana (MT)

SUBSTANTIATED ALLEGATION AND CONCLUSION: COL Walsh improperly endorsed a non-Federal entity (NFE). The preponderance of credible evidence established that COL Walsh improperly endorsed the National Guard Association of the United States (NGAUS) and Enlisted NGAUS (ENGAUS) by personally instructing senior leaders to make NGAUS/ENGAUS a top priority and by linking membership to MTNG readiness. In an attempt to gain membership, COL Walsh used his Federal government e-mail account and his official title and position to solicit support from senior leaders, subordinate officers and warrant officers to join NGAUS/ENGAUS. The evidence further established that COL Walsh allowed the use of his official title, position, and official photograph to be posted to the MTNG Association Facebook webpage with his endorsement of NGAUS.

SUBSTANTIATED ALLEGATION AND CONCLUSION: COL Walsh improperly used his government position for private gain. The evidence indicated COL Walsh used his Federal and State position as TAG/Director, Department of Military Affairs, to solicit/coerce officers and warrant officers to become members of NGAUS in order to further his election as the NGAUS Vice Chairman, Army. COL Walsh forwarded e-mails to officers and warrant officers who were not members of NGAUS or had not paid their dues in an attempt to increase fully-paid membership by a specified suspense date. The evidence indicated that COL Walsh wanted the increased membership in NGAUS to bolster his candidacy for the August 2010 NGAUS elections.

SUBSTANTIATED ALLEGATION AND CONCLUSION: COL Walsh improperly used government resources. The evidence established that COL Walsh used Federal government resources to facilitate his endorsement of NGAUS as well as to solicit/coerce membership in NGAUS. COL Walsh forwarded e-mails using his Federal government computer to over 177 officers and warrant officers using their official Federal government e-mail addresses to advertise and solicit membership in NGAUS. Additionally, COL Walsh used his executive assistant, a Department of Defense (DOD) employee, to perform administrative/travel duties related to NGAUS.

BACKGROUND:

1. On 29 June 2010, the Department of the Army Inspector General Agency (DAIG) received a complaint from an officer assigned to the Montana Army National Guard (MTARNG), that indicated COL Walsh used his position as Director, Department of Military Affairs, to endorse the NGAUS and used his government e-mail to solicit and pressure MTARNG subordinates to join NGAUS.
2. A preliminary analysis determined that the allegations that COL Walsh improperly endorsed an NFE and improperly used government resources in support of an NFE required further investigation.
3. On 16 July 2010, the Vice Chief of Staff, Army, directed an investigation by DAIG. On 29 July 2010, the VCSA approved expanding the investigation to include the allegation that COL Walsh improperly used his government position for private gain.

SYNOPSIS:

SUBSTANTIATED ALLEGATION: COL Walsh improperly endorsed an NFE.

1. DOD Directive 5500.7-R, Joint Ethics Regulation (JER), Section 1-211, states that a DOD employee is any DOD civilian officer or employee, and included any Army Reserve or National Guard (NG) member while performing official duties or functions under the authority of either Title 10 or Title 32, US Code, or while engaged in any activity related to the performance of such duties or function, including any time the member uses his Reserve or National Guard of the United States title or position, or any authority derived therefrom. Section 1-221 states that an NFE is generally a self-sustaining, non-Federal person or organization, established, operated and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the Federal government. Section 3-209, Endorsement, states that endorsement of an NFE may be neither stated nor implied by DOD employees in their official capacities, and may not be used to suggest official endorsement or preferential treatment of any NFE except those listed in Section 3-210, which includes the Combined Federal Campaign and Army Emergency Relief.
2. Evidence indicated that during a 16-19 February 2010, Strategy Alignment and Development Workshop, COL Walsh stated that membership in professional associations (including NGAUS and ENGAUS) was "a top readiness priority." The workshop was attended by MTNG senior leaders and Joint Forces Headquarters (JFHQ) principal staff members who attended in their official duty status. A workshop outbriefing, dated 21 February 2010, reflected "increase membership in professional associations (e.g., NGAUS and ENGAUS) as the top strategic improvement objective for the MTNG." Witness testimony indicated there was surprise among audience

members about this and questioned how COL Walsh could link membership in a "private organization" to readiness.

