

Nepotism and Conflicts

**29th Annual Election Law Seminar for Cities, Schools & Other
Political Subdivisions**

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This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional advisor. Consult with your attorney or professional advisor to apply these principles to specific fact situations.



Topic Overview

- Nepotism – Government Code Chapter 573
- Dual Office Holding/Incompatibility
- Resign to Run
- Conflict of Interest
 - Local Government Code Chapter 171
 - Local Government Code Chapter 176



Nepotism

Government Code
Chapter 573



What is Nepotism?

Gov. Code § 573.041

Prohibits a *public official* from:

- Appointing,
- Confirming the appointment of, OR
- Voting on the appointment of

a *close relative* of certain public officials to a *paid public position* or *employment*



Nepotism: Government Code Chapter 573

Which Public Officials Does Nepotism Apply To?

- Public official who has **final hiring authority** or member of the governing body that has **final hiring authority**.
- **Final Hiring Authority** means the individual or entity that has control over hiring decisions.

Gov. Code § 573.001(3)



Nepotism: Government Code Chapter 573

Special “Public Official” Rules for School Board and Superintendents

Need to know:

- (1) if the population of the school district’s county is less than 35,000; *and*
- (2) whether the board or superintendent has final hiring authority with respect to the type of employment (at-will, contract).

Educ. Code § 11.1513 (a), (f)-(g)

Check TASB policy **DC(LOCAL)** for hiring authority.



Nepotism: Government Code Chapter 573

Board Members in Districts in Large Counties (≥ 35,000)

Question: In districts in counties ≥ 35,000, may the **board members'** relatives be hired?

Answer: No, and it does not matter if hiring authority has been delegated to the superintendent.

Educ. Code §11.1513(f)	If the position is at-will:	If the position is under contract:
The board retains all hiring authority	No	No
The board has delegated hiring authority for at-will employees to the superintendent	No	No
The board has delegated all hiring authority to the superintendent	No	No



Nepotism: Government Code Chapter 573

Board Members in Districts in Small Counties ($< 35,000$)

Question: In districts in counties $< 35,000$, may the **board members'** relatives be hired?

Answer: Yes, but only to the extent they have delegated the hiring authority to the superintendent.

Educ. Code §11.1513(g)	If the position is at-will:	If the position is under contract:
The board retains all hiring authority	No	No
The board has delegated hiring authority for at-will employees to the superintendent	Yes	No
The board has delegated all hiring authority to the superintendent	Yes	Yes



Nepotism: Government Code Chapter 573

The Superintendent - Public Official?

Question: May the superintendent's relatives be hired?

Answer: Yes, but only to the extent the board has *not* delegated hiring authority over the position to the superintendent.

	If the position is at-will:	If the position is under contract:
The board retains all hiring authority	Yes	Yes
The board has delegated hiring authority for at-will employees to the superintendent	No	Yes
The board has delegated all hiring authority to the superintendent	No	No



Nepotism: Government Code Chapter 573

Special Rules for Cities Delegation for Purposes of Nepotism

A delegation of hiring authority **by city charter is valid.**

A delegation of hiring authority **by ordinance is not valid.**

Op. Tex. Att'y Gen. Nos. JC-336 (2001), DM-2 (1991)



Nepotism: Government Code Chapter 573

Who Is Considered a Close Relative?

- **Close relative** is a relative who is either in the
 - 1st, 2nd or 3rd degree of consanguinity (blood)
 - or
 - 1st or 2nd degree of affinity (marriage)

