

Penalty for Class A misdemeanor, § 40-35-111.

Penalty for Class E felony, § 40-35-111.

Rights of person arrested for extradition, § 40-9-119.

Sale of office, § 39-16-105.

Suspension, removal and discharge from office, § 39-16-406.

#### Section to Section References.

Sections 39-16-401 — 39-16-405 are referred to in § 40-12-201.

This section is referred to in §§ 8-4-502, 39-16-406, 40-28-106, 41-21-218, 41-21-310, 41-21-406, 50-4-101.

#### Law Reviews.

"Official" Explanation: Defining "Official Ca-

capacity" and Related "Color of Office" Phrases in Bribery and Extortion Law (Steven J. Mulroy), 38 U. Mem. L. Rev. 587 (2008).

The Tennessee Court System — Criminal Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 319 (1978).

#### Attorney General Opinions.

Legality of rewards to deputy sheriffs, OAG 91-76 (8/20/91).

Constables as collections agents, OAG 97-043 (4/7/97).

Unauthorized use of city funds, OAG 99-196 (9/28/99).

A grand jury foreperson is a public servant who is subject to prosecution for official misconduct, official oppression, and misuse of official information, OAG 05-129 (8/24/05).

### NOTES TO DECISIONS

#### Analysis

1. Unauthorized Exercise of Power.
2. Sexual Misconduct.
3. Evidence Insufficient.
4. Evidence Sufficient.

#### 1. Unauthorized Exercise of Power.

Evidence that chief of police used his official position to alter a motor vehicle accident report to aid a relative was sufficient for conviction of official misconduct. *State v. Brewer*, 945 S.W.2d 803, 1997 Tenn. Crim. App. LEXIS 25 (Tenn. Crim. App. 1997).

For purposes of a city employee's claim under the Tennessee Public Protection Act, or the Whistleblower Act, T.C.A. § 50-1-304, ticket-fixing activities constituted an illegal activity pursuant to T.C.A. §§ 55-10-204(a) and 39-16-402(a)(1) and (d) (now (e)), such that it was within the meaning of § 50-1-304(a)(3). *Williams v. City of Burns*, — S.W.3d —, 2012 Tenn. App. LEXIS 104 (Tenn. Ct. App. Feb. 15, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 353 (Tenn. May 21, 2012).

#### 2. Sexual Misconduct.

Where defendant was a Department of Human Services counselor for a 16 year old female and he exploited the relationship by smoking

marijuana and having sexual intercourse with her on multiple occasions, sufficient aggravating circumstances existed to justify the imposition of consecutive sentences under T.C.A. § 40-35-115(b)(5). *State v. Lane*, 3 S.W.3d 456, 1999 Tenn. LEXIS 430 (Tenn. 1999).

#### 3. Evidence Insufficient.

Appellant's conviction for official misconduct was reversed because the jury had no evidence from which it could have inferred that appellant intended to confer a benefit on the land developer; testimony at trial established that appellant did not know the land developer prior to the Graybeal Road transaction. *State v. Pope*, — S.W.3d —, 2012 Tenn. Crim. App. LEXIS 820 (Tenn. Crim. App. Oct. 5, 2012), appeal denied, — S.W.3d —, 2013 Tenn. LEXIS 240 (Tenn. Mar. 5, 2013).

#### 4. Evidence Sufficient.

Evidence was sufficient to sustain defendant's convictions under T.C.A. §§ 39-14-403(a), 39-16-402, and 39-16-602(a) where it showed that he had entered the victim's home without consent, took jewelry valued at \$200 to \$300, and he struggled and fought the police officers during the arrest. *State v. Johnson*, — S.W.3d —, 2013 Tenn. Crim. App. LEXIS 1139 (Tenn. Crim. App. Dec. 27, 2013).

#### Collateral References.

What constitutes the taking of money or

other thing of value under color of office. 70 A.L.R.3d 1153.

### 39-16-403. Official oppression.

(a) A public servant acting under color of office or employment commits an offense who:

- (1) Intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment or lien when the

public servant knows the conduct is unlawful; or

(2) Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity, when the public servant knows the conduct is unlawful.

(b) For purposes of this section, a public servant acts under color of office or employment if the public servant acts, or purports to act, in an official capacity or takes advantage of the actual or purported capacity.

(c) An offense under this section is a Class E felony.

(d) Charges for official oppression may be brought only by indictment, presentment or criminal information; provided, that nothing in this section shall deny a person from pursuing other criminal charges by affidavit of complaint.

#### History.

Acts 1989, ch. 591, § 1; 1990, ch. 980, § 11.

**Sentencing Commission Comments.** This section is designed to punish public servants who intentionally use their offices to violate citizen's rights. It is similar to, but more detailed than, prior code § 39-5-404. This section should be read in conjunction with §§ 39-16-601 and 39-11-611(e).

Subsection (d) provides that charges may be brought only by indictment, presentment or criminal information. This provision ensures that the prosecutor had an opportunity to review charges of official oppression prior to formal charge. If the prosecutor refuses to proceed, citizens may go directly to the grand jury pursuant to § 40-12-104.

#### Compiler's Notes.

The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

#### Cross-References.

Penalty for Class E felony, § 40-35-111.

### 39-16-404. Misuse of official information.

(a) A public servant commits an offense who, by reason of information to which the public servant has access in the public servant's official capacity and that has not been made public, attains or aids another to attain a benefit.

(b) An offense under this section is a Class B misdemeanor.

#### History.

Acts 1989, ch. 591, § 1.

**Sentencing Commission Comments.** This section creates a new offense under Tennessee law.

#### Compiler's Notes.

The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

#### Section to Section References.

Sections 39-16-401 — 39-16-405 are referred to in § 40-12-201.

This section is referred to in §§ 39-16-406, 40-28-106, 41-21-218, 41-21-310, 41-21-406.

#### Textbooks.

Tennessee Jurisprudence, 17 Tenn. Juris., Justices of Peace and General Sessions Courts, § 8; 21 Tenn. Juris., Public Officers, § 47.

#### Law Reviews.

Criminal Law and Procedure — 1961 Tennessee Survey (Robert E. Kendrick), 14 Vand. L. Rev. 1220 (1961).

"Official" Explanation: Defining "Official Capacity" and Related "Color of Office" Phrases in Bribery and Extortion Law (Steven J. Mulroy), 38 U. Mem. L. Rev. 587 (2008).

#### Attorney General Opinions.

A grand jury foreperson is a public servant who is subject to prosecution for official misconduct, official oppression, and misuse of official information, OAG 05-129 (8/24/05).

#### Cross-References.

Penalty for Class B misdemeanor, § 40-35-111.

#### Section to Section References.

Sections 39-16-401 — 39-16-405 are referred to in § 40-12-201.

This section is referred to in §§ 39-16-406, 40-32-101.

#### Attorney General Opinions.

A grand jury foreperson is a public servant