



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 372

August 8, 1997

Questions about state employees' use of state-owned cellular phones, electronic mail, and Internet services. (AOR-409)

A state agency has asked whether the agency may allow its employees to use state agency electronic mail and Internet connections for personal purposes. The agency has also asked whether it may allow its employees to use agency cellular phones for personal purposes as long as the employees reimburse the agency for any costs incurred.

A well-established principle of Texas law is that state resources are to be used for state purposes, not private purposes. Tex. Const. art. III, §§ 50, 51; Gov't Code § 403.273(d); General Appropriations Act, 74th Leg., ch. 1063, art. IX, § 135. Although the cited provisions do not set out sanctions for use of state property for private purposes,¹ the following Penal Code provision makes misuse of state property a criminal offense in certain circumstances:

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

....

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

Penal Code § 39.02. This criminal statute does not reach every instance in which state resources are used for personal purposes. Rather a violation occurs if a public servant "misuses" something of value belonging to the state and does so "with intent to obtain a benefit or with intent to harm or defraud another." *See id.* §§ 39.01(2) (defining "misuse" as dealing with property contrary to law or an applicable agreement); 1.07(a)(7) (defining "benefit" to mean anything reasonably regarded as economic gain or advantage). In our view, there are circumstances in which the incidental use of state property for personal purposes is not a "misuse" for purposes of Penal Code section 39.02.

In a previous opinion we recognized that state officers' and employees' personal lives occasionally intersect with their work lives and that reasonable and incidental use of state time or state property in crossing such intersections is not a "misuse" of state resources for purposes of Penal Code section 39.02. For example, we have stated that the incidental use of state telephones by state employees to place personal local calls is not a misuse of state property. [Ethics Advisory Opinion No. 134](#) (1993).

The specific questions raised here have to do with personal use of cellular phones, electronic mail, and Internet connections. In our view, Penal Code section 39.02 does not require state agencies to adopt policies absolutely prohibiting personal use of telephones or computer services as long as the state is reimbursed for any direct costs incurred. In adopting policies about use of state equipment, agencies should make sure that any permissible personal use does not result in direct costs paid by the state and does not impede agency functions. Agency

policies should also ensure that state resources are not used for private commercial purposes and that only incidental amounts of employee time--time periods comparable to reasonable coffee breaks during the day--are used to attend to personal matters.

SUMMARY

Penal Code section 39.02 does not require state agencies to adopt policies absolutely prohibiting any personal use of telephones or computer services as long as the state is reimbursed for any direct costs incurred. In adopting policies about the use of agency equipment, agencies should make sure that any permissible personal use does not result in direct costs paid by the state and does not impede agency functions. Agency policies should also ensure that state resources are not used for private commercial purposes and that only incidental amounts of employee time--time periods comparable to reasonable coffee breaks during the day--are used to attend to personal matters.

¹ The Ethics Commission does not have authority to issue advisory opinions interpreting these provisions. See Gov 't Code § 571.091(a) (authority of commission to issue advisory opinions). The Ethics Commission does have authority to issue advisory opinions interpreting Penal Code section 39.02. Id. § 571.091(a)(6).