

## Commanders' Coins: Worth Their Weight in Gold?

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*"A medal glitters but it casts a shadow."*<sup>1</sup>  
—Winston S. Churchill

### Introduction

Army commanders have become increasingly enamored with the presentation of commanders' coins. Typical commanders' coins, which are about the size of half dollar coins, are often custom minted and emblazoned with the unit insignia.<sup>2</sup> Commanders recognize that these inexpensive coins are powerful and versatile tools which can instill unit pride, enhance esprit de corps, and reward outstanding performance. To show appreciation for a job well done, commanders give these tokens to individual soldiers, civilian employees, and entire units. Coins are equally effective in building community relations.<sup>3</sup> The gift of a coin can build rapport, say thank you, and buy goodwill for the command and the commander. Surely these tokens are well worth their small price! Of course, the commander may use

government funds to purchase such valuable items—or can he?

Few would question the inherent value of the commander's coin as a management tool. The propriety of purchasing and distributing commanders' coins, however, presents an interesting fiscal law issue. The crux of the issue is whether commanders' coins are the "object" of a congressional appropriation of funds. In other words, is an expenditure of appropriated funds (APFs) for coins made for a proper purpose?<sup>4</sup> If not, are non-appropriated funds (NAFs) available for the purchase of these coins? The answers are neither simple nor clear cut and may depend on the purpose of giving the coin, the status of the recipient, and the proposed source of funding.

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1. TREVOR ROYLE, A DICTIONARY OF MILITARY QUOTATIONS 158 (1st Am. ed. 1989).

2. Suitable unit coins may also be available without special orders. Museum foundations frequently stock "unit coins" for resale. *See* U.S. DEP'T OF ARMY, REG. 870-20, MUSEUMS & HISTORICAL ARTIFACTS, para. 3-10 (9 Jan. 1987). Coins, medallions, and other commemorative items may also be sold in exchanges. U.S. DEP'T OF ARMY, REG. 600-20, ARMY COMMAND POLICY, app. C, para. c2(8) (15 Dec. 1992).

3. In fact, the use of commanders' coins for community relations purposes dates back to the nation's infancy. When Meriwether Lewis embarked on his historic exploration to the Pacific Coast in 1803, he carried with him Jefferson Peace Medals. These were essentially the equivalent of commanders' coins. They were embossed with the head and shoulders of President Thomas Jefferson. These coins were distributed to Indian chiefs encountered en route, for the purpose of establishing good relations between Native American tribes and the United States government. *See* STEPHEN E. AMBROSE, UNDAUNTED COURAGE: MERIWETHER LEWIS, THOMAS JEFFERSON, AND THE OPENING OF THE AMERICAN WEST 158 (1997).

4. Restrictions on the types of items or services which may be purchased with APFs are found in the Constitution, article 1, section 9, clause 7; the "Purpose Statute," 31 U.S.C.A. § 1301a (West 1997); and the annual authorization and appropriations acts. *See* UNITED STATES GENERAL ACCOUNTING OFFICE, 1 PRINCIPLES OF FEDERAL APPROPRIATIONS LAW Ch. 4 (2d ed. 1991) [hereinafter FEDERAL APPROPRIATIONS LAW] (discussing the restrictions on items which may be purchased with APFs).

This article outlines a comprehensive approach to the vexing fiscal issues related to commanders' coins<sup>5</sup> and examines when and under what circumstances APFs and NAFs may be used for the purchase of coins for awards or tokens of goodwill. It also advises practitioners that, under certain circumstances, APFs, NAFs, and official representation funds<sup>6</sup> may be used for the purchase of commanders' coins.

Coins and similar devices may always be privately funded. Private funding for coins might come from an "informal fund," a formally organized private organization,<sup>7</sup> or the commander's personal funds. Although commanders may not solicit donations of coins,<sup>8</sup> they may encourage the donation of coins to the command in response to an inquiry by a private entity wishing to help the soldiers. Donated or privately purchased coins may be given to soldiers without running afoul of

any limitations on gift giving. Items of little intrinsic value which are intended for presentation are specifically excluded from the Joint Ethics Regulation's definition of gifts<sup>9</sup> and, as such, are not regulated. There are, therefore, virtually no restrictions on the use of coins purchased through private funding.

## The Purpose Question

The "Purpose Statute" restricts the use of appropriations to the "objects for which the appropriations were made."<sup>10</sup> The rule is simple, but its application can be tricky, especially when the question concerns the use of a lump sum appropriation such as the annual appropriation for Operation and Maintenance of the Army.<sup>11</sup> Lump sum appropriations contain little, if any, congressional guidance on appropriate

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5. As a starting point for research in this area, the author consulted a memorandum on the subject by Colonel James O. Smyser. Memorandum, Staff Judge Advocate, Training and Doctrine Command (TRADOC), to TRADOC Installation Staff Judge Advocates, subject: Medallions (4 Oct. 1991). The memorandum has been posted on the Legal Automation Army-Wide System Bulletin Board Service and has been a valuable research tool for lawyers in the field for many years. This article is intended to update and expand upon that research. The author also acknowledges the invaluable assistance provided by Lieutenant Colonel Annamary Sullivan, Professor and Chair, Administrative and Civil Law Department, the Judge Advocate General's School, United States Army, who assisted with the initial research and who provided helpful editing advice.

