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February 1, 2013

SAGC-ACQ

MEMORANDUM FOR CHIEF, CONTRACT AND FISCAL LAW DIVISION, U.S. ARMY  
LEGAL SERVICES AGENCY

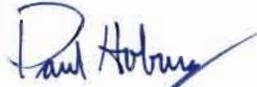
SUBJECT: Junior Reserve Officers' Training Corps (JROTC) Instructors' Status as  
Government Purchase Card Holders

This memorandum is provided in response to the January 16, 2013 memorandum from the Staff Judge Advocate, U.S. Army Cadet Command and Fort Knox concerning the above subject. We understand that your office and the Office of the Staff Judge Advocate for U.S. Army Training and Doctrine Command (TRADOC) participated in its preparation. There is no legal objection to Cadet Command's practice of issuing a government purchase card (GPC) to designated military retirees employed by secondary educational institutions as JROTC instructors pursuant to an authorization under subsection 2031(d) or 2031(e) of title 10, United States Code (U.S.C.).

We note that the retiree instructors are not treated as members of the military for all purposes, e.g., *Cavazos v. United States*, 776 F.2d 1263 (5<sup>th</sup> Cir 1985) (a Federal Tort Claims Act (FTCA) case that turned in part upon the specific regulatory definition of government employee for FTCA purposes). Nonetheless, we conclude that they may be considered "members of the Armed Forces of the United States" for purposes of Federal Acquisition Regulation (FAR) 1.603-3(b) eligibility to serve as GPC holders. The quoted expression is not defined in statute or regulation. The JROTC program statute, 10 U.S.C. 2031 refers to these individuals variously as "retired members" or "members," and the implementing regulation, Army Regulation (AR) 145-2, refers to the retiree instructors as "members of the Armed Forces not on active duty." Other sections of title 10, U.S.C., likewise, refer to retired military personnel as "members" or "retired members" in various contexts, see e.g., 10 U.S.C. 688, 1030, 3075, and 3252.

While these individuals are not in an active-duty status, they are employed by their secondary schools as JROTC instructors only upon the authorization of Commander, Cadet Command, who must certify their individual qualifications on behalf of the Secretary of the Army. JROTC instruction, moreover, is a Department of Defense (DoD) function conducted in accordance with 10 U.S.C. 2031, DoD Instruction 1205.13, and AR 145-2, and the retiree instructors utilize the GPC in direct furtherance of the Army's 10 U.S.C. 2031(c) responsibility to support the JROTC program. We concur that

these considerations provide sufficient basis for the retiree instructors to perform the inherently governmental functions associated with GPC-holder status.



Paul D. Hoburg  
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CF:  
SAGC-O&P (Ms. Barna)