3. On 26 May 2010, COL Walsh sent an e-mail to MTARNG officers, warrant officers, and senior leaders using his Federal government computer system with the subject: Request for Assistance/Support. In a six page e-mail COL Walsh stated he was a lifelong member of NGAUS and the Area VI TAG Representative on the NGAUS Board of Directors. He detailed how NGAUS contributed to the readiness of the Army, the NG, and MTNG and included its history and the benefits provided by NGAUS. He stated, "In order for the NG to receive an appropriate level of the Defense Budget, I am asking you for your support by supporting the NGAUS." He "strongly" believed it was the responsibility of leaders to support the association. He asked everyone to become a member, become familiar with the issues, and visit the NGAUS website often. COL Walsh signed the e-mail as "BG (MT), Montana National Guard, The Adjutant General."

4. On 31 May 2010, the MTNG Association (MTNGA) Facebook page included a posting: "BG John Walsh, Adjutant General of Montana, announces bid to run for NGAUS Vice-Chairman. Read how you can help." One of the links on the message was the same announcement as the one contained on COL Walsh's 26 May 2010 e-mail and included COL Walsh's official military photograph. The photograph showed COL Walsh in his class-A uniform and the caption read, "Message from BGEN John Walsh, The Adjutant General of Montana."

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(b)(7)(D) However, the evidence established that in an "Intergovernmental Personnel Act Mobility Program" agreement, COL Walsh served as TAG, MTNG, as a General Schedule (GS) 14 Military Technician. Further, in accordance with the JER, the evidence established that COL Walsh was considered a DOD employee when using his Federal title and position or the authority of that position. Specifically, the JER stated that any Reserve or NG member while performing official duties or while engaged in any activity related to the performance of such duties or function, including any time the member uses his Reserve or National Guard of the United States title or position, or any authority derived therefrom, was considered a DOD employee. The evidence established that COL Walsh routinely used his title and position as TAG to influence membership in professional organizations such as NGAUS and ENGAUS.

8. The preponderance of credible evidence established that COL Walsh endorsed NGAUS and ENGAUS by presenting membership in the organizations to senior leaders at a MTNG/JFHQ training event as a top priority linking membership to MTNG readiness. The evidence established that COL Walsh endorsed NGAUS by sending out e-mails on a Federal government communications system to the leadership of the MTNG, subordinate officers and warrant officers of the MTNG soliciting their support and membership in NGAUS. He signed the messages using his official title and position as TAG, MTNG. He also allowed the use of his official title, position, and photograph to be posted to the MTNGA Facebook webpage with his endorsement of NGAUS. The evidence indicated COL Walsh incorrectly interpreted information contained in the JER, incorrectly determined he was not a DOD employee, and incorrectly believed that NGAUS was not an NFE. The evidence established that he did not consult with his SJA for ethics advice before making the endorsements and

disregarded the advice he received from his SJA. The NGB information paper clearly stated that "NG members should consult their legal advisor to obtain detailed guidance or assistance in understanding these rules." The preponderance of evidence established that COL Walsh improperly endorsed an NFE.

SUBSTANTIATED ALLEGATION: COL Walsh improperly used his government position for private gain.

1. Title 5, Code of Federal Regulations, Section 2635.701, Use of public office for private gain, states an employee shall not use his public office for his own private gain, for the endorsement of any product, service, or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member. An employee shall not use or permit the use of his government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise to himself, or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity. In Section 3-210, Fundraising and Membership Drives, states DOD employees shall not officially endorse or appear to endorse membership drives or fundraising for any NFE. No member of the National Guard may be ordered, coerced, or compelled to participate in or contribute to any fundraising or membership drives.

2. As discussed in the previous allegation, on 26 May 2010, COL Walsh sent an e-mail to MTARNG officers, warrant officers, and senior leaders using his Federal government computer system with the subject: Request for Assistance/Support. He addressed the message to "Fellow Officers" and announced that he sought the nomination of the Vice Chairman, Army, NGAUS and that 53 percent of officers in the MTNG were members of NGAUS, that his "opponent" would bring up the low membership in MT as an issue and that he would appreciate their support by "becoming a member of NGAUS today." COL Walsh signed the e-mail, and in his signature block he used "BG (MT), Montana National Guard, The Adjutant General." COL Walsh's message included a link where members could pay their dues online and an address where they could send a check. In order to be considered a member, membership dues had to be paid no later than 30 June 2010. Evidence indicated COL Walsh sent the e-mail to a group of approximately 177 officers and warrant officers in the MTARNG who were either not members of NGAUS or had not paid their dues.