6. See U.S. DEPT OF ARMY, REG. 37-47, REPRESENTATION FUNDS OF THE SECRETARY OF THE ARMY (31 May 1996) [hereinafter AR 37-47] (governing official representation funds). These funds come from the portion of the Operation and Maintenance, Army, appropriation that is earmarked for emergencies and extraordinary expenses. See *infra* notes 66-77 and accompanying text.

7. See generally U.S. DEPT OF ARMY, REG. 210-1, PRIVATE ORGANIZATIONS ON DEPARTMENT OF THE ARMY INSTALLATIONS AND OFFICIAL PARTICIPATION IN PRIVATE ORGANIZATIONS (14 Sept. 1990).

8. U.S. DEPT OF ARMY, REG. 1-101, GIFTS FOR DISTRIBUTION TO INDIVIDUALS, para. 7a(5) (1 May 1981).

9. See Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. pt. 2635.203(b)(2), as contained in U.S. DEPT OF DEFENSE, REG. 5500.7-R, JOINT ETHICS REGULATION (Aug. 30, 1993).

10. 31 U.S.C.A. § 1301(a) (West 1997).

11. In Fiscal Year 1997, this appropriation contained the following language: For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed \$11,437,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes; \$17,519,340,000 and, in addition, \$50,000,000 shall be derived by transfer from the National Defense Stockpile Transaction Fund: *Provided*, That during the current fiscal year and hereafter, funds appropriated under this paragraph may be made available to the Department of the Interior to support the Memorial Day and Fourth of July ceremonies and activities in the National Capital Region: *Provided further*, That of the funds appropriated in this paragraph, not less than \$300,000,000 shall be made available only for conventional ammunition care and maintenance. Department of Defense Appropriations Act, Title II, Operation and Maintenance, Pub. L. No. 104-208, 110 Stat. 3009-73 (1996). As the reader can see, the appropriations language contains very little specific guidance.

expenditures of funds; they leave much to the discretion of agency officials. Lacking specific congressional guidance, lawyers must look to the decisions of the General Accounting Office (GAO) to gain insight into the proper use of appropriated funds.<sup>12</sup> As an additional source for guidance when questions arise about the propriety of making a particular payment of appropriated funds, the GAO will render an advance decision.<sup>13</sup> These advance decisions compose much of the GAO case law.

As a starting point in an analysis of commanders' coins, one should ask, what is the purpose of the coin? Is it a gift, a memento, a souvenir, a token of appreciation, or an award? The answer is important, because it will determine whether the purchase can be justified as a necessary expense of the agency.<sup>14</sup> The GAO has deemed the giving of a gift, memento, souvenir, or token of appreciation to be a personal expense. As such, these items

cannot be purchased with appropriated funds, absent statutory authority.<sup>15</sup>

Different rules apply to NAFs. Statutory penalties<sup>16</sup> bolster regulatory provisions that describe in broad terms the authorized and unauthorized uses of NAFs.<sup>17</sup> Nonappropriated fund managers, however, are not entitled to GAO advance decisions, so there is no case law specifically applicable to the use of NAFs. Practitioners might find some interpretations in GAO audit reports which deal with NAF activities.<sup>18</sup> Although the use of NAFs for personal gifts is not specifically addressed by regulation,<sup>19</sup> NAFs may not be used "for any purpose that cannot withstand the test of public scrutiny or which could be deemed a waste of soldiers' dollars."<sup>20</sup> Furthermore, NAFs "are used only to pay for, or [to] defray the cost of, a wide range of [Morale, Welfare, and Recreation] activities . . . ."<sup>21</sup> In light of this provision, GAO case law which forbids the use of APFs for personal

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12. For a discussion of the history of these decisions, also referred to as Comptroller General decisions, and the statutory basis for their issuance, see *FEDERAL APPROPRIATIONS LAW*, *supra* note 4, ch. 1.

13. 31 U.S.C.A. § 3529 (West Supp. 1997). A request for an advance decision must be made by a disbursing official, a certifying official, or an agency head. To date, the commander's coin issue has not been presented to the GAO.

14. The GAO has set out a three-part test to determine whether an expense is for a proper purpose. Is there a specific statutory basis for the expenditure, or is the expenditure necessary and incident to proper execution of the general purpose of the appropriation? Is the expenditure prohibited by law? Is the expenditure otherwise provided for? See Secretary of the Interior, B-120676, 34 Comp. Gen. 195 (Oct. 25, 1954).

15. See, e.g., Decision of the Comptroller General, B-151668, 1979 U.S. Comp. Gen. LEXIS 2349 (June 30, 1979) (holding that the Department of Agriculture's proposed distribution of paperweights, leather products, and convenience foods to foreign visitors and official dignitaries to publicize the contributions of agricultural research was improper and that the items were personal gifts); Decision of the Comptroller General, B-195896, 1979 U.S. Comp. Gen. LEXIS 1993 (Oct. 22, 1979) (holding that photographs given to participants in ceremony to dedicate the Klondike Visitor's Center were not a necessary expense); U.S. Army Criminal Investigation Command (USACIDC) Appropriated Funds for Purchase of Marble Paperweights and Walnut Plaques, B-184306, 55 Comp. Gen. 346 (Oct. 12, 1975) (disapproving gifts given to governmental officials and others to facilitate good working relations and to foster goodwill).

16. See 10 U.S.C.A. § 2783 (West Supp. 1997).

17. U.S. DEPT OF ARMY, REG. 215-1, NONAPPROPRIATED FUND INSTRUMENTALITIES AND MORALE, WELFARE, AND RECREATION ACTIVITIES, paras. 4-6, 4-7 (29 Sept. 1995) [hereinafter AR 215-1].

