



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 164

September 2, 1993

Whether a state agency may allow state employees to use state time or equipment to look for other employment. (AOR-180)

The Texas Ethics Commission has been asked whether a state agency may allow state employees to use state time or equipment to look for other employment. In the situation described, the state employees are losing their jobs because of new legislation governing the activities of the state agency.

An employee of a state agency commits an offense if he or she knowingly misapplies anything of value belonging to the government, acquired by virtue of his or her office or employment, in order to obtain a benefit. Penal Code § 39.01(a)(2). In the situation described, state employees would be using things of value belonging to the state (state time and state equipment) to obtain benefits (paying jobs). See V.T.C.S. art. 5165(a) (full-time state employees shall work 40 hours a week). The question raised is whether such use would be a "misapplication" of state time and equipment.

A use of agency time and equipment that did not serve an agency purpose would be a misapplication of things of value belonging to the state. See generally Tex. Const. art. III, §51 (state funds may not be used for private purposes). As a general rule, a state employee would not be serving an agency purpose by searching for other employment. *But see* State [Ethics Advisory Opinion No. 20](#) (1984) (misapplication does not occur if officeholder uses office stationery, secretary, and typewriter to write a recommendation for any person to another state office). There may, however, be special circumstances--for example, the reorganization of an entire agency--in which an agency's board determines that a limited use of agency resources to help agency employees find new employment would serve an agency purpose. Whether such circumstances exist in the situation at hand is a fact question to be resolved, in the first instance, by the agency's board.

An individual state employee who is using state resources to search for a new job in a way that has been expressly authorized by the agency's board would not, as an individual, be misapplying state property.

SUMMARY

As a general rule, a state employee would not be serving an agency purpose by searching for other employment. An individual state employee who is using state resources to search for a new job in a way that has been expressly authorized by the agency's board would not, as an individual, be misapplying state property.