

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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August 24, 2005

Opinion No. 05-129

Definition of “Public Servant” in Relation to Official Misconduct Offense Statutes

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**QUESTION**

Is a grand jury foreperson a public servant who is subject to prosecution for official misconduct, official oppression, and misuse of official information as those offenses are defined in Tenn. Code Ann. §§ 39-16-402, 39-16-403, 39-16-404?

**OPINION**

Yes, it is the opinion of this Office that a grand jury foreperson is a public servant who is subject to prosecution for official misconduct, official oppression, and misuse of official information.

**ANALYSIS**

The definition of “public servant” for purposes of criminal misconduct involving public officials is established by statute. *See* Tenn. Code Ann. §39-16-401(3)(B). Under that statute, a “public servant” includes a person selected or appointed as a “juror” or “grand juror.” The qualifications and duties of grand jury forepersons are defined by Tenn. R. Crim. P. 6(g), which makes no distinction between a foreperson and a grand juror.<sup>1</sup>

This Office opined that a grand jury foreperson has the same voting power as any other grand jury member. *Op. Tenn. Att’y Gen. 77-260A* (August 9, 1977). That opinion was based on the Court of Criminal Appeal’s decision in *Bolen v. State*, 544 S.W.2d 918, 920 (Tenn. Crim. App. 1976). The *Bolen* decision was based on Tenn. Code Ann. § 40-1506, which has since been repealed. *See* Pub.Acts 1979, Ch. 399, § 1. Although the statute was repealed, it was replaced by Rule 6(g). Accordingly, it is the opinion of this Office that forepersons are public servants and

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<sup>1</sup>The rule provides:

Every person appointed as a foreperson shall possess all the qualifications of a juror.

The foreperson may vote with the grand jury and this vote shall count toward the twelve necessary for the return of an indictment.

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subject to prosecution for official misconduct, official oppression, and misuse of official information.

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