18. The GAO has statutory authority to audit nonappropriated fund activities. See 31 U.S.C.A. § 3525.

19. Distributions to charities, however, are specifically prohibited. This prohibition extends to collecting or disbursing "donations of a private or personal nature." AR 215-1, *supra* note 17, para. 4-7d.

20. *Id.* para. 4-7a.

21. *Id.* para. 4-6.

gifts provides good guidance, although it does not provide binding authority concerning NAF spending.

### Awards for Outstanding Performance

How can the popular commander's coin be distinguished from an unauthorized personal gift? Most commanders insist that their coins are awards that are given on-the-spot to out-standing duty performers. To bolster that interpretation, some coins are inscribed with words such as "for excellence," or "in recognition for outstanding performance." Along with the coin, some commanders give a certificate which describes the recipient's noteworthy achievement. Although the GAO has not dealt directly with the issue of commanders' coins as awards, it has addressed other items proposed as "awards" for soldiers, federal civilian employees, and others. These opinions provide some insight into how the GAO, if asked, would likely approach the question of coins that are purchased with APFs.

In evaluating the propriety of an award, the GAO first asks whether the award is authorized by statute.<sup>22</sup> If a statutory basis exists, the GAO next asks whether the proposed award complies with implementing regulations.<sup>23</sup> Because the analysis rests on the interpretation of both statutes and regulations, the answer could differ depending upon whether the proposed recipient is a civilian employee, a military service member, or an unaffiliated person.<sup>24</sup> Regulatory differences between branches of the service could also lead to different results.<sup>25</sup> As applied to the question of commanders' coins, the coins must comply with both statute and regulation to qualify as an award.

### Awards to Soldiers

A strong argument can be made that Army commanders may use APFs to purchase coins as awards for soldiers.<sup>26</sup> The Army has a seemingly endless array of awards programs which might conceivably authorize the presentation of a coin as an award.<sup>27</sup> In the typical scenario,

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22. Many awards are based on specific statutes. For example, the Legion of Merit is authorized by 10 U.S.C.A. § 1122 (West 1997). Others were established by executive orders. For example, the Meritorious Service Medal is authorized by Exec. Order No. 11,448, 46 Fed. Reg. 35,251 (1969). These executive orders justify the awards because they are an exercise of the President's authority as Commander-in-Chief. Although the GAO often discusses the statutory bases (or lack thereof) when addressing the propriety of awards, an argument could be made that the giving of awards is an inherent part of command authority.

23. See Decision of the Comptroller General, B-184306, 1980 U.S. Comp. Gen. LEXIS 2597 (Aug. 27, 1980) (holding that DOD Instruction 5120.16, which implements 10 U.S.C.A. § 1124 (West 1976), allows the awarding of a desk medallion to military personnel).

24. By "unaffiliated person," the author is referring to a person who is not a soldier and is not employed by the federal government, as well as to a non-federal governmental entity.

25. For example, absent a statutory basis, no cash award may be given to military members of the Coast Guard for superior performance, even though a statute authorized cash awards for civilian employees. Coast Guard—Cash Incentive Awards, B-226928, 68 Comp. Gen. 343 (Mar. 24, 1989).

26. This assertion is the opinion of the author. It is not the official opinion of the Department of the Army. As the GAO has never ruled on this issue, it is possible that a subsequent GAO opinion could settle this question. The case most closely on point is the *Decision of the Comptroller General*, 1980 U.S. Comp. Gen. LEXIS 2597. That case, however, referred to a Navy regulation and to a DOD instruction which is no longer in effect.

27. Besides the award programs discussed in this article, there are a variety of other award programs. See, e.g., U.S. DEP'T OF ARMY, REG. 385-10, THE ARMY SAFETY PROGRAM (28 May 1988); U.S. DEP'T OF ARMY, REG. 672-73, ARMOR LEADERSHIP AWARD (1 Nov. 1980); U.S. DEP'T OF ARMY, REG. 672-201, THE SECRETARY OF THE ARMY RECRUITING/RETENTION/TRANSITION NONCOMMISSIONED OFFICER (NCO) OF THE YEAR AWARDS (14 Feb. 1992); U.S. DEP'T OF ARMY, REG. 672-304, THE ARMY RESEARCH AND DEVELOPMENT ACHIEVEMENT AWARDS (20 Apr. 1977); U.S. DEP'T OF ARMY, REG. 672-305, THE ARMY RESEARCH

however, the commander gives the coin to recognize a soldier's outstanding duty performance or special achievement. In such situations, the presentation of the coin appears to fall within the authority of the Secretary of Defense under 10 U.S.C. § 1125. This is the only statute that is potentially applicable to the presentation of a coin as a performance award for soldiers. That statute grants the Secretary of Defense the authority to: "award medals, trophies, badges, and similar devices to members, units, or agencies of an armed force . . . for excellence in accomplishments or competitions related to that Armed Force, and . . . [to] provide badges or buttons in recognition of special service, good conduct, and discharge under conditions other than dishonorable."<sup>28</sup>

