

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-20

Re: If an office-holder is seeking an appointment to another office, may he use his office stationery, secretary, and typewriter for his letter of application?

This opinion responds to a request (AOR 1984-16) 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:

If an office-holder is seeking an appointment to another office, may he use his office stationery, secretary, and typewriter for his letter of application?

Tex. Penal Code Ann. § 39.01 (a) (Vernon Supp. 1983-1984) 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.

An office-holder's office stationery, secretary, and typewriter are things of value belonging to the government that have come into his 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).

An office-holder's office stationery, secretary, and typewriter are to be used for purposes connected with his office. Applying for appointment to another office is not a purpose that is connected with his office. Therefore, it is improper for an office-holder to use his office stationery, secretary, and typewriter for such a purpose. Such use of these things may be considered a misapplication of them in violation of § 39.01 (a) if done knowingly with intent to obtain a benefit.

Section 1.07(a)(6) of the Penal Code defines "benefit" as used in section 39.01 to mean:

anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested.

The office-holder has the intent to obtain an appointment to the other office. Whether or not that other office is a benefit, as defined above, is a question of fact. However, it is the opinion of this Commission that under these circumstances a misapplication does not occur when an official writes a recommendation for any person, including himself, to another state office.

This opinion does not address whether the activity presented by the question may constitute a violation of Tex. Penal Code Ann. §§ 31.03 or 31.04 (Vernon 1974), These sections prohibit theft of property or services.

SUMMARY

An office-holder commits an offense under § 39.01 (a) if with intent to obtain a benefit, he intentionally or knowingly uses his office stationery, secretary, and typewriter for a letter of application seeking an appointment to another office outside state government. Under these

circumstances a misapplication does not occur when an official writes a recommendation for any person, including himself, to another state office.

W. Page Keeton, Chairman
State Ethics Advisory Commission
Adopted this 14th day of September, 1984.