Gov. Code § 573.002



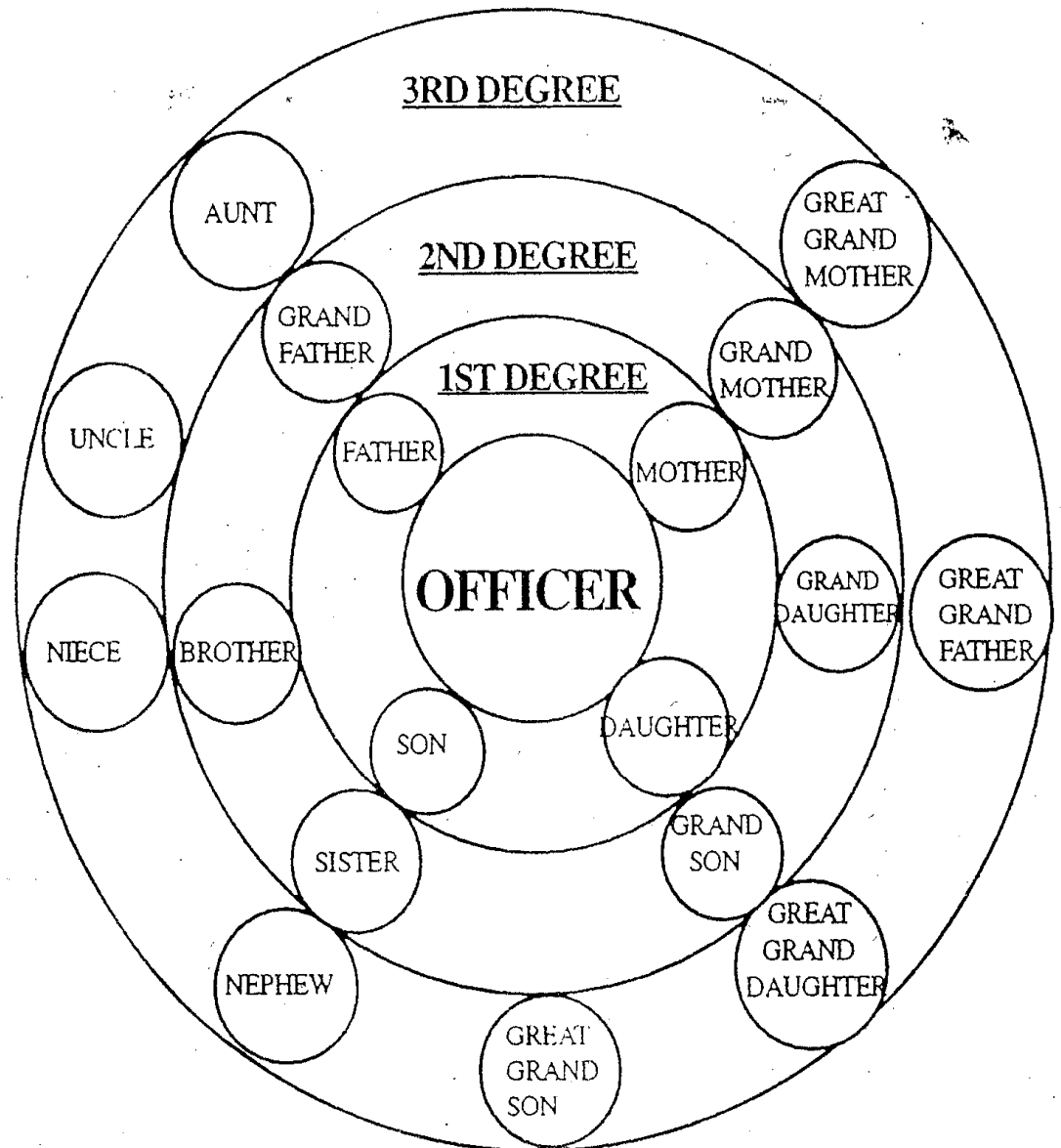
Nepotism: Government Code Chapter 573

What is the 1st, 2nd or 3rd Degree of Consanguinity (blood)?

- **1st degree:** mother, father, son, daughter
- **2nd degree:** brothers, sisters, grandparents, grandchildren
- **3rd degree:** aunts, uncles, nieces, nephews

Adopted children and half brothers/sisters are considered full blooded under consanguinity.

