



Conflict Disclosures for Board Members and Local Government Officers

To protect school district transactions from the undue influence of the business or other financial interests of district officials, several state laws require public disclosure of board members' financial interests. If you are a school district official you may not feel confident that you have disclosed all the business and financial interests required by law. In the past decade, the number of interests a public official must disclose has increased—and may seem increasingly confusing! This article provides a brief overview of the various disclosure requirements with which school board members and sometimes superintendents and other district employees must comply.

Same interest, multiple forms . . .

Each of the disclosure requirements is a separate legal requirement; complying with one disclosure requirement does not fulfill the obligations imposed by the other, separate requirements. As a result, in some instances the same financial interest may require a trustee to file more than one disclosure form. This article covers the following disclosure requirements: substantial interest in a business or property, affidavit disclosing interest in real property, and income and gifts from district vendors.

You might be disclosing interests of your relatives too.

In addition to disclosing personal financial interests, a public official may have to disclose relatives' financial interests as well. Because several of the disclosure requirements imposed on school officials also require disclosure of the financial interests of officials' first-degree relatives by both blood and marriage, it is important to determine who these relatives are.

A school official's first-degree relatives by blood are: (1) the school official's parents; and (2) the school official's children, including children by adoption. Tex. Gov't Code §§ 573.022-.023. A school official's first-degree relatives by marriage are: (1) the school official's spouse; (2) the spouse of one of the official's first-degree relatives by blood; and (3) the first-degree blood relatives of the official's spouse. Tex. Gov't Code § 573.024. A school official should identify his or her first degree relatives and make a good-faith effort to determine if any of those relatives have interests that require disclosure, as described below.

To disclose, or not to disclose . . .

Interest in a Business or Property

If a school board member, or a first-degree relative of a school board member has a *substantial interest* in a business entity that a school district does business with, the school board member must take certain steps to disclose this interest. A school board member has a *substantial*

interest in a business entity when the member or his or her first-degree relative owns 10% or more of the voting stock or shares of the business entity, owns either 10% or more or \$15,000 or more of the fair market value of the business entity; or received 10% or more of his or her gross income for the previous year from the business entity. Also, a school board member has a *substantial interest* in real property when the member or his or her first degree relative has legal or equitable ownership with a fair market value of \$2,500 or more in the property. Tex. Loc. Gov't Code § 171.002.

Remember that discovering a substantial interest does not mean that the district cannot continue to do business with this entity or purchase this property. It simply means that the board member must disclose this interest through a two-step process: filing an affidavit and abstaining from further participation.

Filing the affidavit

Texas law requires a board member with a substantial interest to file an affidavit stating the nature and extent of the board member's interest in the business entity or real property before a vote or a decision on any matter involving the business entity or the real property. Tex. Loc. Gov't Code § 171.004(a). These affidavits must be filed with the district's official record keeper, the person designated in policy CPC(LOCAL). Tex. Loc. Gov't Code § 171.004(b). Usually the record keeper is the superintendent or another person responsible for maintaining the records of the district. Sample affidavits may be found at TASB Policy BBFA(EXHIBIT).

Abstaining from further participation

If the board's action will have a special economic effect on the business entity or the real property's value, the board member with the substantial interest must also abstain from further participation in the official decision-making process. Tex. Loc. Gov't Code § 171.004(a). In essence, a trustee may not vote on the matter and, though not required, would be wise to refrain from attending such deliberations. Op. Tex. Att'y Gen. No. GA-334(2005).

Failure to comply with these disclosure requirements may result in criminal penalties. Tex. Loc. Gov't Code § 171.003. By law, trustees must follow this statute. However, districts can extend these requirements to superintendents and other district employees by local policy. Your district's policy DBD(LOCAL) and (EXHIBIT) reflect this decision.

Interest in Property to Be Acquired with Public Funds

As mentioned above, sometimes a trustee must make more than one disclosure for the same interest. Such is the case if a board member has an interest in real property the school district is interested in purchasing. If a school board member or candidate has a legal or equitable interest in property that is to be acquired with public funds he or she must file a separate affidavit stating the name and office of the trustee and describing the property and the trustee's interest in the property along with other details. This affidavit must be filed with the county clerk of the county in which the trustee or candidate resides and the county clerk of each county in which the property is located. Tex. Gov't Code § 553.002. Most districts require the superintendent to comply with these provisions as a matter of local policy. See TASB Policies DBD(LOCAL) and (EXHIBIT).

Chapter 176 Income and Gifts from District Vendors and Family Relationships

Chapter 176 of the Texas Local Government Code also requires local government officers, including school board trustees, superintendents, and school district employees or agents who exercise discretion in the planning, recommending, selecting, or contracting of a vendor, to disclose relationships with certain district vendors. These officers must file a sworn disclosure statement with respect to a district vendor if: (1) the vendor has entered into a contract with the district or the district is considering entering into a contract with the vendor, *and* (2) the vendor provides certain income or gifts to the officer or first degree relatives of the officer, or a family relationship exists between the officer and the vendor's employees or agents. However, a local government officer is not required to file a statement when the governmental entity or vendor is an administrative agency created to supervise the performance of an interlocal contract under Section 791.013 of the Texas Government Code. Tex. Loc. Gov't Code § 176.003(a-2).

Income Disclosure

If the vendor has an employment or other business relationship¹ with the official or the official's first-degree relative, then the relationship must be disclosed if the relationship generates taxable income² for the officer or family member exceeding \$2,500 during the 12 months preceding the date the officer becomes aware of the contract or prospective contract. Tex. Loc. Gov't Code § 176.003(a)(2)(A).

