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Official Misconduct

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-641

"Tennessee's official misconduct statute only applies to public officials who have an affirmative duty to act and refuse to do so or who misuse their official authority for private gain." Op. Tenn. Atty. Gen. 09-72 (May 6, 2009). Pursuant to T.C.A. § 39-16-402(a), a public servant commits an offense who, with intent to obtain a benefit, or to harm another, intentionally or knowingly:

1. Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;
2. Commits an act under color of office or employment (acting or purporting to act in an official capacity or take advantage of such actual or purported capacity) that exceeds the servant's power;
3. Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the office or employment;
4. Violates a law relating to the servant's office or employment, or
5. Receives any benefit not otherwise provided by law.

In 2012, the legislature amended this statute to make it an offense to purchase real property or otherwise obtain an option to purchase real property with intent to make a profit if the public servant knows that such real property may be purchased by a governmental entity and such information is not public knowledge. It is also an offense to acquire nonpublic information derived from such person's position as a public servant or gained from the performance of such person's official duties as a public servant and knowingly act on such nonpublic information to acquire, or obtain an option to acquire, or liquidate, tangible or intangible personal property with intent to make a profit. T.C.A. § 39-16-402(c).

It is a defense to prosecution for this offense that the benefit involved was a trivial benefit incidental to personal, professional or business contact, and involved no substantial risk of undermining official impartiality. T.C.A. § 39-16-402(d). The offense of official misconduct is a Class E felony. T.C.A. § 39-16-402(e). See *State v. Szczepanowski*, 2002 WL 1358681 (Tenn.Crim.App. 2002) (upholding the constitutionality of the statute); *State v. Chumbley*, 2007 WL 1774250 (Tenn.Crim.App. 2007) (jail administrator convicted of official misconduct and theft). See also Op. Tenn. Atty. Gen. 94-073 (June 16, 1994) (the acceptance of a gift by a county official or employee from a company that does business with the county may, depending upon the circumstances, constitute the criminal offense of official misconduct); Op. Tenn. Atty. Gen. U93-48 (April 6, 1993) (a school superintendent requiring vocational students to provide repair work to his personal residence may constitute official misconduct); Op. Tenn. Atty. Gen. 91-76 (August 20, 1991) (a deputy sheriff is not entitled to a reward given for a service performed within the duties of his office; the acceptance of such a reward might be considered official misconduct). Under T.C.A. § 8-47-103, county attorneys are directed to investigate any complaint alleging that a county officer within their jurisdiction is guilty of any of the acts constituting official misconduct as set forth in T.C.A. § 8-47-101, and upon determination of reasonable cause, to institute a proceeding in the appropriate court to oust such official. Op. Tenn. Atty. Gen. 07-169 (December 21, 2007); Op. Tenn. Atty. Gen. 00-126 (August 7, 2000).

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