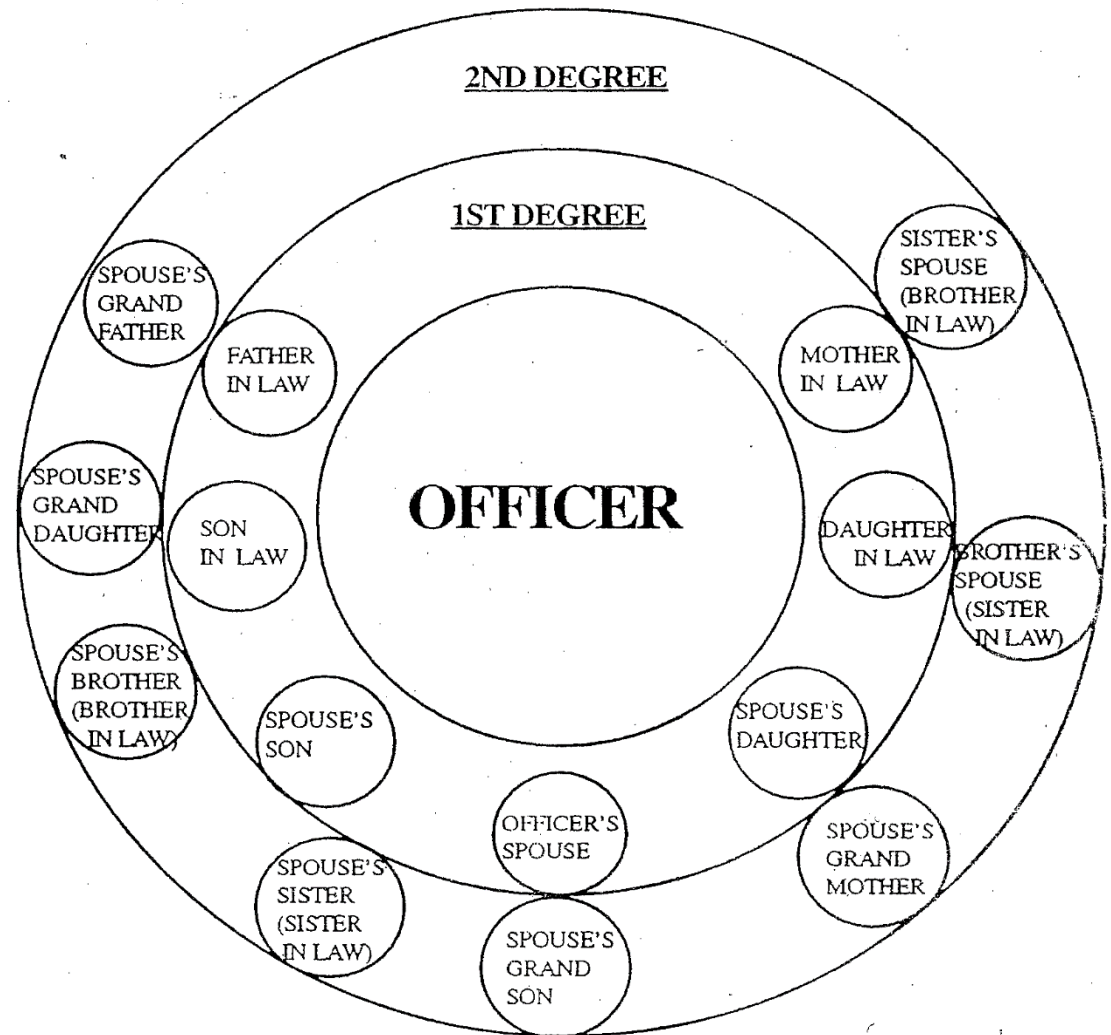
Step brothers/sisters are not.



Nepotism: Government Code Chapter 573

What is the 1st or 2nd Degree of Affinity (marriage)?

- **1st degree:** wife, husband, stepchildren, son-in-law, daughter-in-law
- **2nd degree:** brother-in-law, sister-in-law, spouse's grandparents, spouse's grandchildren



Nepotism: Government Code Chapter 573

What Happens if a Public Official has a Nepotism Conflict?

Neither the public official nor the other members of the governing body can hire the close relative, unless a specific statutory exception applies.

Gov. Code § 573.041



Nepotism: Government Code Chapter 573

Nepotism Question

Does nepotism prohibit a person from running for a public office if the person has a close relative who is currently a public employee?

- A. Yes
- B. No



Nepotism: Government Code Chapter 573

Nepotism Answer

B. No

However, if the person is elected, the close relative might have to resign if they are not protected by **the prior continuous employment exception.**



Nepotism: Government Code Chapter 573

Prior Continuous Employment Exception

Employee may continue employment if the employee has been continuously employed (uninterrupted) for a **sufficient time period immediately prior** to the appointment or election of the close relative.