Gift Disclosure

Also, the officer must disclose the relationship with a district vendor if the officer or the officer's first-degree relative has accepted one or more gifts from the vendor that total over \$100 in the 12-month period preceding the date that the officer becomes aware of the contract or prospective contract. The relationship need not be disclosed if the gift is (1) offered on account of kinship or a personal, professional or business relationship independent of the officer's official status, (2) a political contribution, or (3) food accepted as a guest. Tex. Loc. Gov't Code §§ 176.001(2-b), .003(a)(2)(B), (a-1). Unless covered by another exception, lodging, transportation, and entertainment, even if accepted as a guest, are *not* exceptions to the gift disclosure requirements.

Family Relationship Disclosure

Finally, CIS disclosure is triggered by a family relationship, which means the vendor's employees or agents are related to the officer within the third degree by consanguinity (blood) or the second degree by affinity (marriage), as those relations are defined by Subchapter B, Chapter 573, Texas Government Code. Tex. Loc. Gov't Code § 176.003(a)(2)(C).

¹ *Business relationship* means a connection based on commercial activity. The term does not include a connection based on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity; (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. Tex. Loc. Gov't Code § 176.001(1-a).

² Taxable income does not include *investment income*. Investment income for purposes of Chapter 176 includes dividends, capital gains, or income generated from personal or business checking or savings accounts, investments, or loans. Tex. Loc. Gov't Code §§ 176.001(2-b), .003(a)(2)(A).

This disclosure form is called Form CIS (Conflict of Interest Statement) and is relatively simple to fill out. The form is maintained by the Texas Ethics Commission Website and is available at www.ethics.state.tx.us/forms/CIS.pdf. To comply with the law, an officer must file Form CIS with the district's records administrator by 5 p.m. on the seventh business day after the official becomes aware that there is an interest to disclose. Tex. Loc. Gov't Code § 176.013(a). The records administrator is the superintendent of the school district or another person designated by the district to maintain the disclosures. See TASB Policy CPC(LOCAL).

Do not worry if you are not sure if you know every interest requiring disclosure. Penalties for failing to file such a disclosure are only triggered if a person *knowingly* violates the disclosure requirement. Consequently, if the official files a conflicts disclosure statement by the seventh business day after receiving notice from the district of an alleged violation, the official will not violate the law. Tex. Loc. Gov't Code § 176.013(a), (f).

District Vendor Relationships

The same statute that mandates the disclosure of certain income and gifts from school district vendors also requires vendors to make certain disclosures. If you are a board member, this could affect you if you are a district vendor that (1) has provided income or gifts to a school district officer, or (2) has a family relationship with a school district officer. A board member may be considered a vendor under Chapter 176 if he or she owns or serves as an employee or agent for an entity that does business with the district. Tex. Loc. Gov't Code §§ 176.001(1), (7), .006. For vendor disclosures related to income reporting, but not CIQ disclosures, Chapter 176 provides a limited exception for school district officers who are also a school district vendor. Tex. Loc. Gov't Code § 176.006(a)(1), (e). Board members who have a business relationship with the district should consult the district's attorney or their own attorney to determine if these requirements apply.

A vendor³ must file a Form CIQ (Conflicts of Interest Questionnaire) if the vendor has an employment or other business relationship with a local government officer, again a superintendent, trustee, or a school district employee or agent who exercises discretion in the planning, recommending, selecting, or contracting of a vendor, *or* the officer's first degree relative that generated more than \$2,500 in the preceding year. Tex. Loc. Gov't Code § 176.006(a)(1). This CIQ disclosure is triggered by a vendor gift to an officer or the officer's first degree relative valued at \$100 in the preceding year. Tex. Loc. Gov't Code § 176.006(a)(2). Vendors must also file a CIQ when there is a family relationship with school district officers. Tex. Loc. Gov't Code § 176.006(a)(3). Finally, vendors must disclose that a school district officer serves as an officer or director of the vendor, or holds a vendor ownership interest of one percent or more. Tex. Loc. Gov't Code § 176.006(c)(4). Like Form CIS, Form CIQ can be found on the Texas Ethics Commission's Website at www.ethics.state.tx.us/forms/CIQ.pdf and must be filed with the district's records administrator. Tex. Loc. Gov't Code § 176.006.

³ The vendor disclosure requirements apply to: (1) a person who enters or seeks to enter into a contract with the district; and (2) a third party agent of such a person (in the person's business with the district). The following entities are not subject to these disclosure requirements: a state, a political subdivision of a state, the federal government, a foreign government, or an employee of these governmental entities. Tex. Loc. Gov't Code § 176.002.

School District Records Administration for Disclosures

School districts also have some responsibilities under Chapter 176. The district records administrator shall maintain a list of local government officers of the district and shall make that list available to the public and any person who may be required to file a questionnaire. Tex. Loc. Gov't Code § 176.0065(1). Also, a district that maintains a website shall provide access to all conflict of interest statements and questionnaires on that website. A district is not required to maintain a website solely to comply with these requirements, however. Tex. Loc. Gov't Code § 176.009. Finally, the school district must retain all statements and questionnaires in accordance with the district's records retention schedule. Tex. Loc. Gov't Code § 176.0065(2).

In Conclusion

While the number of disclosures required of public officials might seem daunting at first, it is not difficult to comply with them. This article is a good starting place for determining if you need to disclose an interest to the public. For a more in depth look at these disclosure requirements see TASB Policy BBFA(LEGAL). And, as always, we are available to help school district decision makers through the TASB Legal Line, 800.530.5345.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.

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