

National Aeronautics and
Space Administration



Office of Inspector General
Washington, DC 20546-0001

January 29, 2009

TO: General Counsel, Office of the General Counsel

FROM: Assistant Inspector General for Auditing

SUBJECT: Required Registration Fee for the 2008 NASA General Counsel
Conference (Report No. IG-09-010; Assignment No. S-08-023-00)

We recommend that the NASA Office of the General Counsel (OGC) cease the practice of requiring employees, as a condition of attending a Government activity, to pay for non-reimbursable expenses.

The Office of Inspector General received an anonymous complaint alleging that the NASA OGC was requiring that employees pay a non-reimbursable fee to attend the 2008 NASA General Counsel Conference to pay for a hospitality suite and a reception the night before the conference began. The facts are essentially not at issue; the allegation raised an issue as to whether the methodology employed by the OGC to pay for certain activities associated with its conference was appropriate.

As will be discussed below, we believe OGC's requirement for employees attending the OGC annual conference to pay fees to pay for personal expenses was inconsistent with the scope of authority of Government officers and was inappropriate.

The OGC has an annual conference for its attorneys. All attorneys are invited and attendance by attorneys is customary but not expressly required. These conferences occur in different places around the country, with the 2008 conference taking place in Washington, D.C. In connection with the 2008 conference, the OGC imposed a \$125 mandatory fee on each conference attendee to pay for certain expenses that were not going to be paid for by the Government and, therefore, would not be reimbursable to the OGC employees. Some of these expenses were for certain activities that the Government could not appropriately pay for, such as entertainment, and some of these expenses were for activities that the Government could pay for but elected, at its discretion, not to. If an employee declined to pay the fee, the employee was not welcome at the conference.

The conference-related events can be characterized as either personal activities or governmental activities. They are not both at the same time. If an event is a governmental activity, attendance can be made mandatory and reimbursable expenses authorized in accordance with applicable law. If events are personal in nature, attendance cannot be mandated by a Government official nor can payment for the event be required by a Government employee acting in an official capacity. Here, OGC was requiring payment for personal activities; this practice was outside the scope of the authority of the

OGC. Of course, were a characterization made that any of these events were governmental in nature rather than personal, requiring money from employees to pay for governmental activities would be an augmentation of appropriation.*

Reference to Title 5, Code of Federal Regulations, Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," is instructive. Section 702(a), "Inducement or coercion of benefits," prohibits a Federal employee from using "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 [others] with whom the employee is affiliated in a nongovernmental capacity." While the meaning of the provision can, in this context, be argued a number of different ways, the principle is relevant: governmental authority is not to be used to advance personal interests. OGC made a determination that the events for which it was requiring payment were nongovernmental in nature, and using its authority to require payment for these personal activities is in conflict with the principle. As a matter of administrative convenience to conference attendees, we have no objection to the solicitation of voluntary contributions to conference-related activities that are personal in nature. This type of solicitation occurs frequently in Government, such as with retirement and holiday parties.

We respectfully request a response to this memorandum within 30 days. I am available for questions regarding this matter at 202-358-2572, or you can contact Mr. Daniel Devlin, Director, Human Capital and Institutional Management Directorate, at 202-358-7249.

signed

Evelyn R. Klemstine

* A member of the OGC staff stated that the OGC had limited conference funds and wanted to maximize the use of Government funds for paying performance awards. One could reasonably argue that when a Government official acting in his official capacity requires the payment of personal funds to advance an activity that could be paid for with Government funds, the receipt of funds for the activity constitutes an augmentation of appropriation. Because the requirement to pay was a precondition to attending the Government activity, there is no doubt that the requirement was official.