- *30 days* if public official is appointed
- *Six months* if public official is elected in an election other than the general county and state election
- *One year* if public official is elected in the general county and state election

Gov. Code § 573.062



Nepotism: Government Code Chapter 573

Additional Exceptions

- Bus drivers for school districts located in counties with population < 35,000. Gov. Code § 573.061(4)
- Substitute teachers (not permanent position). Gov. Code § 573.061(6)
- Corporate employees – as long as corporation appoints, supervises, and pays
 - **HOWEVER**, the nepotism prohibition applies to hiring individuals as *independent contractors*. Op. Tex. Atty. Gen. No. DM-76 (1992)
- Cities under 200: Nepotism prohibitions do *not* apply to cities with a population less than 200. Gov. Code § 573.061 (7)



Nepotism: Government Code Chapter 573

Nepotism Scenario

Mayor Walter of the City of Texasville was elected to office in January 2001 and reelected in 2005. Rhonda, an Assistant City Secretary, was employed by the City of Texasville in October 1999.

As time progressed, Mayor Walter and Assistant City Secretary Rhonda became more acquainted and eventually fell in love. They got married in February 2006.

The local watchdog has written an editorial in the local newspaper accusing the mayor of violating the nepotism laws because he is still employing his now wife, Rhonda, at the City of Texasville .



Nepotism: Government Code Chapter 573

Nepotism Scenario Question #1

Is Mayor Walter violating the nepotism law by continuing to employ his wife, Rhonda, as an Assistant City Secretary for the City of Texasville?

- A. Yes b/c now they are related by 1st degree of affinity
- B. Yes b/c now they are related by 1st degree of consanguinity
- C. No b/c even though they are related now, Rhonda was employed by the city prior to marrying Mayor Walter over a year before the mayor was elected and she has remained employed since his elections.
- D. No b/c nepotism does not apply if the marriage happened after the mayor was elected.



Nepotism: Government Code Chapter 573

Nepotism Scenario Answer #1

C. No b/c even though they are related now, Rhonda was employed by the city prior to marrying Mayor Walter over a year before the mayor was elected and she has remained employed since his elections.



Nepotism: Government Code Chapter 573

Nepotism Scenario Question #2

Can Mayor Walter and the city council promote Assistant City Secretary Rhonda to City Secretary while they are married?

- A. Yes, b/c she is the best assistant city secretary and she deserves it.
- B. Yes b/c though she is married to Mayor Walter, the prior continuous employment exception allows for her to receive promotions as long as Mayor Walter does not participate, deliberate or vote on the promotion.
- C. No b/c she is his wife.



Nepotism: Government Code Chapter 573

Nepotism Scenario Answer #2

B. Yes b/c though she is married to Mayor Walter, the prior continuous employment exception allows for her to receive promotions as long as Mayor Walter does not participate, deliberate or vote on the promotion.

Gov. Code § 573.062(b)



Nepotism: Government Code Chapter 573

Consequences for Violating The Nepotism Law

- Public official commits official misconduct
- Fine not less than \$100 nor more than \$1000
- Public official can be removed from office if convicted and the conviction is final
- Employment contract is void

Gov. Code §§ 573.081 – 573.084



Dual Office Holding & Incompatibility



Dual Office Holding

Texas Constitution Art. XVI, Section 40

- “No person shall hold or exercise at the same time, more than one civil office of emolument...”
- What is “civil office of emolument”?
 - A paid public office



Dual Office Holding

Distinction Between “Public Office” and “Public Employment”

Public Office is determined by:

1. The officeholder’s authority to exercise governmental power for the benefit of the public, AND
2. Officeholder’s independence from the control of other governmental bodies or officials

Aldine Independent School District v. Standley, 280 S.W.2d 578 (Tex. 1955)



Dual Office Holding

Definition of Emolument

- Pay or some other benefit, compensation or thing of value received in exchange for the person's service as an officer.
- Reimbursement for actual governmental related expenses is not considered emolument.

Tex. Att'y Gen. LO-93-33 (1993)



Incompatibility

- Prohibition against a person holding certain public offices at the same time because of conflicts of interest that might arise.
- Three types of Incompatibility
 - Self Appointment
 - Self Employment
 - Conflicting Loyalties



Incompatibility

Incompatibility: Self Appointment

Prevents a governing body from appointing one of its own members to a public office.

Ehlinger v. Clark, 8 S.W.2d 666(Tex. 1928)

Incompatibility: Self Employment

A member of a governing body may not simultaneously serve as an employee of his/her entity.