*Army Regulation 600-8-22* 29 implements the statute. In addition to its provisions concerning individual decorations,<sup>30</sup> certificates of achievement, and memoranda or letters of commendation

and appreciation,<sup>31</sup> the regulation contains a chapter entitled "Trophies and Similar Devices Awarded in Recognition of Accomplishments."<sup>32</sup> This chapter includes the following language: "[t]rophies and similar devices<sup>33</sup> may be presented to military members, units, or Department of the Army agencies for excellence in *accomplishments or competitions* which clearly contribute to the increased effectiveness or efficiency of the military unit, that is, tank gunnery, weapons competition, and military aerial competition."<sup>34</sup> The award guidelines that are set out in the chapter deal primarily with contests and events which are "announced officially"<sup>35</sup> and are "of a continuing nature."<sup>36</sup> "However, awards *may be made on a one-time basis where the achievement is unique and clearly contributes to increased effectiveness.*"<sup>37</sup> These regulatory provisions support the award to a soldier of a typical commander's coin.<sup>38</sup>

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AND DEVELOPMENT LABORATORY AWARDS (21 Aug. 1975). There is also authority in AR 215-1 to give awards for athletic competitions and for Soldier of the Year. See AR 215-1, *supra* note 17. These award programs are beyond the scope of this article.

28. 10 U.S.C.A. § 1125 (West 1997).

29. U.S. DEPT OF ARMY, REG. 600-8-22, MILITARY AWARDS (25 Feb. 1995) [hereinafter AR 600-8-22].

30. *Id.* ch. 3.

31. *Id.* ch. 10, §§ III, IV.

32. *Id.* ch. 11.

33. The implementing Army regulation defines "trophies" expansively. A coin could be considered to fall within the definition of "trophy," which states, "[t]rophies include, but will not be limited to, loving cups, plaques, badges, buttons, and similar objects which represent the type of achievement or contest." *Id.* para. 11-3.

34. *Id.* para. 11-1a (emphasis added).

35. *Id.* para. 11-2a.

36. *Id.* para. 11-2b.

37. *Id.* (emphasis added).

38. It is reasonable to question whether the language in AR 600-8-22, paragraphs 11-1 and 11-2, is sufficiently broad to support the giving of coins as on-the-spot awards. Nevertheless, in taking the position that the provisions should be read so broadly, the author has considered the broad language of the underlying statute and the applicable DOD Directive, which states:

Having concluded that there is statutory and regulatory authority to give a coin to a soldier as an award and to purchase it with appropriated funds, what, if any, are the limits of that authority? Commanders must avoid the presentation of duplicate awards for the same act or achievement.<sup>39</sup> The cost of the coin must not exceed \$75 for an individual award or \$250 for a team award.<sup>40</sup> Finally, the purchase of coins for distribution as awards must be approved by the major command (MACOM) commander or the head of the principal Department of the Army agency.<sup>41</sup>

In addition to regulatory restrictions, thorny questions remain. How does the commander draw the distinction between a token of appreciation and an award as he strolls among his troops with a pocket full of coins? What constitutes an achievement

which is “unique” and which “clearly contributes?” Finally, how many coins can be purchased and distributed without undue risk of allegations of fiscal abuse in a time of shrinking budgets? These practical problems create real challenges. This is an area where the potential for abuse and misinterpretation of the rules is high. Common sense and good judgment must prevail.

What is the difference between a gift and an award? There are numerous GAO cases which condemn proposals to distribute items to individuals. These cases repeatedly emphasize that APFs cannot be used for personal gifts. In determining whether the proposed item is a personal gift, the GAO looks not at the nature of the item to be presented,<sup>42</sup> but rather at the agency’s reason for giving it.<sup>43</sup> To steer clear of

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Accomplishments and contributions recognized under this Directive, including intramural sports and athletic competitions, officially shall be established and announced, and generally shall be of a continuing nature, *although awards may be made on a one-time basis where the accomplishment is as follows:*

- a. Unique.
- b. Clearly contributes to increased effectiveness or efficiency.
- c. Not covered in implementing instructions.

U.S. DEPT OF DEFENSE, DIRECTIVE 1348.19, AWARD OF TROPHIES AND SIMILAR DEVICES IN RECOGNITION OF ACCOMPLISHMENTS (12 May 1989) (emphasis added). It is particularly clear in the DOD Directive that the limitations on the accomplishments for which the one-time award may be given do not require that the accomplishments be related to any event or competition, but only that they be unique and clearly contribute. *Id.*

39. AR 600-8-22, *supra* note 29, para. 1-18.

40. *Id.* para. 11-3.

41. *Id.* para. 1-7d.

42. In other words, the GAO was unconcerned that awarded items had monetary or practical value, or both.

43. The GAO has held that many proposed awards were actually “personal gifts.” For example, the GAO disapproved the giving of photographs as mementos at a dedication ceremony, where the purpose was to thank individuals for their contributions. Decision of the Comptroller General, B-195896, 1979 U.S. Comp. Gen. LEXIS 1933 (Oct. 22, 1979). It disapproved a Forest Service proposal to give key chains to environmental educators to “stimulate” their future “advice and counsel” and to enhance the Forest Service’s image. Expenditure for Key Chains for Educators Attending Forest Service Seminars, B-182629, 54 Comp. Gen. 976 (May 20, 1975). Other items which were determined to be personal gifts include caps to promote esprit de corps among volunteers, Decision of the Comptroller General, B-201488, 1981 U.S. Comp. Gen. LEXIS 1740 (Feb. 25, 1981); plaques designed to enhance relations between the criminal investigation command and community law enforcement officials, U.S. Army Criminal Investigation Command (USACIDC) Appropriated Funds for Purchase of Marble Paperweights and Walnut Plaques, B-184306, 55 Comp. Gen. 346 (Oct. 2, 1975); ice scrapers bearing a logo to discourage drinking and driving as part of an occupational health and safety program, Implementation of Army Safety Program, B-223608, 1988 U.S. Comp. Gen. LEXIS 1582 (Dec. 19, 1988); and agricultural products to enhance the image of an agricultural research program, Decision of the Comptroller General, B-151668, 1970 U.S. Comp. Gen. LEXIS 2349 (June 30, 1970). In an easily distinguishable case, the GAO allowed the Forest Service to give out plaques to encourage state government’s continued cooperation in Forest Service programs. To the Secretary of Agriculture, B-157368, 45 Comp. Gen. 54 (Oct. 27, 1965). The GAO approved payment of the voucher, only because the language of the appropriation indicated that its purpose included “cooperation with States.” *Id.* Even so, the opinion advised that congressional approval should be sought for future purchases of such items. *Id.*

