

# STATE ETHICS ADVISORY COMMISSION

## ADVISORY OPINION 1984-9

Re: Whether a public employee who works on official business 40 hours per week may perform private business or take care of personal matters using state telephones for local calls; what are permissible personal uses of state telephones, if any.

This opinion responds to a request (AOR 1984-8) 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 a public employee works on official business 40 hours per week, can that employee perform private business or take care of personal matters using state telephones for local calls? What are permissible personal uses of state telephones, if any?

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

"Misapplication" means an improper, illegal, wrongful or corrupt use or application of funds, property, etc. *Ferguson v. State*, 80 Tex. Crim. 383, 189 S.W. 271 (1916). "Benefit" means anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested. See Tex. Penal Code Ann. § 1.07(a)(6).

Telephone equipment and local service are acquired by the state at a fixed rate without additional charge for individual telephone calls. The Commission recognizes that from time to time public employees need to make personal telephone calls during working hours. Such use does not result in additional costs or damage to the state and generally will not hinder the day to day operation of government. It is the Commission's opinion that the incidental use during working hours of state telephones by public employees to place personal local calls, under circumstances which do not result in additional costs or damage to the state, is not a "misapplication" as contemplated by § 39.01. This opinion is not intended to authorize the abusive use of state telephones by state employees. The Commission also expresses no opinion regarding the personnel policies of individual state agencies which may further structure the rights and responsibilities of employees.

Whether or not the use of state telephones by public employees is a violation of sections 31.03 or 31.04 of the Texas Penal Code cannot be addressed by the Commission. These sections prohibit theft of property and services.

### SUMMARY

The incidental use of state telephones by state employees to make local personal calls does not violate Tex. Penal Code Ann. § 39.01 (Vernon Supp. 1984), provided such use does not result in additional costs or damage to the state and generally will not hinder the day to day operation of government. Such use of state telephones is not a "misapplication" as contemplated by § 39.01.

State Ethics Advisory Commission  
Adopted this 13th day of April, 1984.