Tex. Att'y Gen. LO-97-34



Incompatibility

Incompatibility: Conflicting Loyalties

Prevents a person from holding two public offices when the interest of the two entities may conflict and when voting on behalf of one public entity would possibly compromise the interest of the other public entity.

Thomas v. Abernathy County Line Indep. Sch. Dist., 290 S.W. 152 (Tex. Comm'n App. 1927, judgm't adopted)



Dual Office Holding / Incompatibility Scenario

The City of Texasville has a 5 member city council. Each council member serves a 2 year term. The Council members receive \$50 for every meeting they attend. The County of Tejas has a commissioners court that has 4 members and a county judge. Commissioners are paid a salary once they are elected, and they serve 4 year terms.

Council Member Davis has decided to run for County Commissioner in the County of Tejas where Texasville is the county seat. Council Member Davis was just reelected to the Texasville City Council and still has over a year on her term.

At the press conference announcing her candidacy for County Commissioner, a reporter asked Council Member Davis if she planned to remain a council member before the election. She responded that she planned to continue as a council member. The reporter then asked if she planned to stay a council member if she became the next county commissioner. Council member Davis stated that she would keep both positions because she thinks it would be best for both Texasville and Tejas County because it would help bridge the communication gap that sometimes happened between the governmental bodies.



Dual Office Holding / Incompatibility Scenario

Question #1

Would Dual Office Holding prevent Council Member Davis from being a city council member and a county commissioner at the same time?

- A. Yes b/c both positions are paid.
- B. Yes b/c both positions are public offices.
- C. Yes b/c both positions are public offices and paid.
- D. No b/c county commissioners are exempted from Dual Office Holding.



Dual Office Holding / Incompatibility Scenario

Answer #1

D. No b/c county commissioners are exempted from Dual Office Holding.

Art. XVI, §40 of the Texas Constitution provides that certain public officers are exempt from Dual Office Holding, including county commissioners.



Dual Office Holding / Incompatibility Scenario

Question #2

Would Incompatibility prevent Council Member Davis from being a city councilmember and a county commissioner at the same time?

- A. Yes b/c it would be considered self appointment.
- B. Yes b/c it would be considered self employment.
- C. Yes b/c it would be considered conflicting loyalties.
- D. No b/c dual office holding allowed it.



Dual Office Holding / Incompatibility Scenario

Answer #2

C. Yes b/c it would be considered conflicting loyalties.

Conflicting Loyalties applies b/c:

1. Texasville and Tejas County have overlapping boundaries.
2. Both entities are taxing authorities.
3. Council Member Davis would be holding two public offices where the interest of one might conflict with the interest of the other.



Dual Office Holding / Incompatibility Scenario

Bonus Question

Does Council Member Davis automatically resign her position on the Texasville City Council when she accepts the position of County Commissioner?

- A. Yes
- B. No



Dual Office Holding / Incompatibility Scenario

Bonus Answer

A. Yes

Automatic Resignation operates as a matter of law only when either:

- 1) A public officer accepted a second public office that is a paid position; or
- 2) A person accepts a second public office that would present a conflicting loyalties problem under common-law incompatibility.

Automatic Resignation can sometimes apply when the public official announces their candidacy for a second public office. (i.e. Resign to Run)

Pruitt v. Glen Rose ISD, 84 S.W.2d 1004 (Tex. 1935); Tex. Att'y Gen. LO-89-57 (1989)



Dual Office Holding / Incompatibility Scenario

Consequences for Violating Dual Office Holding or Incompatibility

There are no criminal penalties for holding two conflicting public offices or for other types of prohibited dual office holding. Such a violation would have to be challenged through a civil action in a district court.



Resign to Run



Resign to Run

Texas Constitution, Art. XVI, § 65

- a. This section applies to the following offices: District Clerks; County Clerks; County Judges; Judges of the County Courts at Law, County Criminal Courts, County Probate Courts and County Domestic Relations Courts; County Treasurers; Criminal District Attorneys; County Surveyors; County Commissioners; Justices of the Peace; Sheriffs; Assessors and Collectors of Taxes; District Attorneys; County Attorneys; Public Weighers; and Constables.
- b. **If any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one year and 30 days, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.**



Resign to Run

Resign to Run School Board Trustee

School board trustee is not one of the public offices subject to the resign to run provision; however, it is an office of trust.

