



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 134

April 1, 1993

Whether it is a violation of section 39.01(a)(2) of the Penal Code for a state employee to use state-owned telephones and other equipment for personal purposes. (AOR-150)

The Texas Ethics Commission has been asked to consider whether it is a violation of section 39.01(a)(2) of the Penal Code for a state employee to use state-owned telephones and other equipment for personal purposes.

Under section 39.01(a)(2) a state employee commits an offense if, with intent to obtain a benefit or with intent to harm another, the state employee intentionally or knowingly "misapplies any thing of value belonging to the government that has come into his custody or possession by virtue of his office or employment." *See* Penal Code § 1.07(a)(6) (defining "benefit" for purposes of section 39.01(a)(2)).

In a 1984 opinion, the State Ethics Advisory Commission considered whether the use of state phones to make personal local calls is a misapplication of state property if there is no charge for individual local calls. The commission wrote:

The Commission recognizes that from time to time public employees need to make personal telephone calls during working hours. Such use does not result in additional costs or damage to the state and generally will not hinder the day to day operation of government. It is the Commission's opinion that the incidental use during working hours of state telephones by public employees to place personal local calls, under circumstances which do not result in additional costs or damage to the state, is not a "misapplication" as contemplated by § 39.01.

[State Ethics Advisory Commission Opinion No. 9](#) (1984). We believe that conclusion is a correct one. On the other hand, the use of telephones or other office equipment for personal purposes is a misapplication of state property if the use results in additional costs to the state or damage to state property.¹

Although personal use of state *equipment* is not necessarily a violation of a criminal statute, such use--particularly if it involves a significant intrusion into actual *working time*--may nonetheless be a basis for agency disciplinary action. Also, particular state agencies may have personnel policies that set specific guidelines for the use of state equipment. This opinion does not supersede any such policies.

SUMMARY

The incidental use of state telephones by state employees to place personal local calls that does not result in additional costs or damage to the state is not a "misapplication" of state property for purposes of section 39.01(a)(2) of the Penal Code.

¹ We note that there are also laws that regulate use of state funds and programs for political activity. *See*, e.g., V.T.C.S. art. 6252-9f; Acts 1991, 72d Leg., 1st C.S., ch. 19, art. V, § 5, at 1004.