

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion No. 05-106

Violating an Oath of Office

QUESTIONS

1. When does a person violate an oath of office?
2. Who determines when an oath of office has been violated?
3. What are the penalties for violating an oath of office?

OPINIONS

1. Whether a person has violated an oath of office depends on the terms of the particular oath. A legislator violates the oath of office by failing to exercise his or her impartial judgment in voting for an appointment, by voting for a bill or resolution that “appears” to him or her to be “injurious to the people,” or by consenting to “any act or thing . . . that shall have a tendency to abridge their rights and privileges” under the Tennessee Constitution. An official would violate the general statutory oath of office by failing to perform his or her official duties “with fidelity.” Other statutory oaths contain similar language and would be violated by similar conduct.

2. Each house of the General Assembly has the sole authority to decide whether one of its members has violated the oath of office and to determine the appropriate sanctions for such violation. In the case of other officials, a complete answer to this question would require an examination of the statutes governing the particular office that the official holds. As a general matter, however, statutes do not expressly charge a particular authority or individual with the responsibility to determine whether an official has violated his or her oath of office.

3. As a general matter, no statute provides a penalty for a bare violation of an official oath of office. But conduct that violates an official’s oath of office may also violate another statute. Depending on the conduct and the statute violated, the penalties could include criminal penalties, ouster, or personal liability.

ANALYSIS

1. When an Oath of Office is Violated

This opinion concerns violation of an officer's oath of office. The request states that the three general questions are posed in light of recent ethics legislation. We assume this statement refers to 2005 Tenn. Pub. Acts Ch. 102, regarding consulting services by various state and local officials and employees. A complete answer to these questions would require a review of the statutes governing every office requiring an oath, as well as the terms of the particular oath. As a general matter, the Tennessee Constitution and many state statutes specify that certain officers must take an oath of office. Tenn. Const. Art. X, § 1; Tenn. Const. Art. X, § 2. Neither the Constitution nor most statutes creating these offices provide for any sanctions if the oath is violated.

Article X, Section 2, of the Tennessee Constitution provides as follows:

Each member of the Senate and House of Representatives, shall before they proceed to business take an oath or affirmation to support the Constitution of this State, and of the United States and also the following oath: I do solemnly swear (or affirm) that as a member of this General Assembly, I will, in all appointments, vote without favor, affection, partiality, or prejudice; and that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing, whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State.

Tenn. Const. Art. X, § 2. A legislator would violate the oath by failing to exercise his or her impartial judgment in voting for an appointment, by voting for a bill or resolution that "appears" to him or her to be "injurious to the people," or consenting to "any act or thing . . . that shall have a tendency to abridge their rights and privileges" under the Tennessee Constitution. Obviously, determining whether a legislator may have violated this oath requires a subjective judgment. This Office has concluded that any lawsuit claiming that a legislator violated his or her oath of office by voting for any particular bill is barred by legislative immunity. Op. Tenn. Atty. Gen. 02-014 (February 5, 2002). That opinion also concluded that, under Article II, Section 12, of the Tennessee Constitution, each house of the General Assembly has the sole authority to decide whether one of its members has violated the oath of office and to determine the appropriate sanctions for such violation.

Other Tennessee statutes prescribe a specific form of oath of office for various state and local officials. The general oath of office, unless otherwise expressly prescribed by law, provides as follows:

I do solemnly swear that I will perform with fidelity the duties of the office to which I have been appointed (or elected, as the case may be), and which I am about to assume.

Tenn. Code Ann. § 8-18-111. An official would violate this office by failing to perform his or her official duties “with fidelity.” Other oaths contain similar language. *See, e.g.*, Tenn. Code Ann. § 2-1-111 (election officials) (“I do solemnly swear (affirm) that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Tennessee, and that I will faithfully and impartially discharge the duties of my office.”); Tenn. Code Ann. § 6-31-112 (city manager -council officials); Tenn. Code Ann. § 17-2-120 (special judges).

2. Who Determines that an Oath of Office has been Violated

The second question is who determines that an oath of office has been violated. As noted above, each house of the General Assembly has the sole authority to decide whether one of its members has violated the oath of office and to determine the appropriate sanctions for such violation. In the case of other officials, a complete answer to this question would require an examination of the statutes governing the particular office that the official holds. As a general matter, however, statutes do not expressly charge a particular authority or individual with the responsibility to determine whether an official has violated his or her oath of office.

3. Consequences for Violating Oath of Office

The last question concerns the penalties for violating an oath of office. As a general matter, no statute provides a penalty for a bare violation of an official oath of office. But conduct that violates an official’s oath of office may also violate another statute. Depending on the conduct and the statute violated, the penalties could include criminal penalties, ouster, or personal liability.

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