


Traps For the Unwary


**Information that a Public Officer
Needs to Know**

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Topic Overview

- Conflict of Interest
 - Local Government Code Ch. 171
 - Local Government Code Ch. 176
- Disclosure of Interested Parties – Government Code §2252.908
- Gift to Public Servant – Penal Code §36.08
 - Exceptions – Penal Code §36.10
- Honorarium – Penal Code §36.07
- Misuse of Government Property – Penal Code §39.02
- Misuse of Official Information – Penal Code §39.06
- Nepotism – Government Code Ch. 573
- Dual Office Holding/Incompatibility
- Bribery – Penal Code §36.02



**Conflict of Interest
Part 1**

Local Government Code
Chp 171




What is Conflict of Interest in Ch. 171 of the Local Government Code?

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't Code Chp. 171

Who is Considered a Local Public Official?
§171.001(1)

Local Public Officials are defined to 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't Code Chp. 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 his/her 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 his/her governmental unit's action.




Conflict of Interest: Local Gov't Code Chp. 171

Substantial Interest in a Business Entity: §171.002(a) & (c)

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

- ▶ 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: receives more than 10% of his/her gross income from the previous year from the business entity
- ▶ Close family member w/ any of the above interest: close relative within the 1st degree or 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. - §171.001(2)



Conflict of Interest: Local Gov't Code Chp. 171

**Test for Conflict of Interest regarding a Business Entity
§171.004(a)(1)**

1. Substantial Interest Analysis: Must determine if he/she or close relative has a substantial interest in a business entity.
2. Special Economic Effect Analysis: Must determine whether the action that the local government 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't Code Chp. 171

Substantial Interest in Real Property: §171.002(b) & (c)

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


- ▶ \$2,500 Ownership Interest: has 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't Code Chp. 171

**Test for Conflict of Interest Regarding Real Property:
§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 that 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't Code Chp. 171

What Does Local Public Official Do if He/She Has a Conflict of Interest?: §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't Code Chp. 171


Consequences for Violating Conflict of Interest Law: §171.003

1. **Civil**: Action taken is voidable
2. **Criminal**: Four situations in which public official may be prosecuted for his/her 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*:
 1. Failure to File an Affidavit
 2. Participating in Discussion Regarding an Item when there is a conflict
 3. Serving as a Surety for any business entity that has work, business or a contract of any amount with the governmental body
 4. Serving as a Surety on any official bond that is required for an official of a governmental body of the local entity.
3. **Possible Removal from office**




**Conflict of Interest
Part 2**

Local Government Code
Chp 176



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


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



Conflict of Interest: Local Government Code Ch. 176

Local Governmental Entities – §176.001(3)
Amended by HB 23 (2015)
Effective Sept. 1, 2015


- ▶ 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 the county, the mayor of a city, or governing body of a city.
- ▶ The term 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 Government Code Ch. 176

Local Governmental Officer - §176.001(4)
 Amended by HB 23 (2015)
 Effective Sept. 1, 2015


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 if the governmental entity who exercises discretion in the planning, recommending, selecting or contracting of a vendor.



Conflict of Interest: Local Government Code Ch. 176

Vendor - §176.001(7)
 Amended by HB 23 (2015)
 Effective Sept. 1, 2015


- ▶ 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 Government Code Ch. 176

Agent - §176.001(1)
 Amended by HB 23 (2015)
 Effective Sept. 1, 2015

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 Government Code Ch. 176

Family Members - §176.001(2)

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

Family Relationship - §176.001(2-a)
*Added by HB 23(2015)
 Effective Sept. 1, 2015*

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 Government Code Ch. 176

Gift - §176.001(2-b)
*Added by HB 23(2015)
 Effective Sept. 1, 2015*

▶ 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 Government Code Ch. 176

Who are the "Conflict Disclosure Statements" and "Conflict of Interest Questionnaires" to be Filed With?: §§ 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 government entity or another person who is designated by the local governmental entity to maintain the statements and questionnaires. §176.001(5)
- ▶ If local governmental entity maintains a web site, then the statements and questionnaires must be posted on the web site. §176.009



Conflict of Interest: Local Government Code Ch. 176

When is a Local Governmental Officer Required to File a "Conflicts Disclosure Statement"? -§176.003


Two-Part Test

Officer is required when:

Part 1

A vendor enters into a contract with the a local governmental entity
or
The local governmental entity is considering entering into a contract with vendor;

AND



Conflict of Interest: Local Government Code Ch. 176

When is a Local Governmental Officer Required to File a "Conflicts Disclosure Statement"? -§176.003


Part 2

2. The vendor:

A. Has an employment or other business relationship w/ the local government officer a family member of the officer that results in the officer or family member receiving taxable income, other then 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



Conflict of Interest: Local Government Code Ch. 176

When is a Local Governmental Officer Required to File a "Conflicts Disclosure Statement"? -§176.003

*Amended by HB 23(2015)
Effective Sept. 1, 2015*


Part 2 cont.

B. Has given to the local government officer or a family member of the officer one or more gifts that have 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. *Has a family relationship with the local government officer.*



Conflict of Interest: Local Government Code Ch. 176

When is the "Conflict Disclosure Statements" Required to be Filed? - §176.003(b)


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



Conflict of Interest: Local Government Code Ch. 176

Consequences of Not Filing "Conflict Disclosure Statement"? - §176.013
Added by HB 23(2015)
Effective September 1, 2015


- ▶ *An officer commits an offense if:*
 - ▶ *Is requires to file a statement; AND*
 - ▶ *Knowingly fails to file the statement when the officer becomes aware of the facts that requires the filina of the statement.*
- ▶ *Exception to prosecution if officer files a statement or questionnaire not later than the seventh day after the date the person receives notice from the local governmental entity of the alleged violation.*



Conflict of Interest: Local Government Code Ch. 176

Consequences of Not Filing "Conflict Disclosure Statement"? - §176.013 cont.
Added by HB 23(2015)
Effective September 1, 2015

- *Local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply.*




Conflict of Interest: Local Government Code Ch. 176

When is a Vendor Required to File a "Conflict of Interest Questionnaire"? - §176.006
 Amended by HB 23(2015)
 Effective Sept. 1, 2015

Vendor is required 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. Has given local government officer or an officer's family member one or more gifts totaling more than \$100 in the preceding twelve months, excluding any gifts; or
3. Has a family relationship w/ a local government officer of that local governmental entity.




Conflict of Interest: Local Government Code Ch. 176

When is the "Conflict of Interest Questionnaires" Required to be Filed? - §176.006(a-1)
 Amended by HB 23(2015)
 Effective September 1, 2015

•Not later than the seventh business day after the latter 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



Conflict of Interest: Local Government Code Ch. 176

When is the "Conflict of Interest Questionnaires" Required to be Filed? - §176.006(a-1) cont.
 Amended by HB 23(2015)
 Effective September 1, 2015

- ▶ 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 Government Code Ch. 176

Consequences of Not Filing "Conflict of Interest Questionnaire"? - §176.013

*Added by HB 23(2015)
Effective September 1, 2015*

- 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 of the questionnaire; or
 - Knowingly fails to file an updated questionnaire when the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.




Conflict of Interest: Local Government Code Ch. 176

Consequences of Not Filing "Conflict of Interest Questionnaire"? - §176.013

*Added by HB 23(2015)
Effective September 1, 2015*

- Exception to prosecution if vendor files questionnaire not later than the seventh business day after the date the vendor received notice from the local government 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 Government Code Ch. 176

Possible Offenses for Knowingly Failing to file the Statement or the Questionnaire - §176.013(c)

*Added by HB 23(2015)
Effective September 1, 2015*

1. Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;
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.




Disclosure of Interested Parties

Government Code §2252.908



What is Disclosure of Interested Parties?
Added by HB 1295 (2015)
Effective January 1, 2016

A business entity that is going to enter into a contract with a governmental entity or state agency must disclose interested parties.




Disclosure of Interested Parties: Government Code §2252.908

Business Entity - §2252.908(a)(1)

Any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation

Governmental Entity - §2252.908(a)(2)

A municipality, county, public school district, or special-purpose district or authority.




Disclosure of Interested Parties: Government Code §2252.908

Interested Party - §2252.908(a)(3)

A person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.

State Agency - §2252.908(a)(4)

A board, commission, office, department or other agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by Section 61.003 of the Education Code.




Disclosure of Interested Parties: Government Code §2252.908

When is it required for a business entity to disclose interested parties? – §2252.908(b)

*When a contract of a governmental entity or state agency that:

- Requires an action or vote by the governing body of the entity or agency before the contract may be signed; OR
- Has a value of at least \$1 million.




Disclosure of Interested Parties: Government Code §2252.908

When is the disclosure of interested parties required to be submitted and to whom is it submitted to? – §2252.908(d) & (f)

*Business entity must submit the disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the entity or agency.

*The governmental entity or state agency must submit the disclosure to the Texas Ethics Commission no later than the 30th day after the date the entity or agency receives the disclosure.




Disclosure of Interested Parties: Government Code §2252.908

What is the Texas Ethics Commission involvement with the disclosure of interested parties? - §2252.908(e) & (g)

- Create a disclosure of interested parties form
- Promulgate rules to implement this new law
- Post a copy of the disclosure forms of its website.


For more information:

<https://www.ethics.state.tx.us/tec/1295-Info.htm>



Gift to Public Servant

Penal Code §36.08




Gift to Public Servant by Person Subject to His/Her Jurisdiction
Penal Code §36.08

Gift Question #1

Can a public official or public employee accept a gift or benefit that is simply provided in appreciation for superior public service and that is not in exchange for any official exercise of discretion?

A.No, not for any reason
 B.Yes, because they are a good public servants
 C.Yes, as long as it falls under an exception




Gift to Public Servant by Person Subject to His/Her Jurisdiction
Penal Code §36.08

Gift Answer #1

C. Yes, if it falls under an exception

*In general, public officials and public employees are not supposed to accept gifts or benefits from a person who is subject to their jurisdiction.


*However, there are exceptions.



Gift to Public Servant by Person Subject to His/Her Jurisdiction
Penal Code §36.08

Exceptions
Penal Code §36.10


- **Token Gifts:** an item that has a value of \$50 or less, excluding cash or a negotiable instrument
- **Gifts from Family or Close Friends:** A gift from the public servant's family or a personal friend, if there is an independent relationship that is not related to the status or work of the public servant
- **Gifts from Individuals with Whom the Public Official or Public Employee has an Independent Business Relationship:** A gift conferred by a professional or business contact if there is an independent relationship that is not related to the status or work of the official



Gift to Public Servant by Person Subject to His/Her Jurisdiction
Penal Code §36.08

Exceptions
Penal Code §36.10


- **Statutorily Provided Fees:** a fee that is provided by law that an official is lawfully entitled to receive for performing some function other than his or her official function as a public servant
- **Payment for Expenses:** a benefit given in honor of or appreciation to a public servant who is required to file a campaign finance report or personal financial disclosure statement
 - Used solely to defray expenses accrued in the performance of duties or activities connected to the office which are non-refundable by the political subdivision, and
 - The benefit and the sources of any benefit in excess of \$50 is reported in the statement



Gift to Public Servant by Person Subject to His/Her Jurisdiction
Penal Code §36.08

Exceptions
Penal Code §36.10

- **Political Contributions:** as defined by Title 15 of the Election Code
- **Food, Lodging, or Transportation Expenses:** in connection with a seminar or conference in which the public servant renders a substantive service (i.e., doing a speech)
- **Food, Lodging, Transportation or Entertainment Expenses accepted as a Guest:** can be accepted as long as the recipient is in the presence of the donor and the recipient reports the expenses if required by law




Gift to Public Servant by Person Subject to His/Her Jurisdiction
Penal Code §36.08

Gift Question #2

What can a public official or public employee do if the official is presented with an unsolicited benefit?

A. Keep it because it was unsolicited.
 B. Donate it to an educational charitable organization.
 C. Do not keep it.




Gift to Public Servant by Person Subject to His/Her Jurisdiction
Penal Code §36.08

Gift Answer #2
B & C

*The public official or public employee can either:

- Turn down the unsolicited gift
- Donate the unsolicited gift to a recognized tax-exempt charitable organization formed for educational, religious or scientific purpose, or
- Donate the unsolicited gift to a governmental entity that has the authority to accept the gift


Penal Code §36.08(i)



Gift to Public Servant by Person Subject to His/Her Jurisdiction
Penal Code §36.08


Consequences for Violating Gift Law

- Violating this offense results in a Class A misdemeanor:
 - Fine not to exceed \$4,000 and/or
 - Not to exceed one year in jail
- Also, it could be grounds for removal or a recall depending on if such action is authorized under state law or a city charter.




Honorarium

Penal Code §36.07



What is an Honorarium?
Penal Code §36.07

- Honorarium is considered "a payment in recognition of acts or professional service for which custom or propriety forbids a price to be set."
 Op. Tex. Ethics Comm'n No. 401 (1998)
- Public officials and public employees are prohibited from soliciting, accepting or agreeing to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public official or public employee's official position or duties.




Honorarium: Penal Code §36.07

Exception

Public officials or public employees can accept payment for meals, transportation or lodging expenses connected with a conference or similar event in which the public servant renders services (i.e., speeches).

Penal Code §36.07(b)




Honorarium : Penal Code §36.07

Consequences for Violating Honorarium Law


Violating this offense results in a Class A misdemeanor:

- Fine not to exceed \$4,000 and/or
- Not to exceed one year in jail



Misuse of Government Property


Penal Code §39.02



Misuse of Government Property: Penal Code § 39.02

Does State Law Prohibit a Public Official or Public Employee From Using Government Property for Personal Purposes?


State law prohibits a public official or public employee from misusing government property, services, personnel or any other thing of value belonging to the government with the intent to obtain a benefit or to harm or defraud another.



Misuse of Government Property: Penal Code § 39.02

► **Misuse** is dealing with property in a way that is contrary to:


- An agreement under which the public official or public employee holds the property
- A contract of employment or oath of office of a public official or public employee
- A law that prescribes the manner of custody or disposition of the property or
- A limited purpose for which the property is delivered or received.



Misuse of Government Property: Penal Code § 39.02

Consequences of Violating Misuse of Government Property Law
Amended by HB 1396 (2015)
Effective September 1, 2015


- An offense is:
 - a Class C misdemeanor if the value of the use of the thing misused is less than \$100;
 - a Class B misdemeanor if the value of the use of the thing misused is \$100 or more but less than \$750;
 - a Class A misdemeanor if the value of the use of the thing misused is \$750 or more but less than \$2,500;



Misuse of Government Property: Penal Code § 39.02


Consequences of Violating Misuse of Government Property Law cont.
Amended by HB 1396 (2015)
Effective September 1, 2015

- a state jail felony if the value of the use of the thing misused is \$2,500 or more but less than \$30,000;
- a felony of the third degree if the value of the use of the thing misused is \$30,000 or more but less than \$150,000;
- a felony of the second degree if the value of the use of the thing misused is \$150,000 or more but less than \$300,000; or
- a felony of the first degree if the value of the use of the thing misused is \$300,000 or more.



Misuse of Official Information

Penal Code §39.06




Misuse of Official Information: Penal Code §39.06

Does state law prohibit a public official or public employee from using confidential information to gain a benefit or advantage?

Public officials and public employees are prohibited from disclosing or using confidential information to which the official or employee has access by virtue of the office or employment and that has not been made public:


- To acquire or aid another to acquire pecuniary interest in any property, transaction or enterprise;
- To speculate or aid another to speculate; OR
- To gain a benefit or with intent to harm or defraud another.



Misuse of Official Information: Penal Code §39.06

What is “information that has not been made public”?

Any information to which the public does not generally have access, and that is prohibited from disclosure under the Public Information Act




Misuse of Official Information: Penal Code §39.06

Consequences of Violating Misuse of Official Information Law

Violations of misuse of official information is a third degree felony:


- Two years to 10 years in TDCJ; and/or
- Fine up to \$10,000.

Also, could be grounds for removal or a recall depending on if such action is authorized under state law or a city charter.



Nepotism

Government Code Ch. 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 that has the **final hiring authority** or member of the governing body that has the **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

Who Is Considered a Close Relative?

- ▶ **Close relative** is a relative that is either in the:
 - 1st, 2nd or 3rd degree of consanguinity or
 - 1st or 2nd degree of affinity.

Gov. Code § 573.002



Nepotism: Government Code Chapter 573

What is Consanguinity?

- ▶ Close relative is related to the public official by **blood**.
- ▶ Examples
 - Brother
 - Sister
 - Mother
 - Father



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 Affinity?

- ▶ Close relatives is related to the public official by **marriage**.
- ▶ Examples
 - Wife
 - Husband
 - Mother-in-law
 - Father-in-law



Nepotism: Government Code Chapter 573

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

- ▶ **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 Does a Public Official Do if He/She Has a Nepotism Conflict?

- ▶ 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 of 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

Nepotism Scenario

Sheriff Walter was elected to office in January 2001 and reelected in 2005, 2009 & 2013. Prior to his election in 2001, Rhonda, a dispatcher, became employed by the Sheriff's office in October 1999.

As time progressed, Sheriff Walter and Dispatcher Rhonda became more acquainted and eventually fell in love. They got married in February 2010.

The local watchdog has written an editorial in the local newspaper accusing the sheriff of violating the nepotism laws because he was still employing his now wife, Rhonda, at the Sheriff's office.




Nepotism: Government Code Chapter 573

Nepotism Scenario Question #1

Is Sheriff Walter violating the nepotism law by continuing to employ his wife, Rhonda, as a dispatcher in the Sheriff's office?


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 Sheriff's office prior to marrying Sheriff Walter over a year before the Sheriff was elected and she has remained employed since his elections.
 D. No b/c nepotism does not apply if the marriage happened after the Sheriff 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 Sheriff's office prior to marrying Sheriff Walter over a year before the Sheriff was elected and she has remained employed since his elections.




Nepotism: Government Code Chapter 573

Nepotism Scenario Question #2

Can Sheriff Walter promote Dispatcher Rhonda to head dispatcher while they are married?

A. Yes, b/c she is the best dispatcher and she deserves it.
 B. Yes b/c she is his wife.
 C. No b/c she is his wife.



Nepotism: Government Code Chapter 573

Nepotism Scenario Answer #2

C.No b/c she is his wife.

Although Dispatcher Rhonda was able to keep her job because of the prior continuous employment exception, Sheriff Walter may not participate in any deliberation or voting on the change of status of Rhonda if that action applies only to her.

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.




**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 once 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



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.



Incompatibility

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



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: 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



Dual Office Holding / Incompatibility Scenario

The City of Texasville has a 5 member city council. Each council member serve 2 year terms. The Council members do receive \$50 for every meeting that 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 one year on her term.

At the press conference announcing her candidacy for County Commissioner, one of the reporters asked her if she planned to stay a council member before the election. She stated that she did plan to continue to be a council member. The same reporter asked her if she planned to stay a council member if she became the next county commissioner. Council member Davis stated that she would do both positions because she thinks it would be the 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 Councilmember Davis for being a city councilmember and a county commissioner at the same time?

- A. Yes b/c both positions are paid.
- B. Yes b/c both positions are public office.
- C. Yes b/c both positions are public office 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 which includes county commissioners.



Dual Office Holding / Incompatibility Scenario
Question #2

Would Incompatibility prevent Councilmember Davis for 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) Councilmember 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 Councilmember 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




Consequences for Violating the 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.



Bribery

Penal Code §36.02




• What is Bribery?

- Penal Code §36.02

- It is *illegal* for:
 - A person to offer, confer or agree to confer; or
 - A public official or employee to accept, agree to accept or solicit,
- Any *benefit* as consideration:
 - For a decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter.
 - For a violation of a duty imposed by law on a public servant or party official.

Penal Code §36.02(a)(1) & (3)




Bribery: Penal Code §36.02

What is considered a “benefit”?

•Anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has direct and substantial interest

Penal Code §36.01(3)

•In other words, benefit would include anything that is offered that a *reasonable person would consider* having some monetary value, whether it is given to the public official or to someone in whom the official has a direct and substantial interest (such as a family member or a business associate).




Bribery: Penal Code §36.02

Bribery Question #1

Does state law prohibit a public official or employee from accepting a benefit if the item is offered or accepted after the exercise of official discretion?

A.Yes for public officials, but no for public employees
 B.Yes for public employees, but no for public officials
 C.Yes for public officials and public employees
 D.No for public officials and public employees



Bribery: Penal Code §36.02

Bribery Answer #1

C. Yes for public officials and public employees

*Even if the benefit was offered or accepted after the exercise of an official action or official discretion, it may still be considered bribery of a public official or public employee.


Penal Code §36.02(c)(1)

*It is not a defense if the benefit was offered or accepted after the public official ceased to be a public official.

Penal Code §36.02(c)(2)

*Also, not a defense if the influenced person was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

Penal Code §36.02(b)




Bribery: Penal Code §36.02

Bribery Question #2

Is a plaque considered a benefit under the bribery law?

A. Yes, if it cost more than \$50
 B. Yes, no matter what it cost
 C. No, but do not make it too elaborate




Bribery: Penal Code §36.02

Bribery Answer #2

C. No, but don't make it too elaborate

The Texas Ethics Commission has stated in its opinion that plaques, unless quite elaborate, would not be considered a benefit under the bribery law of such item is unsolicited and not offered or accepted in exchange for any action or inaction on the part of a public servant.

Op. Tex. Ethics Comm'n No. 36 (1992)




Bribery: Penal Code §36.02

Exceptions to bribery

•If the benefit is:

- A political contribution as defined by Title 15 of the Election Code (Regulating Political Funds and Campaigns), or
- Expenditure made and reported in accordance with Chapter 305 of the Government Code (Registration of Lobbyist)

Penal Code §36.02(d)



Bribery: Penal Code §36.02


Consequences for violating the bribery law

•Persons prosecuted for bribery will be guilty of a second degree felony:

- Not less than two years, but not more than 20 years in TDCJ, and/or
- Fine not to exceed \$10,000

Penal Code §§12.33 & 36.02(e)

– Also, could be grounds for removal or a recall depending on if such action is authorized under state law or a city charter.



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