[IO note: There were 445 officers and warrant officers in the MTNG, 336 Army and 109 Air Guard.]

3. As previously discussed, on 31 May 2010, the MTNGA Facebook page included a posting: "BG John Walsh, Adjutant General of Montana, announces bid to run for

NGAUS Vice-Chairman. Read how you can help." One of the links on the message was the same announcement as the one contained on COL Walsh's 26 May 2010 e-mail and included COL Walsh's official military photograph. The color photograph shows COL Walsh in his class-A uniform and the caption above his photo states "Message from BGEN John Walsh, The Adjutant General of Montana."

4. On 3 June 2010, COL Walsh sent another e-mail on a Federal communications system to approximately 55 MTARNG officers and warrant officers, with the same message as the 26 May 2010 e-mail, subject: Request for Assistance/Support. Evidence in the investigation indicated that a number of officers became members of NGAUS or paid their dues after receiving COL Walsh's e-mail dated 26 May 2010.

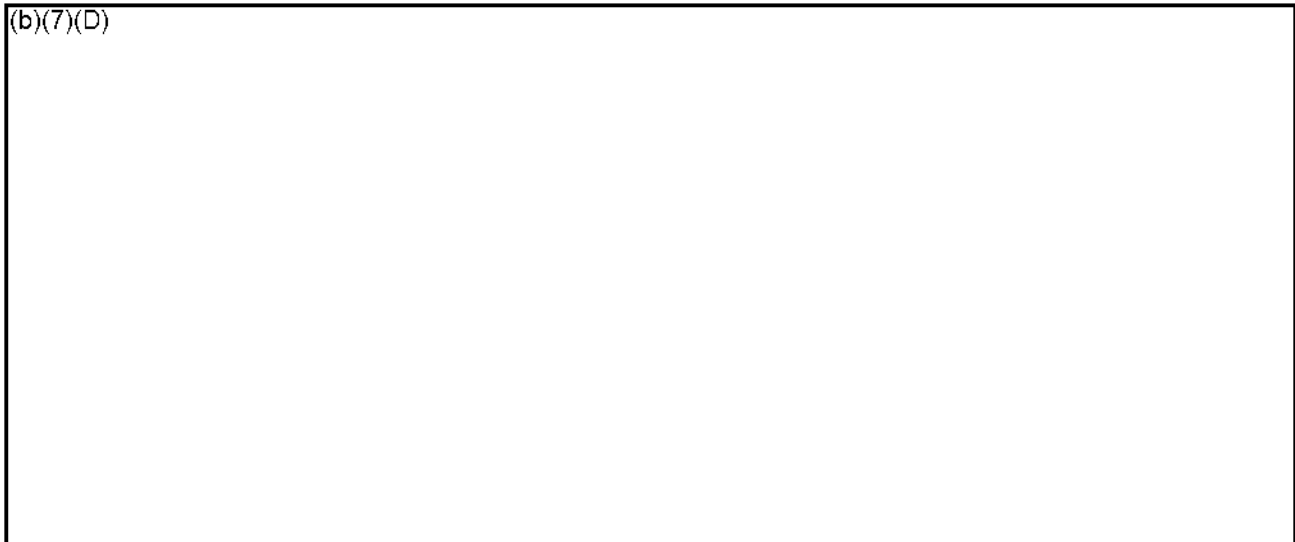
5. On 10 June 2010, (b)(7)(C) sent an e-mail from his own government e-mail address, subject: MTNGA News. His e-mail stated, "Greetings to the officers and warrant officers of the MTNG. Montana's Adjutant General Is Running Again for NGAUS Vice Chair-Army." He stated that "this is the first time in many years that a MTNG officer has been on the ticket for a NGAUS executive level position. He further stated that COL Walsh was currently serving on the NGAUS Board of Directors as the TAG Representative of the Area VI region." The e-mail indicated that the Area VI region included 13 western states and one territory.

[IO note: The NGAUS Conference was scheduled for 19-24 August 2010 at Austin, Texas. The election for NGAUS positions was included in the schedule of events.]

