



March 18, 2004

Theodore Gloukhoff
Designated Agency Ethics Official
American Battle Monuments Commission
Courthouse Plaza II, Suite 500
2300 Clarendon Boulevard
Arlington, VA 22201

Dear Mr Gloukhoff

The Office of Government Ethics (OGE) recently completed its review of the ethics program at the American Battle Monuments Commission (ABMC). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated ABMC's systems and procedures for ensuring that ethics violations do not occur. This review was conducted in February 2004.

HIGHLIGHTS

While much of ABMC's ethics program is sound and appropriate for its size and mission, some areas need improvement. During our last review in 1997, we made no formal recommendations, but did make several suggestions we expected you to implement. We were disappointed to find that you had not acted on these suggestions. For instance, ABMC continues to publish its residual standards of conduct at 36 C.F.R. part 400. Our current review also found that the annual ethics training program is lacking in many areas. ABMC's prompt and serious response to an employee's ethical violation leaves no doubt, however, that ABMC takes ethics seriously. The financial disclosure system is also well managed, as evidenced by the timely submission and review of reports.

In order to strengthen your program, we recommend that you: (1) revoke your residual standards of conduct, (2) provide verbal annual ethics training to covered regular employees in accordance with 5 C.F.R. §§ 2638.704 and 2638.705, and (3) provide ethics training to ABMC's commissioners annually.

PROGRAM STRUCTURE

ABMC is headed by 11 Presidentially-appointed commissioners who serve as special Government employees (SGE). Supporting them are approximately 390 full-time employees, only

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18 of whom are located at headquarters. The remaining are mostly foreign nationals who maintain American military cemeteries and monuments located in the European, Mediterranean, and Latin American/Pacific regions ¹

As ABMC's Director of Personnel and Administration, you serve as the Designated Agency Ethics Official (DAEO), devoting about five percent of your time to administering the ethics program. The Director of Finance serves in a back-up capacity as the Alternate DAEO. Additionally, the Director of the Mediterranean Region and the Deputy Director of the European Region are responsible for providing ethics training to employees in their respective regions ²

AGENCY-SPECIFIC ETHICS RULES

ABMC must revoke its residual standards of conduct regulation at 36 C.F.R. part 400. At the time of our 1997 review of the ethics program, we suggested you rescind this part of the ABMC regulation. Although you plan to revoke these residual standards soon, you have not yet done so. Your failure to revoke these outdated standards threatens to point employees and others to incorrect and incomplete ethics rules.

EDUCATION AND TRAINING

We found that your initial ethics orientation program is adequate, but that you are not providing verbal annual ethics training as required. ABMC does exceed our requirements, however, in that many non-filers receive annual ethics training.

Initial Ethics Orientation

In 2003, all four new headquarters ABMC employees received initial ethics orientation. You personally identify any new employees and give them a copy of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). All employees must certify that they have received, read, and understood the Standards.

In the regions, personnel offices are responsible for providing initial ethics orientation to U.S. national employees stationed there. As for foreign nationals, during our 1997 review we advised you that if they are considered Federal employees, they need to be given an initial ethics orientation. You informed us that they are now designated as Federal employees and receive their initial ethics orientation through the Department of State.

¹The former two regions are overseen by directors. However, the superintendents of ABMC cemeteries in the Latin American/Pacific Region report directly to headquarters.

²For report writing ease, they will henceforth be referred to as deputy ethics officials.

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Annual Ethics Training

In contrast to ABMC's initial ethics orientation program, its annual ethics training program does not meet OGE's requirements. You failed to provide verbal training annually to public filers and at least every third year to regular employees at headquarters who are confidential filers. However, you did exceed requirements by providing written training to many uncovered employees. Furthermore, we note that while you did not revise your annual ethics training plan despite our suggestion to do so during the 1997 review, you provided us with a revised plan for 2004 that meets the requirements of 5 C F R § 2638 706.

For the past couple of years, you have circulated the Standards to all regular employees at headquarters and required them to sign that they have read the booklet. While we admire your determination to provide ethics training to all employees, regardless of whether they are required to receive it under OGE's regulations, we remind you that ABMC's three public filers must receive verbal ethics training annually. Additionally, although you have made a determination in accordance with 5 C F R § 2638 705(d)(1) that providing verbal ethics training to your three confidential filers located overseas is impractical, no such exception applies to the remaining three confidential filers located at headquarters. They must receive verbal ethics training at least every third year. You agreed with our suggestion to use computer-based training modules on OGE's Web site to satisfy the verbal training requirement.

