



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 172

November 18, 1993

Whether a legislator may use state computer equipment and employees to make entries about personal or political business on a computer schedule, and whether a state employee may conduct transactions involving officeholder contributions and expenditures. (AOR-188)

A member of the legislature has asked the Texas Ethics Commission to consider two questions about the use of state equipment and state employees to coordinate state business with personal or political matters. The first question is whether a legislator may use state computer equipment and employees to make entries about personal or political business on a computer schedule. The second question is about the use of state employees to conduct transactions involving officeholder contributions and expenditures.

A legislator commits an offense if, with intent to obtain a benefit or with intent to harm another, the legislator *misapplies* any thing of value belonging to the government that has come into his or her custody or possession by virtue of his or her office. Penal Code § 39.01(a)(2). In our opinion, state computers and the work time of state employees¹ are things of value belonging to the government. [Ethics Advisory Opinion No. 164](#) (1993). The question, then, is whether the use of state computers and state employees for the purposes described above would be a *misapplication* of state computers or state employees' work time.²

The first question is about scheduling. As a general rule, it is advisable to keep state business separate from personal and political matters to avoid misapplying things of value belonging to the state. We do not think, however, that this principal applies to the use of a paper appointment calendar purchased by the state or to the use of a state-owned computer to make scheduling entries about personal or political matters. To plan legislative activities, a legislator must know his or her schedule, which will almost certainly include political and personal activities in addition to legislative activities. In other words, it serves a legislative purpose for a legislator to know the time of dental appointments so he or she will not schedule conflicting committee hearings. Therefore, we do not think that a legislator who uses state equipment to enter personal and political matters on a schedule would, by that activity alone, be misapplying things of value belonging to the state. *See generally* Open Records Decision Nos. 145 (1976), 116 (1975) (regarding public availability of desk calendars of public employees).

In regard to the use of state employees' time to make such entries, we caution that a state employee should not be used as a political or personal scheduler. In other words, a state employee should not be used to make personal appointments or organize political events. We do not believe, however, that directing a state employee to keep track of a legislator's overall schedule in order to manage his or her legislative schedule would be a misapplication of the employee's time.

The second question has to do with accepting political contributions and making political expenditures. Under title 15 of the Election Code there are two types of political contributions and expenditures: campaign and officeholder contributions and campaign and officeholder expenditures. Elec. Code § 251.001(5). A campaign contribution to a candidate is one offered or given with the intent that it be used in connection with a campaign for elective office. Elec. Code § 251.001(3). Similarly, a campaign expenditure is one made in connection with a campaign for an elective office. *Id.* § 251.001(7). The use of state equipment to handle campaign contributions or expenditures is a misapplication of state property. *See* [Ethics Advisory Opinion No. 134](#) (1993). Similarly, the use of state employees' work time to handle such transactions is a misapplication of the employees' time.³

The other type of political contribution is an officeholder contribution. An officeholder contribution is a contribution offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and that are not reimbursable with public funds. Elec. Code § 251.001(4). An officeholder expenditure is an expenditure, not reimbursable with public funds, to defray expenses incurred by an officeholder in performing a duty or engaging in an activity in connection with the office. *Id.* § 251.001(9).

An officeholder who has an appointment of campaign treasurer on file may accept campaign contributions and officeholder contributions and make campaign expenditures and officeholder expenditures. *Id.* § 253.031(a). Also, a contribution made as an officeholder contribution may be used to make a campaign expenditure and vice versa. *Id.* § 253.036. Often, therefore, the distinction between campaign matters and officeholder matters is not clear. Consequently, a legislator should be cautious in using state employees to handle any political contributions or expenditures. Because officeholder contributions and expenditures may be devoted to the duties and activities of an office, however, there are certainly circumstances in which it would be appropriate for state employees to handle officeholder transactions. Because the request letter does not describe specific circumstances involving the use of state employees or equipment to handle officeholder contributions or expenditures, we can provide only a general response to this question.

SUMMARY

A legislator's use of state resources and employees to keep track of the legislator's overall schedule, including personal and political appointments, is not a misapplication of things of value belonging to the government under Penal Code section 39.01(a)(2). However, a state employee should not be used as a political or personal scheduler to make personal appointments or organize political events.

The use of state equipment or state employees' work time to handle campaign contributions or expenditures is a misapplication of state property. Under certain circumstances, the use of state resources to handle officeholder contributions and expenditures may be appropriate. Because the distinction between campaign matters and officeholder matters is not always clear, a legislator should be cautious in using state employees to handle any political contributions and expenditures.

¹ This opinion address the use of state employees to do personal or political work. Nothing in the opinion is intended to suggest that state employees may not engage in political activity on their own time. Rather, this opinion addresses only the use of state employees to do personal or political work during work hours. See V.T.C.S. art. 5165(a) (full-time state employees shall work 40 hours a week); Gov't Code ch. 556 (political activities by state employees).

² Even if a public servant misapplies state property, the public servant commits an offense only if the misapplication is done intentionally or knowingly with intent to obtain a benefit or to harm another. Whether that intent exists in a particular situation is a fact question to be determined on a case-by-case basis. Under section 39.01(a)(1) of the Penal Code, a public servant commits an offense if, with intent to obtain a benefit or with intent to harm another, he intentionally or knowingly violates a law relating to his office. Although the Ethics Commission does not have authority to interpret provisions of the Appropriations Act, we do note that riders to the appropriations act prohibit the use of appropriated funds for other than state purposes or to affect the outcome of an election. General Appropriations Act, Acts 1993, 73d Leg., ch. 1051, art. V, §§ 5, 80, at 5329, 5369.

³ We do not think that incidental and unavoidable use of state employees' time--for example, forwarding campaign contributions to a campaign office-- is a misapplication of state employees' time. We recognize that an officeholder cannot always control the mail or the visitors that arrive at a state office. Not only would use of state equipment and state employees to handle campaign contributions and expenditures be a misapplication of things of value belonging to the state, it would be in violation of a rider to the Appropriations Act that prohibits the use of appropriated funds to influence the outcome of an election. General Appropriations Act, Acts 1993, 73d Leg. ch. 1051, art. V, § 5, at 5329; see Penal Code § 39.01(a)(1) (a public servant commits an offense if, with intent to obtain a benefit or with intent to harm another, he intentionally or knowingly violates a law relating to his office or employment).