Ramirez v. Flores, 505 S.W.2d 406 (Tex. Civ. App. — San Antonio, 1973, writ ref'd n.r.e.)



Resign to Run

Resign to Run Cities

Texas Constitution, Art. XI, § 11

Sec. 11. (a) A Home Rule City may provide by charter or charter amendment, and a city, town or village operating under the general laws may provide by majority vote of the qualified voters voting at an election called for that purpose, for a **longer term of office than two (2) years for its officers**, either elective or appointive, or both, but not to exceed four (4) years; provided, however, that tenure under Civil Service shall not be affected hereby; provided, however, that such officers, elective or appointive, **are subject to Section 65(b), Article XVI, of this constitution, providing for automatic resignation in certain circumstances, in the same manner as a county or district officer to which that section applies. . . .**



Resign to Run

Resign to Run Cities

Resign to run is triggered in a city when the officer:

- serves more than a two-year term; and
- has more than 1 year 30 days left in that term



Resign to Run

Resign to Run Additional Information

- Whether or not the officeholder wins the second office is irrelevant. Tex. Att'y Gen. LO-96-011, n.1 (1996)
- A candidate's later withdrawal from candidacy does not undo an automatic resignation. Tex. Att'y Gen. LO-94-059 (1994)
- The holdover provision applies to an officer who constructively resigns under article XVI, section 65 by running for another office. *Bianchi v. State*, 444 S.W.3d 231, 248 (Tex. App.—Corpus Christi 2014, no pet.); Op. Tex. Att'y Gen. Nos. GA-550 (2007), JC-0318 (2000), DM-377 (1996)
- A home-rule city charter may include a resign to run provision. Tex. Att'y Gen. LO-96-014



Conflict of Interest Part 1

Local Government Code
Chapter 171



What is Conflict of Interest in Local Government Code Chapter 171?

Prohibits *local public officials* from:

- Discussing,
- Deciding, OR
- Voting on

Issues that the local public official has a *Substantial Interest in a Business Entity or Real Property*.



Conflict of Interest: Local Gov. Code Chapter 171

Who is Considered a Local Public Official?

Local Gov. Code § 171.001(1)

Local Public Officials include:

- Elected Officials, and
- Appointed Officials,

Whether paid or unpaid, who exercise responsibilities that are more than advisory in nature.



Conflict of Interest: Local Gov. Code Chapter 171

Two Types of Conflict of Interest

1. Substantial Interest in a Business Entity: Conflict due to a local public official's substantial financial interest in a *business entity* that has an issue before the governmental unit.
2. Substantial Interest in Real Property: Conflict due to a local public official's substantial financial interest in *real property* that would be affected by the governmental unit's action.



Conflict of Interest: Local Gov. Code Chapter 171

Substantial Interest in a Business Entity

Local Gov. Code § 171.002(a) & (c)

A person has a substantial interest in a business entity if the person has:

- Stock Interest: owns 10% or more of the total voting stock or shares
- Other Ownership Interest: owns either 10% or more, or \$15,000 or more, of the fair market value of the business entity
- Income Interest: received more than 10% of his/her gross income from the previous year from the business entity
- Close Relative w/any of the above interests: close relative within the 1st degree of consanguinity (blood) or affinity (marriage)

Business Entity means sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust or any other entity recognized by law.



Conflict of Interest: Local Gov. Code Chapter 171

Test for Conflict of Interest Regarding Business Entity

Local Gov. Code § 171.004(a)(1)

1. Substantial Interest Analysis: determine if official or close relative has a substantial interest in the business entity
2. Special Economic Effect Analysis: determine whether the action the local governmental body is considering would have a special economic effect on the business entity that is distinguishable from its general effect on the public



Conflict of Interest: Local Gov. Code Chapter 171

Substantial Interest in Real Property

Local Gov. Code § 171.002(b) & (c)

A person has a substantial interest in real property if the person has:

- \$2,500 Ownership Interest: a legal or equitable interest in real property worth \$2,500 or more
- Close Relative w/\$2,500 Ownership Interest: close relative within the 1st degree of consanguinity (blood) or affinity (marriage)



Conflict of Interest: Local Gov. Code Chapter 171

Test for Conflict of Interest Regarding Real Property Local Gov. Code § 171.004(a)(2)

1. Substantial Interest Analysis: determine if official has substantial interest in real property
2. Special Economic Effect Analysis: determine whether the action the local governmental body is considering would have a special economic effect on the value of the property that is distinguishable from its general effect on the public



Conflict of Interest: Local Gov. Code Chapter 171

What Does Local Public Official Do if He/She has a Conflict of Interest?

