

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-10

Re: Can a legislator who authored a constitutional amendment use his legislative staff or office facilities, supplies, and equipment in support of the ballot issue proposing the amendment?

This opinion responds to a request (AOR 1984-9) from the Public Servant Standards of Conduct Advisory Committee for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on January 13, 1984, and relates to the following issue:

Can a legislator who authored a constitutional amendment use his legislative staff or office facilities, supplies, and equipment in support of the ballot issue proposing the amendment?

Of the laws under which the Commission has authority to issue opinions, the only one that applies to this situation is Tex. Penal Code Ann. 39.01 (a) (Vernon Supp. 1984), which states:

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

(1) violates a law relating to his office or employment; or

(2) misapplies any thing of value belonging to the government that has come into his custody or possession by virtue of his office or employment.

A legislator's staff's services, his office facilities, supplies, and equipment are things of value belonging to the government that have come into the legislator's custody or possession by virtue of his office.

"Misapplication" means an improper, illegal, wrongful, or corrupt use or application of funds, property, etc. Jewett v. U.S., 100 F. 840, (Mass. C.C.A. 1900); Ferguson v. State, 80 Tex. Crim. 383, 189 S.W. 271 (1916).

A legislator's use of staff during the hours of their state employment and - the use of his office facilities, supplies and equipment should be related to the purposes of his office. It is the opinion of this Commission that efforts to solicit support among voters for a constitutional amendment is an activity connected with his office. Therefore, a legislator may use his office facilities, supplies, and equipment to support or oppose the adoption of a constitutional amendment when the amendment becomes a ballot issue.

SUMMARY

A legislator may use his office facilities, supplies, and equipment to support or oppose the adoption of a constitutional amendment when the amendment becomes a ballot issue.

W. Page Keeton, Chairman
State Ethics Advisory Commission
Adopted this 13th day of April, 1984.