S T A T E O F T E N N E S S E E
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Opinion No. 02-132

Activities of Legislative Staff

QUESTIONS

1. Is it a violation of any law for the staff of a legislator to function as a press secretary for an organization advocating a "Yes" vote on the state lottery referendum?

2. Is it a violation of any law for the staff of a legislator to function in a support role during state office hours, using state facilities, equipment, and the like, to advocate the passage of proposed amendments to the Tennessee Constitution in a referendum.?

3. Is it a violation of any law for the staff of a legislator to raise money, or assist in same, for an organization whose purpose is advocating popular approval of proposed amendments to the State Constitution in a referendum?

OPINIONS

1. Whether any specific activity violates Tenn. Code Ann. § 2-19-206(b) and Tenn. Code Ann. § 2-19-207 depends on the facts and circumstances. This Office has concluded that Tenn. Code Ann. 2-19-206(b) prohibits the use of state facilities to prepare and distribute information that directly urges constituents to vote for a particular candidate or for an issue in a referendum election. But a legislative staff member does not violate Tenn. Code Ann. § 2-19-207 by responding to requests for information and assisting a legislator in disseminating information about the lottery referendum, so long as the response or information does not directly advocate voting for or against the referendum issue. Similarly, distributing information, addressing specific issues, or responding to specific events that relate to an issue of public interest, even if it also serves the purpose of an independent organization, is not prohibited by either of these statutes, so long as the information or response does not directly advocate voting for or against the referendum issue.

2. A staff member could violate Tenn. Code Ann. §§ 2-19-206 and -207 if he or she performs support functions for a legislator such as preparing a mass mailing that directly advocates voting for or against the referendum issue. Whether any particular activity violates these statutes must depend on specific facts and circumstances, particularly in light of the fact that these statutes impose criminal penalties.

3. State law prohibits a legislative staff member from directly raising money for an

organization formed to advocate support for or opposition to the state lottery referendum if such activity takes place during regular business hours or in a state building. Whether a legislative staff member would violate state law by assisting in fundraising for such an organization would depend on the facts and circumstances, particularly in light of the fact that these statutes impose criminal penalties.

ANALYSIS

1. Staff of Legislator Functioning as Press Secretary for Organization Advocating "Yes" Vote on State Lottery Referendum

The first question is whether it violates any law for the staff of a legislator to function as a press secretary for an organization advocating a "Yes" vote on the state lottery referendum. This question implicates two state statutes regarding the use of state facilities and political activities by state employees.

Subsection (b) of Tenn. Code Ann. § 2-19-206 provides:

> (b) It is unlawful to use public buildings or facilities *for meetings or preparation of campaign activity* in support of any particular candidate, party or *measure* unless reasonably equal opportunity is provided for presentation of all sides or views, or reasonably equal access to the buildings or facilities is provided all sides.

(Emphasis added). A violation of this statute is a Class C misdemeanor. Tenn. Code Ann. § 2-19-208. As discussed in Op. Tenn. Atty. Gen. 02-114 (October 16, 2002), this provision does not apply to popularly elected officials, including members of the General Assembly. But the statute does not exclude legislative staff members.

The request does not specify the particular activities that "functioning as a press secretary for an organization that advocates a "Yes" vote on the lottery referendum" would include. Whether any activity violates this statute would depend on specific facts and circumstances. As we noted in our October 16 opinion, Tenn. Code Ann. § 2-19-206(b) does not prohibit the use of state facilities for the distribution of any information concerning an issue of public concern. On the other hand, the opinion also concluded that the term "preparation of campaign activity" prohibited in Tenn. Code Ann. § 2-19-206(b) would include the use of state facilities to prepare and distribute information that directly urges constituents to vote for a particular candidate or for an issue in a referendum election. But distributing information, addressing specific issues, or responding to specific events that relate to an issue of public interest, even if it also serves the purpose of an independent organization, is not prohibited by this statute, so long as the information or response does not directly advocate voting for or against the referendum issue.