Local Gov. Code § 171.004(a) & (b)

1. File an Affidavit stating the nature and extent of the official's interest with the governmental body's record keeper;
2. Abstain from discussion or other proceedings regarding the item; and
3. Abstain from voting on the item.



Conflict of Interest: Local Gov. Code Chapter 171

Consequences for Violating Conflict of Interest Law

Local Gov. Code § 171.003

1. **Civil:** Action taken is voidable
2. **Criminal:** Four situations in which a public official may be prosecuted for action or inaction that is a *Class A misdemeanor punishable by a fine not to exceed \$4,000 and/or up to one year in jail:*
 - a. Failure to file an affidavit
 - b. Participating in discussion regarding an item when there is a conflict
 - c. Serving as surety for a business entity that has work, business, or a contract with the governmental body
 - d. Serving as surety on any official bond required for an official of a governmental body
3. **Possible Removal from office**



Conflict of Interest Part 2

Local Government Code
Chapter 176



What is Conflict of Interest in Local Government Code Chapter 176?

Requires a vendor or a local government officer of a local governmental entity to disclose certain business relationships.



Conflict of Interest: Local Gov. Code Chapter 176

Local Governmental Entities

Local Gov. Code § 176.001(3)

- Includes a county, city, school district, charter school, junior college district, water district created under Subchapter B, Chapter 49, Water Code, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a city, or governing body of a city.
- Does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.



Conflict of Interest: Local Gov. Code Chapter 176

Local Governmental Officer

Local Gov. Code § 176.001(4)

1. A member of the governing body of a local governmental entity;
2. A director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or
3. An agent of a local governmental entity who exercises discretion in the planning, recommending, selecting or contracting of a vendor.



Conflict of Interest: Local Gov. Code Chapter 176

Vendor

Local Gov. Code § 176.001(7)

- A person who enters or seeks to enter into a contract with a local governmental entity.
 - The term includes an agent of a vendor.
 - The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract.
 - The term does not include a state agency except for Texas Correctional Industries.



Conflict of Interest: Local Gov. Code Chapter 176

Agent

Local Gov. Code § 176.001(1)

A third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.



Conflict of Interest: Local Gov. Code Chapter 176

Family Members

Local Gov. Code § 176.001(2)

Person related to another person within the 1st degree by consanguinity (blood) or affinity (marriage).

Family Relationship

Local Gov. Code § 176.001(2-a)

A relationship between a person and another person within the 3rd degree by consanguinity (blood) or the 2nd degree by affinity (marriage).



Conflict of Interest: Local Gov. Code Chapter 176

Gift

Local Gov. Code § 176.001(2-b)

- A benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest.
- The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.



Conflict of Interest: Local Gov. Code Chapter 176

Who are the “Conflict Disclosure Statements” and “Conflict of Interest Questionnaires” Filed With?

Local Gov. Code §§ 176.003(b) & 176.006(a-1)

- The statements and questionnaires must be filed with the record administrator of the local governmental entity.
- **Record Administrator** is the director, county clerk, city secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person who is designated by the local governmental entity to maintain the statements and questionnaires. Local Gov. Code § 176.001(5)
- If the local governmental entity maintains a website, then the statements and questionnaires must be posted on the website. Local Gov. Code § 176.009



Conflict of Interest: Local Gov. Code Chapter 176

When is a Local Government Officer Required to File a “Conflicts Disclosure Statement”?

Local Gov. Code § 176.003

Two-Part Test

WHEN

Part 1

A vendor enters into a contract with the local governmental entity

or

The local governmental entity is considering entering into a contract with the vendor

AND



Conflict of Interest: Local Gov. Code Chapter 176

When is a Local Government Officer Required to File a “Conflicts Disclosure Statement”?