6. On 21 June 2010, (b)(7)(C) sent another e-mail, subject: Last Call: NGAUS Conference in Austin, TX. A MTNG subordinate officer received the same e-mail. On 22 June 2010, a subordinate officer asked (b)(7)(C) to remove him from the MTNGA mailing list. On 23 June 2010, COL Walsh sent an e-mail to that subordinate officer with the subject: MTNG Readiness, which stated "I am making one last effort to ask for your support of the NGAUS for this year. I was disappointed to see that you have decided not to support the NGAUS especially after my previous memo outlining the significant contributions of NGAUS over the past several years...I am concerned that as an officer and leader in our organization you do not support my priorities which is to improve the readiness of the MTNG which NGAUS clearly does." COL Walsh continued that "I would be happy to personally discuss with you the benefits NGAUS brings to the MTNG." COL Walsh signed the e-mail with his signature block as "John E. Walsh, Director, Department of Military Affairs." One of the subordinate officers testified that COL Walsh's message felt "more like coercion" and the fact that senior members of the command were talking about him in other e-mails felt "very threatening." Evidence indicated during this timeframe, several other officers received the same individual e-mail message from COL Walsh. In an e-mail dated 29 June 2010, a subordinate officer stated that "I find it a little intimidating and fear that I am being bullied (read: Strongly Encouraged) into joining."

7. On 30 June 2010, membership statistics for the MTNGA reflected that 68 percent, or 301 of 445 officers and warrant officers, were paid up for NGAUS.

(b)(7)(D)



9. The evidence indicated COL Walsh used his Federal and State position as TAG/Director of Military Affairs to make NGAUS (Guard Associations) a top readiness priority and to solicit/coerce officers and warrant officers to become members of NGAUS in order to further his election as the NGAUS Vice Chairman, Army. COL Walsh's direct e-mails to individual officers and warrant officers who were either not members of NGAUS or had not paid their dues in the MTNG appeared coercive. Evidence indicated COL Walsh sent these direct e-mails to officers because they had not signed up for NGAUS and were not going to meet the 30 June 2010 deadline. Evidence indicated the NGAUS Conference in August 2010 will include elections for NGAUS senior level positions and COL Walsh wanted to increase MTNG membership in NGAUS to bolster his candidacy for NGAUS. The direct result of COL Walsh's efforts, including reaching down through the chain of command to individual officers and warrant officers, was to increase membership of the MTNG from 53 to 68 percent. Evidence also indicated COL Walsh endorsed NGAUS, an NFE, by promoting it in his e-mail communications to members of the MTNG and by placing his announcement on Facebook. Evidence also indicated COL Walsh used Federal government resources to facilitate his support of NGAUS as well as to solicit/coerce membership in NGAUS.

10. The preponderance of evidence established that COL Walsh used his government position for private gain.

SUBSTANTIATED ALLEGATION: COL Walsh improperly used government resources.

1. DODD 5500.7-R, JER, Section 2-301, Use of Federal Government Resources, states Federal government communication systems and equipment shall be for official use and authorized purposes only. Do not use Federal communications systems for uses such as unofficial advertising or soliciting.
2. As discussed in the previous allegations, COL Walsh repeatedly used his Federal government communications system to endorse and solicit membership in NGAUS, an NFE.
3. The evidence indicated COL Walsh's executive assistant performed duties for him in making arrangements and sending correspondence for his State functions as well as for his attendance at NGAUS related events, such as the upcoming NGAUS Conference on 19-24 August 2010.

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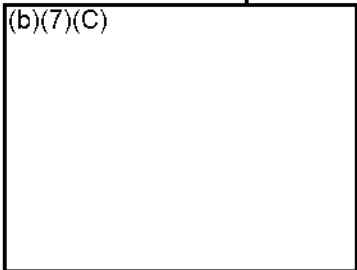
6. The evidence established that COL Walsh used Federal government resources to facilitate his endorsement of NGAUS as well as to solicit/coerce membership in NGAUS. COL Walsh sent out e-mails using his Federal government computer to over 177 officers and warrant officers using their official Federal government e-mail addresses to advertise and solicit membership to NGAUS. Additionally, COL Walsh used his executive assistant, a DOD employee, to perform duties related to administrative matters and travel related to NGAUS. The evidence indicated there was no "dual-use" agreement whereby COL Walsh could use his Federal government computer system to perform State and Federal functions.

7. The preponderance of evidence established that COL Walsh improperly used government resources.

RECOMMENDATIONS:

1. This report be approved and the case closed.
2. Refer this report to the Office of The Judge Advocate General.

(b)(7)(C)



CONCUR:



WILLIAM H. MCCOY
Major General, USA
Acting The Inspector General

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APPROVED:



PETER W. CHIARELLI
General, U.S. Army
Vice Chief of Staff

Encls