This question also implicates Tenn. Code Ann. § 2-19-207. That statute provides:

> (a) It is unlawful for *any person employed by the state* to engage actively in a political campaign on behalf of any party, committee, organization, agency or political candidate, or to attend political meetings or rallies or to otherwise use such person's official position or employment to interfere with or affect the result of any regular or special primary election conducted within the state, *or to perform political duties or functions of any kind not directly a part of such person's employment, during those hours of the day when such person is required by law or administrative regulation to be conducting the business of the state.*
>
> (b)(1) Nothing in this section shall be construed to deprive any official or employee of the state from voting for the party or candidate of such person's choice or to deprive such person of the right to express such person's personal opinion concerning any political subject, party or candidate.
>
> (2) *Elected officials, state employees on leave or during those hours not required by law or administrative regulation to be conducting the business of the state,* persons duly qualified as candidates for public office and teachers, as defined in § 49-1501 [repealed], are expressly excluded from the provisions of this section.

Tenn. Code Ann. § 2-19-207(a), (b)(1) & (b)(2) (emphasis added). Again, whether the specific activities characterized generally as "acting as a press agent" for an organization violate this statute will depend on the particular facts and circumstances. By its terms, this statute prohibits any person employed by the State from engaging actively in a political campaign or from performing political duties or functions of any kind not directly a part of such person's employment, during regular business hours. Responding to requests for information and assisting a legislator in disseminating information about a matter of public concern like the lottery referendum, logically, are a part of the employment of any legislative staff member. For this reason, a legislative staff member does not violate Tenn. Code Ann. § 2-19-207 by responding to requests for information and assisting a legislator in disseminating information about the lottery referendum, so long as the response or information does not directly advocate voting for or against the referendum issue. Similarly, distributing information, addressing specific issues, or responding to specific events that relate to an issue of public interest, even if it also serves the purpose of an independent organization, is not prohibited by either of these statutes, so long as the information or response does not directly advocate voting for or against the referendum issue.

2. Staff Functioning "in a Support Role" to Advocate the Passage of the Resolution Allowing a State Lottery

The next question is whether it violates any state law for a legislator's staff to function in a

"support role" during state office hours, using state facilities, equipment, and the like, to advocate the passage of the resolution allowing a state lottery. Again, an answer to this question depends on the specific facts and circumstances. The term "support role" could include such diverse activities as answering a legislator's phone, typing and filing correspondence, keeping a legislator's calendar, and preparing and mailing out information. In our October 16 opinion, this Office concluded that a legislative staff member does not violate any law by responding on behalf of the legislator to requests for information regarding the referendum or assisting the legislator in carrying out his or her duties informing the public about the referendum election, so long as the response or information does not directly advocate voting for or against the referendum issue. But a staff member could violate Tenn. Code Ann. § 2-19-206 and -207 if he or she performs support functions for a legislator such as preparing a mass mailing that directly advocates voting for or against the referendum issue. Whether any particular activity violates these statutes must depend on specific facts and circumstances, particularly in light of the fact that these statutes impose criminal penalties.

3. Fundraising or Assisting in Fundraising

The last question is whether it violates any provision of state law for a legislative staff member to raise funds or assist in fundraising for an organization formed for the purpose of advocating popular approval of proposed amendments to the State Constitution in a referendum. A legislative staff member would violate state law by directly requesting contributions to such an organization either during regular business hours or in a state building.[1] This activity would be "preparation for campaign activities" prohibited under Tenn. Code Ann. § 2-19-206, and would also fall within the expression, "political activities not directly a part" of a legislative staff member's employment under Tenn. Code Ann. § 2-19-207.

Whether a legislative staff member would violate state law by assisting in fundraising for such an organization would depend on the particular facts and circumstances. For example, a staff member who simply opens mail addressed to a legislator containing such contributions, or places calls for a legislator during which the legislator engages in fundraising probably does not violate state law. On the other hand, a staff member may violate Tenn. Code Ann. §§ 2-19-206 and -207 if he or she prepares and mails out a direct request for funds during state business hours or in a state building.

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[1] Rules promulgated by the Department of General Services also prohibit solicitation of gifts in state facilities. Tenn. Admin. Comp. Ch. 0690-4-1-.01, *et seq.* But those regulations only apply to "[a]ny building, or part thereof, which is . . . under the control of the *executive branch* of state government." Ch. 0690-4-1.02(2). The rules therefore do not apply to legislative offices.

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