Local Gov. Code § 176.003

Part 2

The Vendor Has

- A. An employment or other business relationship w/the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:
 - 1. A contract b/w the local governmental entity and vendor has been executed; or
 - 2. The local governmental entity is considering entering into a contract with the vendor; OR
- B. Given the local government officer or a family member of the officer one or more gifts with an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - 1. A contract b/w the local governmental entity and vendor has been executed; or
 - 2. The local governmental entity is considering entering into a contract with the vendor; OR
- C. A family relationship with the local government officer.



Conflict of Interest: Local Gov. Code Chapter 176

When is the “Conflict Disclosure Statement” Required to be Filed?

Local Gov. Code § 176.003(b)

No later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require filing of the statement.



Conflict of Interest: Local Gov. Code Chapter 176

Consequences of Not Filing “Conflict Disclosure Statement” Local Gov. Code § 176.013

- An officer commits an offense if the officer:
 - Is required to file a statement; AND
 - Knowingly fails to file the statement when the officer becomes aware of the facts that require filing the statement.
- **Exception to prosecution** if officer files a statement or questionnaire not later than the seventh day after the date the officer receives notice from the local governmental entity of the alleged violation.
- Local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply.



Conflict of Interest: Local Gov. Code Chapter 176

When is a Vendor Required to File a “Conflict of Interest Questionnaire”?

Local Gov. Code § 176.006

If the vendor has a business relationship with the local governmental entity and has:

1. An employment or other business relationship with a local government officer or an officer’s family member that results in the officer or officer’s family member receiving taxable income that is more than \$2,500 in the preceding twelve months; or
2. Given a local government officer or an officer’s family member one or more gifts totaling more that \$100 in the preceding twelve months, with some exceptions; or
3. A family relationship w/a local government officer of that local governmental entity.



Conflict of Interest: Local Gov. Code Chapter 176

When is the “Conflict of Interest Questionnaire” Required to be Filed?

Local Gov. Code § 176.006(a-1)

Not later than the seventh business day after the later of the following:

- The date the vendor:
 - begins discussions or negotiations to enter into a contract with the local government entity;
 - submits an application, response to a request for proposal or bid, or another writing related to a potential contract w/ local governmental entity;

OR

- The date the vendor becomes aware:
 - of an employment or other business relationship w/ a local government officer or a family member of officer;
 - that the vendor has given a gift to an officer or officer’s family member; or
 - of a family relationship with a local government officer.



Conflict of Interest: Local Gov. Code Chapter 176

Consequences of Not Filing “Conflict of Interest Questionnaire”

Local Gov. Code § 176.013

- A vendor commits an offense if the vendor:
 - Is required to file a questionnaire; AND
 - Either knowingly fails to file:
 - the questionnaire when the vendor becomes aware of the facts that require the filing; or
 - an updated questionnaire when the vendor becomes aware of an event that would make a statement in a questionnaire previously filed incomplete or inaccurate.
- **Exception to prosecution** if vendor files the questionnaire not later than the seventh business day after the date the vendor receives notice from the local governmental entity of the alleged violation.
- The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a questionnaire.



Conflict of Interest: Local Gov. Code Chapter 176

Possible Offenses for Knowingly Failing to file the Statement or the Questionnaire

Local Gov. Code § 176.013(c)

1. Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount;
2. Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or
3. Class A misdemeanor if the contract amount is less than \$5 million.



For More Information

- **Nepotism**

- TML: Texas Nepotism Laws Made Easy - <https://www.tml.org/p/Texas%20Nepotism%20Laws%20Made%20Easy%202016.pdf>
- TASB: Conflict of Interest: Nepotism - https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/conflict_int_nepotism_may15.pdf

- **Dual Office Holding / Incompatibility**

- TML: Dual Office Holding Legal Q&A - <https://www.tml.org/legal-qna/2010April-LFC.pdf>
- TASB: Double Trouble: When School Board Trustees Hold More Than One Public Office - https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/holding_more_than_one_office.aspx

- **Resign to Run**

- TML: Resign to Run Legal Q & A: <https://www.tml.org/p/2014%20March%20Resign%20to%20Run%20HM.pdf>

- **Conflict of Interest – Local Government Code Chapter 171 & 176**

- TML: Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors - https://www.tml.org/p/Conflicts%20and%20Disclosure%20Laws_January%202017.pdf
- TASB: Conflict Disclosure for Board Members and Local Government Officers - https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/conflict_disclosures_bd_mem_dec15.pdf



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Darn! That's The End!

