



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 182

January 27, 1994

Whether state employees may use state time and state resources to raise funds for charitable organizations. (AOR-203)

A state agency has asked the Texas Ethics Commission whether state employees may use state time and state resources to raise funds for charitable organizations. The state agency has appointed an employee to coordinate fundraising efforts. The agency estimates that this employee devotes 12 hours a month to those efforts. The coordinator works with division representatives who spend "much less" time on these activities. The organizations that the fundraising efforts support include the United Way, the March of Dimes, and the American Heart Association.

Of the statutes subject to interpretation by the Ethics Commission, only section 39.01 of the Penal Code is relevant to the question raised. Under section 39.01 a state officer or employee commits an offense if, "with intent to obtain a benefit or with intent to harm another," the state officer or 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." We think the use of state resources in the manner described in the request letter would not violate section 39.01.

All elements of the offense created under section 39.01 must be present for a violation to occur. The two significant elements here are the requirement that there be a "misapplication" of state resources and the requirement that the misapplication be made with intent to obtain a benefit or with intent to harm another.

A recent legislative enactment specifically authorizes deductions from state employees' salaries for donations to certain "umbrella" fundraising entities. V.T.C.S. art. 6813h (added by Acts 1993, 73d Leg., ch. 922, § 2, at 3929-36, eff. Aug. 30, 1993). Under the statute state employees may be appointed to a state employee charitable campaign policy committee. It is the committee's responsibility to coordinate a state employee charitable campaign. V.T.C.S. art. 6813h, §§ 4, 9. A use of state resources for charitable fundraising in compliance with article 6813h would not be a misapplication of such resources. [Ethics Advisory Opinion No. 164](#) (1993).

It is beyond the scope of the Ethics Commission's authority to determine whether other uses of state resources to raise funds for charitable purposes serve an agency purpose. *See generally* Tex. Const. art. III, § 51 (state funds may not be used for private purposes); [Ethics Advisory Opinion No. 164](#) (1993) (a use of agency time and resources that does not serve an agency purpose is a misapplication of things of value belonging to the state). In any event, though, the individuals authorizing or participating in the drive described in the request would not be doing so with intent to obtain a benefit or with intent to harm another. For purposes of section 39.01 of the Penal Code, "benefit" means "anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested." Penal Code § 1.07(a)(6). Thus, a gain to charities such as the well-established charities aided by the fund drive would not be a benefit to an individual state officer or employee. "Harm," for purposes of section 39.01, means "anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested." *Id.* § 1.07(a)(16). It is difficult to imagine circumstances in which a state officer or employee would use or authorize the use of state resources to raise funds for the type of charitable purposes described in the request with intent to "harm" another. If there is neither an intent to obtain a benefit nor an intent to harm another, a state officer or state

employee would not violate section 39.01 of the Penal Code by using state resources to support the fundraising drive described in the request letter.

SUMMARY

In order for a violation of section 39.01 of the Penal Code to occur, there must be both a "misapplication" of state resources and the misapplication must be made with intent to obtain a benefit or with intent to harm another. A use of state resources for charitable fundraising in compliance with article 6813h, V.T.C.S., would not be a misapplication of such resources. Nor would a use of state resources in connection with a charitable fundraising drive involve an intent to obtain a "benefit" or an intent to "harm" another as defined by section 1.07(a) of the Penal Code.