problems, commanders should ask themselves the following questions: Am I giving the coin to say “thank you” or “remember me?” Am I giving the coin to build esprit de corps or to instill unit pride?<sup>44</sup> Am I giving the coin to say “job well done?” Only in the last instance, when the commander’s intent is to reward outstanding duty performance, can the coin properly be purchased with appropriated funds.<sup>45</sup>

The requirements that the contribution be “unique” and that it “clearly contribute” are also potentially troublesome, because the regulation fails to further define those terms. The commonly understood definition of “unique,” however, would encompass an achievement that is one of a kind, unusual, or of unusually high quality.<sup>46</sup> Clearly, the routine performance of regular duty would not merit a coin simply because it was observed by, or

performed in the presence of, a high-ranking commander. One can reasonably interpret the requirement that the achievement “clearly” contribute “to increased effectiveness” as the need for a direct connection between the act and the military mission. A commander should, in any case, be able to articulate his reason for giving a coin. As long as it is reasonable and the achievement to be awarded is duty-related,<sup>47</sup> the GAO is likely to defer to the commander’s discretion.<sup>48</sup> A prudent commander might also keep a written record, however brief, which names the recipient and describes the accomplishment for which each coin is given.<sup>49</sup>

As to the number of coins given out, commanders should remain sensitive to the potential for claims of wasteful spending.<sup>50</sup> Commanders of MACOMs might appropriately set some limits on the number of coins to be purchased using APFs in a

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44. This purpose would not support the use of appropriated funds. See *Decision of the Comptroller General*, 1981 U.S. Comp. Gen. LEXIS 1740.

45. Of course, the commander could use his personal funds for all of the former purposes.

46. Unique means: “1. Being the only one of its kind: SOLE. 2. Being without equal or rival. 3. Informal. Unusual. An achievement of exceptionally high quality could be understood as being unequalled and/or unusual.” WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY (1984).

47. See *IRS Purchase of T-shirts for Employees Contributing Certain Amounts to the Combined Federal Campaign*, B-240001, 70 Comp. Gen. 248 (Feb. 8, 1991) (Employee’s decision whether to contribute to the Combined Federal Campaign was personal and unrelated to official duties. As such, Government Incentive Awards Act did not provide authority to give T-shirts to employees who contributed to the Combined Federal Campaign.).

48. An expenditure must bear a “reasonable relationship” to an appropriation. “The question is whether the expenditure falls within the agency’s legitimate range of discretion, or whether its relationship to an authorized purpose or function is so attenuated as to take it beyond that range.” *Implementation of Army Safety Program*, 1988 U.S. Comp. Gen. LEXIS 1582. See also *FEDERAL APPROPRIATIONS LAW*, *supra* note 4, ch. 4, para. B (pertaining to the “necessary expense doctrine”).

49. This would serve as a repeated reminder to the commander that the coin must be awarded only for merit. It would also be useful in the event of an audit.

50. The Army Deputy General Counsel (Ethics & Fiscal), Mr. Matt Reres, recently responded to a request from the administrative assistant to the Secretary of the Army for draft regulatory language to assist in curbing illegal spending for coins. The draft language will be presented by senior Army officials. Mr. Reres has recommended as follows:

Add the following new paragraph to *Army Regulation 600-8-22*, Military Awards, as paragraph 11-3b and number the current paragraph as [letter] a:

“b. Officers in the rank of O-7 and above, Command Sergeants Major, and principal officials of HQDA, may present soldiers coin medallions as on-the-spot awards for performance of duties above and beyond the norm. Such coins will not be presented merely as

given fiscal year and might limit such award authority to relatively senior level commanders.<sup>51</sup> Even at a few dollars per coin, the aggregate cost of an installation's commanders' coins could easily amount to many thousands of taxpayer dollars.<sup>52</sup> Commanders' displays of their own extensive collections of unique commanders' coins and unit coins suggest that these items may have become more collectors' items than awards. Coins traded or given as collectors' items cannot be funded with APFs.

### *Awards to Civilian Employees*

The award of a commander's coin as a performance award to civilian employees presents few, if any, unresolved legal issues. As discussed previously, the propriety of

giving a coin as an award rests upon the interpretation of the applicable statute and implementing regulations.<sup>53</sup> There are numerous GAO cases which specifically allow the giving of a wide variety of merchandise as awards for civilian employees. Cases both prior and subsequent to the abolishment of the Federal Personnel Manual have upheld the award of merchandise type items for good duty performance.<sup>54</sup> These opinions stress the Office of Personnel Management's (OPM) broad interpretation of the statute and the intentional flexibility of the OPM's implementing regulation.<sup>55</sup> The GAO opinions have approved many items that various agencies have given as awards, such as restaurant gift certificates, jackets, telephones, plaques, desk medallions, and

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greetings, gratuities, or tokens of appreciation. They will be presented only to sincerely recognize extraordinary effort exerted by a soldier in completing a mission."