In the regions, ABMC exceeds OGE's training requirements. While you personally provide employees in the Latin American/Pacific region with ethics training, you rely on your two deputy ethics officials to provide training to employees in their respective regions.³ They assured you that they had conducted annual ethics training in 2003. Furthermore, the three filers located overseas attend a cemetery superintendents conference every other year, at which annual ethics training is usually conducted by an ethics official from the Department of Defense.

SPECIAL GOVERNMENT EMPLOYEES

Although you have neglected to train ABMC's SGEs, you generally administer the financial disclosure system for them well. The only SGEs are the 11 commissioners, who meet semiannually to establish ABMC's operating policy and inspect its facilities.

You had considered excluding the commissioners from filing confidential financial disclosure reports, but decided that potential conflicts of interest, though remote, do exist, therefore, it would be in the best interest of ABMC for them to continue to file. We examined all of the confidential financial disclosure reports due by commissioners in November 2003 and found that they generally had been filed, reviewed, and certified timely and contained no substantive

³Only one other regional employee besides the two deputy ethics officials is required to receive annual ethics training under OGE's training regulation, but your goal is to train all U S national employees. You also encourage foreign national employees to complete annual training.

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deficiencies. However, due to an administrative oversight, the one commissioner who was appointed in March 2003, long after all the other commissioners, did not file a new entrant report until November even though he participated in the commission's April meeting.

Furthermore, you did not provide initial ethics orientation to that new commissioner, nor have you provided any ethics training to commissioners for several years. You advised us that you considered your distribution of OGE's written instructions accompanying the OGE Form 450 as fulfilling the annual ethics training requirement for the commissioners. As SGEs the commissioners do not need to receive verbal training; however, these instructions do not meet the content requirement at 5 C F R § 2638 705(b) for written annual ethics training. To satisfy the training requirement, you have agreed to distribute materials such as OGE's February 15, 2000 DAEOgram (DO-00-003) on ethics requirements applicable to SGEs.

ENFORCEMENT

ABMC appears to place high value on maintaining an ethical culture, promptly taking disciplinary action in response to any ethical violations. In the absence of an inspector general, you perform all such duties. Although you have never referred a conflict of interest violation to the Department of Justice, you stated that if the need arose you would contact your OGE Desk Officer.

In 2003 you investigated a violation of the Standards by an employee in one of your regions. During your investigation, conducted immediately after receiving the allegation, the employee admitted to knowingly misusing Government property. Shortly thereafter you proposed removing the employee and, according to you, he retired as a result. We applaud your swift response.

FINANCIAL DISCLOSURE SYSTEMS

You effectively manage ABMC's financial disclosure system in accordance with your written procedures. As the Director of Personnel and Administration, you are well positioned to create each year's master list of filers. We do remind you, however, to destroy all public and confidential financial disclosure reports after six years, pursuant to 5 C F R §§ 2634 603(g)(1) and 2634 604(a), respectively.

We examined all financial disclosure reports required to be filed by regular employees in 2003, no new entrant or termination reports were due during this time. All three public reports and six confidential reports were filed, reviewed, and certified timely and your report was timely forwarded to OGE. We found a few technical deficiencies, but no conflicts of interest. According to you, there is little potential for conflicts and you would be knowledgeable of any potential conflicts due to the small size of the agency. We also note that no ABMC employee has any ethics agreements.

ADVICE AND COUNSELING

We were unable to evaluate your advice and counseling program, since you dispense all advice (only two or three opinions a year) verbally and do not maintain a written record. OGE

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strongly encourages ethics officials at all agencies to keep a written record of advice when appropriate

There is little turnover at ABMC, and consequently you have no organized post-employment counseling program. However, you do keep employees aware of any restrictions that would affect them. For instance, you recently informed the Executive Director that due to changes in the Senior Executive Service compensation system, he would now be covered by the one year cooling off period under 18 U S C § 207

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

ABMC has an unwritten policy of never accepting payments for travel-related expenses from non-Federal sources under 31 U S C § 1353. Nonetheless, as required, ABMC continues to submit negative semiannual reports.

RECOMMENDATIONS

We recommend that you

- 1 Revoke your residual standards of conduct at 36 C F R part 400
- 2 Provide verbal annual ethics training to covered regular employees in accordance with 5 C F R §§ 2638 704 and 2638 705
- 3 Provide ethics training to ABMC's commissioners annually in accordance with 5 C F R § 2638 705

In closing, I wish to thank you for all of your efforts on behalf on the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendations in our report. A follow-up review will be scheduled approximately six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C F R part 2638, it is important that you take actions to correct these deficiencies in a timely manner. Please contact Christelle Klovers at 202-482-9255, if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs