

Guide to Conflicts of Interest & Texas Ethics Law

Newly Elected County Judges and Commissioners
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TEXAS ASSOCIATION *of* COUNTIES

WHY ARE WE HERE?

- Who you can and can't do business with.
- How to transact county business without ending up in jail.
- Other ways you can get into trouble.



CONFLICTS OF INTEREST

Must not do business with yourself, your family, or an entity you are involved with, and you must follow the law exactly.

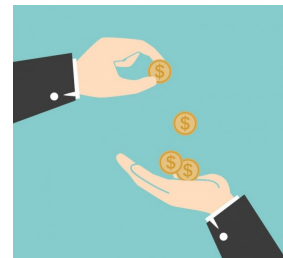


3

CONFLICTS OF INTEREST

You have a conflict of interest if:

- you or a family member has a substantial interest in a business entity or real property subject to action by the commissioners court; and
- the action would have a special economic effect distinguishable from the general effect on the public.



4

CONFLICTS OF INTEREST

Local Government Code Chapter 171 supersedes Local Government Code 81.002 and common law strict standard contained in county judge and commissioner's oath of office: no direct or indirect interest in contract with the county.



5

WHAT IS A "SUBSTANTIAL INTEREST"?

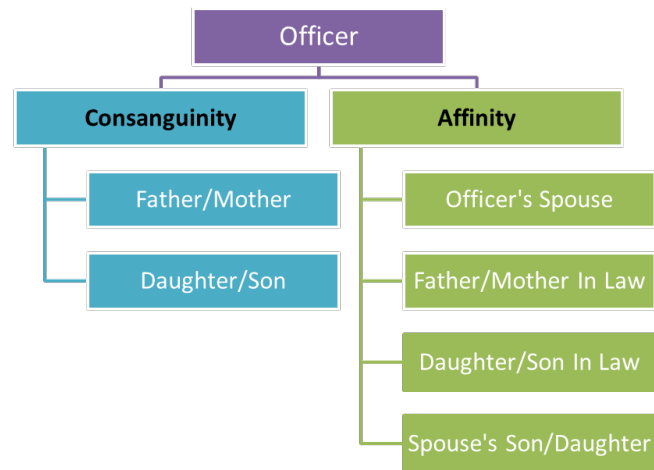
Local Government Code Chapter 171 test for 'substantial interest' in a business entity or real property:

- Own 10% or more voting stock or shares
- Own 10% or more or \$15,000 or more of fair market value
- Receive funds exceeding 10% of annual gross income
- Equitable or legal ownership equal to \$2,500 in real property
- Same standard applies for relatives of the 1st degree



6

FIRST DEGREE RELATIVES



7

CONFLICTS OF INTEREST TEST

Two part test for conflicts of interest:

- Substantial interest analysis
- Special economic effect analysis



8

WHAT IF YOU HAVE A CONFLICT?

- You are prohibited from participating in a vote if it is reasonably foreseeable that the action could confer an economic benefit on related business entity or real property.
- If you have a conflict of interest, you must:
 - file an affidavit with the county clerk that describes the nature and extent of your conflict
 - abstain from any discussion
 - abstain from any action



9

WHAT IF YOU HAVE A CONFLICT?

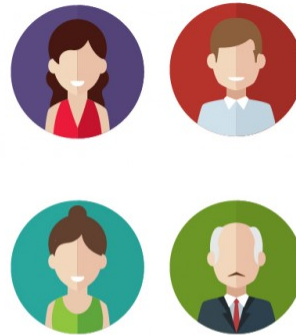
- You do not need to leave the dais, especially if this will affect the quorum.
- You must also file affidavit and abstain if a person related to you in the first degree of consanguinity or affinity owns a substantial interest in a business entity.



10

EXCEPTION

- If a majority of commissioners court has conflicts and filed affidavits, the law allows participation and vote.
- When in doubt, talk to your county attorney.



11

CONFLICTS OF INTEREST PENALTIES

- Action is not voidable unless it would not have been approved without the vote of the person with the conflict.
- Knowing violation is:
 - Class A misdemeanor:
 - Fine: up to \$4,000
 - Jail: up to a year
 - Both fine and jail.
 - **Official misconduct (automatic removal)**



12

PURCHASING DISCLOSURES

- Local Government Code Chapter 176 requires disclosure of certain relationships between a vendor and a member of a governing body (commissioners court).
- You must file a disclosure form with the county clerk within 7 days if a vendor or potential vendor:
 - has an employment or other business relationship with you
 - Has given you or a family member gifts totaling \$250 or more in a 12-month period



13

PURCHASING DISCLOSURES

- Potential vendors must also file a disclosure form with the county clerk.
- Texas Ethics Commission form:
www.ethics.state.tx.us



14

PURCHASING DISCLOSURES

Exceptions to disclosure:

- Employment or business relationship resulted in less than \$2,500 income in the past year
- Gift is:
 - from a family member
 - a political contribution
 - food, lodging or entertainment accepted as a guest



15

PENALTIES

- Most purchasing related violations are:
 - Class B misdemeanor:
 - Fine up to \$2,000
 - Jail up to 6 months
 - Both fine and jail
 - **Official misconduct (automatic removal)**
- Contract entered into in violation of bidding requirements is void.
- County can also accrue civil penalties for not paying its bills timely.



16

PENALTIES

- Failure to comply with Chapter 176 disclosure requirement:
 - Class C misdemeanor if less than \$1 million or no contract amount.
 - Fine up to \$500
 - Class B misdemeanor if at least \$1 million but less than \$5 million
 - Fine up to \$2,000; jail up to 180 days; or both
 - Class A if at least \$5 million
 - Fine up to \$4,000; jail up to one year; or both



17

ETHICS

- Remember that you work for the public.
- Relevant Penal Code provisions are:
 - Chapter 36: Bribery and Corrupt Influence
 - Chapter 37: Perjury and Other Falsification
 - Chapter 39: Abuse of Office
- These apply to all elected officials, with some special provisions for law enforcement.
- The Texas Ethics Commission has issued opinions and other guidance related to these statutes.



18

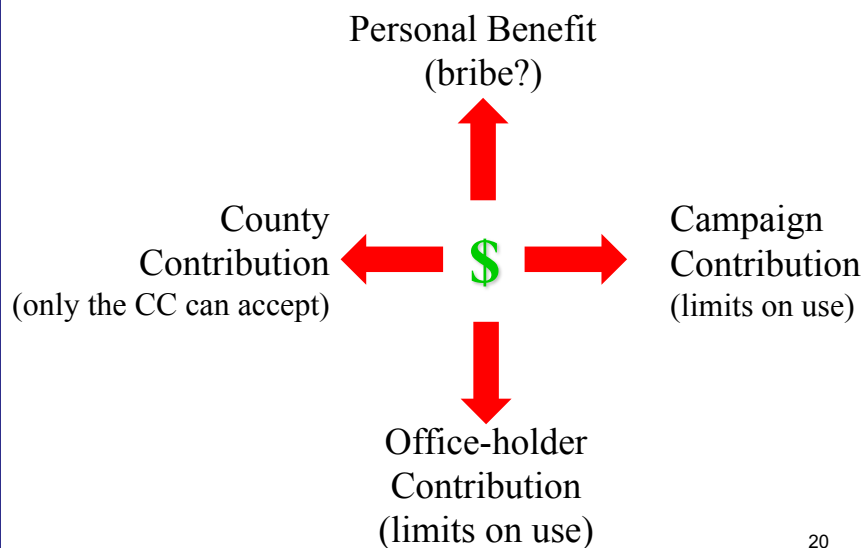
ETHICS

- All Chapter 36 violations have a common element – receipt of a ‘benefit.’
- A benefit is defined as anything reasonably regarded as a pecuniary gain or advantage – this means anything of value, not just money.
- You may be considered to receive a benefit if a gift is given to someone in whose welfare you have a direct and substantial interest (spouse and children).
- Why you are given benefit controls whether you can take it and what you can do with it.



19

CHARACTERIZE THE BENEFIT



20

CHAPTER 36 – BRIBERY

- NEVER solicit or accept any benefit as consideration for an exercise of official discretion – this is BRIBERY.
- It is an offense even if:
 - you don't have the actual authority to do what you promised
 - it occurred before or after you acted
 - you are no longer in office



21

CHAPTER 36 – OTHER ISSUES

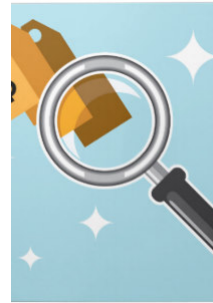
- You may not solicit, accept, or agree to accept an honorarium or gift in consideration of services provided if you would not have been asked to speak 'but for' your official position or duties.
- You may not solicit, accept or agree to accept a gift from a person you know is:
 - Subject to your regulation
 - Likely to become interested in any contract, purchase, or transaction over which you can exercise discretion



22

PERSONAL BENEFIT - EXCEPTIONS

- Value less than \$50, unless cash or negotiable instrument
- Food, lodging, or transportation accepted as a guest (and properly reported)
- Kinship, independent business relationship, or political contribution



23

CAMPAIGN AND OFFICEHOLDER CONTRIBUTIONS

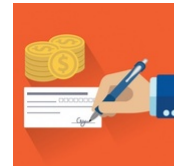
- Election Code Title 15 related to campaign and officeholder contributions
- You may not take a campaign contribution from a corporate source.
- You may only take money or a thing of value from a corporation as an officeholder if it is for an expenditure that would otherwise be reimbursable with public funds.



24

CAMPAIGN AND OFFICEHOLDER CONTRIBUTIONS

- “Reimbursable with public money” means the governmental body has the authority to reimburse an officerholder for an expense but does not require actual reimbursement or available funds.
- Only the county, through the commissioners court, may accept a contribution from a corporation or other prohibited source.



25

ETHICS - CHAPTER 37 FALSIFICATION OF RECORDS

Tampering with a governmental record is:

- Knowingly making a false entry in or alteration of a governmental record
- Making, presenting, or using any record knowing it is false, with the intent that it be taken as genuine
- Intentionally destroying, concealing, removing, or impairing the availability of a governmental record



26

ETHICS – CHAPTER 39 ABUSE OF OFFICE

Abuse of official capacity is when a public servant intends to obtain a benefit or harm or defraud another and:

- Violates a law related to his or her office or employment **or**
- Misuses government property, services, personnel, or any other thing of value in the official's custody or possession



27

ETHICS – CHAPTER 39 ABUSE OF OFFICE

Official oppression is when a public official, acting under color of his or her office or employment, intentionally:

- Mistreats or unlawfully arrests a person
- Denies or deprives a person of any right
- Subjects a person to sexual harassment



28

ETHICS – CHAPTER 39 ABUSE OF OFFICE

- Misuse of official information is when a public servant uses or relies on information that is not public to:
 - Acquire or help another to acquire an interest in any property, transaction, or enterprise
 - Speculate or help another to speculate based on non-public information
 - Disclose non-public information (prohibited from disclosure under Public Information Act)



29

ETHICS – CHAPTER 39 ABUSE OF OFFICE

A county or district attorney has a duty to initiate proceedings against a county official entrusted with public funds if s/he learns that the official is abusing or neglecting the official's duties.



30

ETHICS – PENALTIES

- Conviction for any ethical violation is probably **official misconduct** – intentional, unlawful behavior related to the official duties of a public officer, resulting in **automatic removal**.
- Misuse of public property – range from Class C misdemeanor to 1st degree felony depending on the value of use of thing misused.
- Bribery is a 2nd degree felony:
 - Fine up to \$10,000
 - Jail in state facility from 2 to 20 years



31

ETHICS – PENALTIES

- Class A misdemeanors include:
 - Accepting an honorarium
 - Accepting a gift from a person subject to a public official's jurisdiction
 - Accepting most illegal campaign contributions
 - Tampering with a governmental record
- Penalty:
 - Fine up to \$4,000
 - Jail up to one year
 - Both fine and jail



32

ETHICS – PENALTIES

- Tampering with governmental record with intent to defraud or harm another is a state jail felony.
- Accepting corporate contributions:
 - 3rd degree felony
 - Fine: up to \$10,000
 - Jail: state facility for 2 to 10 years
 - Both fine and jail

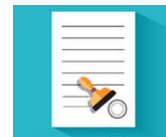


33

ETHICS – AFFIRMATIVE DEFENSE

It is an affirmative defense to prosecution if, **before** you take action that may violate an ethics provision, you rely on:

- Written opinion of an official (county attorney)
- Court order or opinion
- Ethics Commission Advisory Opinion



34

OFFICIAL IMMUNITY

- As a public official, you may attract attention resulting in a civil suit against you.
- Official immunity is a defense to liability in certain circumstances.
- Not a 'get out of jail free' card – you will need to defend any suit that is filed against you.



35

HOW TO CONTACT HELP

- TAC Legal toll-free: 888-ASK-TAC4 (275-2884)
- Texas Ethics Commission: (512) 463-5800 or www.ethics.state.tx.us



36