Add to the end of *AR 600-8-22*, paragraph 11-4:

"To avoid waste of Army resources, award items procured in bulk will not include the presenting official's name unless the official is the Secretary of the Army; the Chief of Staff, Army; or the Sergeant Major of the Army. Items may be procured in bulk that contain the official's title and/or the organization's name. This limitation does not prohibit the specific inscribing or engraving of an award individually selected for presentation."

Add to *Army Regulation 672-20*, Incentive Awards, section 4-2:

"f. Officers in the rank of O-7 and above, Command Sergeants Major, and principal officials of HQDA, may present soldiers coin medallions as on-the-spot awards for performance of duties above and beyond the norm. Such coins will not be presented merely as greetings, gratuities, or tokens of appreciation. They will be presented only to sincerely recognize [sic] extraordinary effort exerted by a soldier in completing a mission. To avoid waste of Army resources, coins procured in bulk will not include the presenting official's name unless the official is the Secretary of the Army; the Chief of Staff, Army; or the Sergeant Major of the Army. Coins may be procured in bulk that contain the official's title and/or the organization's name."

Memorandum, Army Deputy General Counsel (Ethics & Fiscal), to the Administrative Assistant to the Secretary of the Army, subject: Presentation of Coin Medallions by Senior Army Officials (11 Apr. 1997).

51. The provision in the military awards regulation which would cover commanders' coins is phrased in the passive voice: "awards may be made." *AR 600-8-22*, *supra* note 29, para. 11-2b. No approval level is set out for these awards, as it is for other decorations and medals. The MACOM commanders are free to decide whether authority to award coins should be available at the lowest levels of command or even to noncommissioned officers.

52. The author is aware of one purchase of 1,000 custom minted coins which cost \$2,750.00.

53. For the Army's civilian employees, the applicable statute is 5 U.S.C.A. § 4503 (West 1997). *See also* 5 C.F.R. § 451 (1997); U.S. DEPT OF ARMY, REG. 672-20, INCENTIVE AWARDS (1 June 1993) [hereinafter *AR 672-20*]; U.S. DEPT OF ARMY, PAM. 672-20, INCENTIVE AWARDS HANDBOOK (1 July 1993) [hereinafter *DA PAM 672-20*].

54. *See* National Security Agency—Availability of Appropriations to Purchase Food as a Nonmonetary Award Under the Government Employee Incentive Awards Act, B-271511, 1997 U.S. Comp. Gen. LEXIS 105 (Mar. 4, 1997).

55. In response to the GAO's request, the OPM advised that its regulation allowed the use of meals or food vouchers as awards. *Id.* The OPM's authority to publish regulations which implement the awards programs is found at 5 U.S.C.A. § 4506.



even tickets to sporting events.<sup>56</sup> In reviewing these awards, the GAO has relied heavily on the OPM regulations.

The only potential issue, it would appear, is whether Army regulations contain any additional guidance. *Army Regulation 672-20* <sup>57</sup> established an extensive incentive award program, allowing a wide range of honorary awards which are usually evidenced by at least a certificate. While the regulation contains no specific authority for the award of a commander's coin, it grants MACOM commanders the authority to "establish supplemental recognition devices . . . adapted to major command requirements."<sup>58</sup> The implementing procedural guide provides that "[s]pecial plaques and other recognition devices may be established by activity commanders, consistent with MACOM policy."<sup>59</sup>

For civilian awards, there is no specific regulatory dollar limitation for recognition devices. The GAO case law raises no concern about the appropriate

nature of a coin of de minimis value as an award for excellence.<sup>60</sup> Commanders who wish to recognize civilian employees should, however, also take care to distinguish between personal gifts and awards and should exercise appropriate restraint concerning the number and frequency of coins presented.

#### *Awards to NAF Employees*

The Army's incentive awards regulation applies to both appropriated and nonappropriated fund employees.<sup>61</sup> Therefore, NAF employees, like their APF counterparts, are eligible for honorary awards and "special recognition devices."<sup>62</sup> Award eligibility under the Army regulation, however, does not determine the proper funding source. Commanders should use NAFs to pay for commanders' coins used to honor NAF employees.<sup>63</sup> Furthermore, commanders should award coins to NAF employees only for acts which contribute to Morale, Welfare, and Recreation (MWR)

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56. See *National Security Agency*, 1997 U.S. Comp. Gen. LEXIS 105.

57. AR 672-20, *supra* note 53.

58. *Id.* para 1-4d(2).

59. DA PAM 672-20, *supra* note 53, para 3-6b. This authorization was contained in the predecessor AR 672-20, at para 8-13b (1 June 1982), but has since been deleted from AR 672-20 and moved to DA PAM 672-20.

60. The GAO has not objected to the award of items with some intrinsic value. See *supra* note 42 and accompanying text. For example, jackets valued at \$50.00 were considered appropriate. Federal Aviation Administration—Incentive Awards Program—Presentation of Jackets, B-243025, 1991 U.S. Comp. Gen. LEXIS 566 (May 2, 1991). There is no similar authority to award items with more than de minimis value to soldiers.

61. AR 672-20, *supra* note 53, para. 2-4, tbl. 2-1.

62. See *supra* note 57 and accompanying text.

63. Some oversight and management of morale, welfare, and recreation activities is done by APF employees. See generally AR 215-1, *supra* note 17, ch. 9. The person giving the award must use APFs when the awardee is an APF employee and NAFs when the recipient is a NAF employee. *Id.* para. 4-6c. Note also that the cost of "special achievement awards" and suggestion awards (where the suggestion benefits the NAF instrumentality) should be paid from NAFs. U.S. DEPT OF ARMY, REG. 215-3, NONAPPROPRIATED FUNDS AND RELATED ACTIVITIES PERSONNEL POLICIES AND PROCEDURES, para 9-7 (10 Sept. 1009) [hereinafter AR 215-3]. The regulation is silent as to the funding source for honorary awards, which seem to be included as a separate category of awards, and for honorary awards to NAF employees. *Id.* para. 9-3. This issue is cleared up, however, by reference to AR 215-1. See *supra* note 61 and accompanying text.

programs.<sup>64</sup> These employees “may be recognized individually or in groups” for superior performance.<sup>65</sup> Soldiers who are employed by NAF instrumentalities are also eligible.<sup>66</sup>

### Coins for Unaffiliated Third Parties

Can a commander’s coin be given to an individual who is neither a soldier nor a civilian employee? For example, can the installation commander present the newly elected mayor with a coin on the occasion of his visit to the installation? Can the commander present an “award” to recognize the contributions of a helpful unaffiliated individual or civilian agency? Can the commander present a coin to a family member or volunteer whose work has been particularly outstanding? If so, what is the proper source of funds?

### *Gifts to VIPs*

The analysis for a proposed gift or memento to a distinguished visitor must

begin with the general rule that gifts are a personal expense. In these circumstances, an award analysis is inapplicable, because the reason for giving the coin is not to reward performance. Nevertheless, some gifts or mementos are legitimate when they are given as “courtesies” for “authorized guests.”<sup>67</sup> The Army has both statutory<sup>68</sup> and regulatory<sup>69</sup> authority to give such gifts and to pay for them with official representation funds (ORFs).

Subject to regulatory limitations and to the availability of the earmarked ORFs,<sup>70</sup> a commander could give a coin to the newly elected local mayor. Prior to any obligation of ORFs, however, the expenditure must be approved by both the representation fund custodian and the certifying and approving official.<sup>71</sup> The gift may not exceed the specified regulatory dollar value.<sup>72</sup> Finally, the gift<sup>73</sup> may be given only to “authorized guests in connection with official courtesies.”<sup>74</sup> Authorized guests include certain foreign citizens, national and local government officials, national or regional

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64. The general rules on the use of NAFs dictate that NAFs be used for MWR functions. AR 215-1, *supra* note 17, para. 4-6. If a NAF employee performed some act or service which was beneficial to the official APF mission, the analysis should proceed as if the individual were an unaffiliated third party.

65. AR 215-3, *supra* note 63, para. 9-4a.

66. *Id.* para. 9-2a.

67. AR 37-47, *supra* note 6, para. 2-1a.

68. 10 U.S.C.A. § 127 (West Supp. 1997).

69. AR 37-47, *supra* note 6, para. 2-9a(1). *See also* U.S. DEPT OF DEFENSE, DIR. 7250.13, OFFICIAL REPRESENTATION FUNDS (Mar. 3, 1995).

70. These funds are appropriated by Congress as “Emergency and Extraordinary Expense Funds.” They are an earmarked portion of Operation and Maintenance funds. The typical statutory language states a dollar amount which the Army may not exceed. *See supra* note 11. Exceeding this limitation would violate the Antideficiency Act. 31 U.S.C.A. § 1341(a)(1)(A) (West 1997).

71. Approval procedures are set out in AR 37-47, chapter 3. Legal review is also required. AR 37-47, *supra* note 6, para. 3-1f(2).

72. The limitation is set out in DOD Directive 7250.13. It is currently \$225.00. *Id.* para. 2-9b.

73. Items which may be presented as gifts also include mementos or tokens. *Id.* para. 2-9a. Certain categories of gifts are prohibited. *See id.* para. 2-10.

74. *Id.* para. 2-9a.

“dignitaries,” and similar officials.<sup>75</sup> The regulation prohibits the bulk procurement of items bearing the presenter’s name.<sup>76</sup> There is no corresponding provision in NAF regulations which would allow the giving of a gift solely because of an individual visitor’s status.<sup>77</sup>

### *Recognition of the Contributions of Others*

Commanders should not give coins purchased with APFs to unaffiliated individuals or nonfederal government agencies to create goodwill or to encourage or to reward cooperation with the military. While such goals are worthy, the GAO has determined that the distribution of such items, although potentially “desirable,” is not a necessary agency expense.<sup>78</sup> Although Army regulations authorize commanders to recognize unaffiliated individuals with “public service awards,” these awards are limited to those specific medals and certificates authorized by

regulation.<sup>79</sup> There is no provision for other award devices.

In contrast, NAFs may be used for the purchase of “mementos of nominal value . . . for presentation to distinguished military and *other visitors*,” for recognition of their contributions to NAF instrumentality programs.<sup>80</sup> Commanders should not use NAFs to acknowledge those whose contributed to APF missions.<sup>81</sup>

### *Recognition of Volunteers*

In these days of shrinking budgets, commanders greatly appreciate the efforts of volunteers. Absent statutory authority, however, commanders should not use coins purchased with APFs to recognize the efforts of volunteers.<sup>82</sup> The GAO has regarded items given to promote retention in volunteer programs as personal gifts.<sup>83</sup> Contributions by, and achievements of,

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75. *Id.* para. 2-3. Some senior DOD officials may fall within this definition.

76. *Id.* para. 2-9b.

77. *But see infra* note 80 and accompanying text. Mementos may be given to those who have made contributions to MWR programs.

78. U.S. Army Criminal Investigation Command (USACIDC) Appropriated Funds for Purchase of Marble Paperweights and Walnut Plaques, B-184306, 55 Comp. Gen. 346 (Oct. 1, 1975).

79. U.S. DEPT OF ARMY, REG. 360-61, COMMUNITY RELATIONS, para. 3-8 (15 Jan. 1987) (discussing public service awards without mention of honorary medals, trophies, or other awards beyond those detailed in AR 672-20); U.S. DEPT OF DEFENSE, PUB. 1400.25-M, CIVILIAN PERSONNEL MANUAL, Subch. 451, para. O (Dec. 1996) (discussing public service awards, but containing no provision for local awards in addition to the honorary awards set out in Appendix B of that publication); AR 672-20, *supra* note 53. None of these sources contains any provision equivalent to the supplemental recognition devices described for soldiers and civilian employees.

80. AR 215-1, *supra* note 17, para. 4-6b.

81. *See generally id.* paras. 4-6, 4-7. These regulatory provisions indicate that NAFs should be used for MWR related functions.

82. Decision of the Comptroller General, B-201488, 1981 U.S. Comp. Gen. LEXIS 1740 (Feb. 25, 1981); *see also* Student Volunteers—Traveling and Living Expenses, B-201528, 60 Comp. Gen. 456 (May 11, 1981).

83. Some statutes which authorize the acceptance of voluntary services also allow for the payment of certain incidental expenses. For example, one statutory provision allows the DOD to accept the services of the Red Cross. 10 U.S.C.A. § 2602 (West 1997). It also states that the government may furnish transportation, meals, quarters, office space, etc. to the volunteers. *Id.* Another provision authorizes the DOD to accept numerous voluntary services. *Id.* § 1588. It also allows the payment of “incidental expenses incurred by the person in providing” the services and gives the Secretary the authority to determine whether these will be paid with APFs or NAFs. *Id.* § 1588(e). Awards or mementos, however, would not be incurred expenses. They might, however, be justified as an expense necessary for recruiting volunteers. The Secretary is also authorized by statute to recruit and to train volunteers. *Id.* § 1588(c). The author can find no case in which the “necessity” of giving awards or mementos as a recruiting expense under this statute has been addressed by the GAO. The issue of the statutory authority to pay volunteers incidental expenses has been raised, but the GAO left the issue undecided. Decision of the Comptroller General, B-201488, 1981 U.S. Comp. Gen. LEXIS 1740 (Feb. 25, 1981).

volunteers who provide support to Army Community Service, family support groups, and mayoral programs may be recognized with NAF-funded “mementos” and other “non-monetary awards.”<sup>84</sup>

### Conclusion

Commanders’ coins are inexpensive yet powerful management tools. They can be purchased with government funds, given as awards, and, under limited circumstances, as gifts to hosted guests of the unit. It is important, however, that their purchase comply with funding rules and limitations. Commanders must understand the limitations on giving government-funded coins—no personal gifts, no tokens of appreciation, no recognition of the contribution of unaffiliated parties, and no recognition of volunteers unless specifically provided for by regulation. Additionally, commanders need a method of tracking each coin’s funding source. Coins that are purchased with ORFs, for example, may only be given to hosted guests. They cannot be given to soldiers or civilian employees.

The unfettered purchase and distribution of these coins is certainly not

worth jeopardizing a commander’s career or reputation. So, what is a commander to do? How can he keep track of each coin’s funding source? Perhaps some commanders, finding the rules too unwieldy and recognizing that these items are inexpensive, will choose a private funding alternative. For those who do not, the simplest method would be to ensure that each coin bears a distinctive motto which makes its purpose self-evident. A coin “for excellence” would be funded with APFs and given to soldiers or civilian employees. A coin purchased with ORFs might identify its bearer as a “friend” of the unit, and coins for NAF employees could include a morale, welfare, and recreation motto.

Understanding the rules of the game in this area is vital for practitioners. Helping individual commanders to seek the necessary approval and to determine appropriate parameters for the use of commanders’ coins will keep commanders out of trouble. The lawyer’s assistance in this area should also help to ensure that the giving of coins remains reasonable, escapes criticism, and survives close scrutiny, if necessary.

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84. AR 215-1, *supra* note 17, para. 4-6j(9). *See also id.* para. 4-6a(3) (allowing the use of NAFs for “[a]wards honoring volunteers and gratuitous service personnel at volunteer recognition ceremonies”). But compare this to the restrictions on using APFs for volunteer expenses. *See, e.g.*, U.S. DEPT OF ARMY, REG. 608-10, CHILD DEVELOPMENT SERVICES, para. 3-15d (12 Feb. 1990) (stating that Child Development Services volunteers are not entitled to incidental expenses); U.S. DEPT OF ARMY, REG. 608-1, ARMY COMMUNITY SERVICE PROGRAM, para. 1-19a(9) (30 Oct. 1990) (prohibiting the use of APFs for Army Community Service volunteer awards other than certificates of recognition).