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Misuse of County Time and Property

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-651

A county official has a duty not to neglect the duties of the office. *State ex rel. Thompson v. Reichman*, 188 S.W. 225 (Tenn. 1916) (sheriff removed from office for neglect of office). Therefore, while outside activities may be permissible, they can cause problems if taken to extremes. For example, a county official could sell computers during non-working hours, but if a contract called for the county official to personally train the purchaser's employees to use the new equipment during regular working hours over the first month of operation, a serious question of neglect of duty could arise.

As the Attorney General has noted,

conflicts of interest exist whenever a legislator or other public official has placed himself in a position where, for some advantage gained or to be gained for himself, he finds it difficult if not impossible to devote himself with complete energy, loyalty and singleness of purpose to the general public interest. The advantage that he seeks is something over and above the salary, the experience, the chance to serve the people, and the public esteem that he gains from public office.

Op. Tenn. Atty. Gen. 85-036 (February 14, 1985), quoting 1959 Minnesota Governor's Committee on Ethics and Government Report 17, quoted in Note; Conflict of Interests: State Government Employees, 47 Va. L. Rev. 1034 (1961) (footnote 1).

The occasional use of the office telephone for personal business should not cause a problem. But if a county official was also, for example, a real estate broker, the official could not use their county office in a dual capacity, official and private, without violating various duties and violating the prohibition against the use of public property for private purposes, which would be a form of official misconduct. T.C.A. § 39-16-402. See Op. Tenn. Atty. Gen. 81-587 (November 3, 1981) (the offices in a county courthouse may be used only for a public purpose); Op. Tenn. Atty. Gen. 82-391 (a county official can not use county property to conduct an insurance business or any other business in his private capacity).

In *Azbill v. Lexington Mfg. Co.*, 188 Tenn. 477, 483, 221 S.W.2d 522 (1949), the Tennessee Supreme Court noted that public funds provided by taxation may be used only for public, not private, purposes. The Attorney General has opined that, consistent with the foregoing principle, public equipment and other property paid for, and public officers and employees compensated, by public funds appropriated for public purposes from revenues derived by counties from taxes authorized by law cannot properly be donated or applied by a county officer to a private use. Op. Tenn. Atty. Gen. 84-166 (May 17, 1984); Op. Tenn. Atty. Gen. 03-088 (July 15, 2003). See Op. Tenn. Atty. Gen. No. U93-48 (April 6, 1993) (it is improper for a county official to use publicly owned equipment for private gain); Op. Tenn. Atty. Gen. 97-043 (April 7, 1997) (a law enforcement officer should not perform services that are not part of his or her official responsibilities while wearing his/her uniform or driving a patrol car in a way that might convey that any services performed for a private individual are, in fact, being carried out as part of the officer's official duties). See also *State ex rel. Leech v. Wright*, 622 S.W.2d 807 (Tenn. 1981) ("It is patently intolerable and clearly unlawful and an inexcusable dereliction of duty for a public official to allow public employees to work for private employers while being paid from the public treasury.").

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