

# **Conflicts of Interest**

## **Chapter 171 Local Government Code**

### **Who Is Subject To Chapter 171?**

**How can you identify when a Public Official has a Chapter 171 Conflict?**

**If a Public Official has a Chapter 171 conflict, what is the Public Official required to do?**

## Who is Subject to Chapter 171?

Chapter 171 applies to all members of a governing body or officers, whether elected or appointed, paid or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority, or other local government entity who exercise responsibilities beyond those that are advisory in nature.

This means that Chapter 171 applies not just to elected members of the above listed governmental entities, such as, city council members, county judges or commissioners, school board trustees, transit authority board members, but Chapter 171 also applies to the appointed officers of those governmental entities who exercise responsibilities that are more than advisory in nature, such as, zoning and plan commissioners (see Attorney General DM-309).

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## When Does A Public Official Have A Conflict Under Chapter 171?

In order to determine whether a public official has a conflict under Chapter 171, we must determine whether local public official or anyone related to the local public official within the first degree of consanguinity or affinity, has a substantial interest in either a business entity or in real property. First, let's review:

- Who is a person within the first degree of consanguinity or affinity
- What is a "Substantial Interest" in a business entity
- What is a "Substantial Interest" in real property

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## Who is a person within the first degree by consanguinity and affinity?

- **First degree by consanguinity**
  - parent or child, natural or adoptive
- **First degree by affinity**
  - spouse, step child, mother-in-law,
  - father-in-law, daughter-in-law, son-in-law

⇒ Note: In cases of divorce or death, if your child is living, the marriage is considered as continuing, even after the divorce or death.

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## What is a “business entity” for purposes of Chapter 171?

- **Sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, any other entity recognized by law**
- **Not a governmental entity**

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## **What is a “substantial interest” in a Business Entity?**

**A substantial interest in a business entity  
results from:**

- Ownership in a business entity**
- Receipt of funds from the business  
entity**

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## **Ownership of Business Entity**

**A Public Official has a substantial interest in a  
Business Entity if the public official, or a  
relative within the 1st degree of consanguinity  
or affinity to the public official, owns:**

- 10 percent or more of the voting stock or  
shares of the business entity, or**
- 10 percent or more or \$15,000 or more of  
the fair market value of the business  
entity**

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## Receipt of Funds From Business Entity

**A Public Official can also have a substantial interest in a Business Entity if, the Public Official or a relative within 1st degree of consanguinity or affinity to the public official, received funds from the business entity:**

**In excess of 10% of his/her gross income for the previous year (12 months preceding a vote or consideration of the matter)**

- **If a Public official has a substantial interest in a Business Entity, the Public official will have a Chapter 171 Conflict if action on a matter will have a “special economic effect” on the business entity that is distinguishable from the effect on the public. The “special economic effect” may be either a positive economic effect or a negative economic effect.**

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## What is a “Substantial interest” in Real Property?

- **A public official has a substantial interest in Real Property, if the public official or a relative within the 1st degree of consanguinity or affinity has an equitable or legal ownership in property that exceeds \$2,500.00 in fair market value**
- **If a Public Official has a substantial interest in Real Property, the Public official will have a Chapter 171 conflict if it is reasonably foreseeable that action on a matter will have a “special economic effect” on the entity, distinguishable from its effect on the public**

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## Other Prohibitions Under Section 171

### A local Public official cannot

- ⇒ act as a surety for a business entity that has work, business or a contract with the City
  
- ⇒ act as a surety on any official bond required of an officer of the City

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## What must be done if there is a conflict under Chapter 171?

- File a sworn affidavit with the official record keeper of the governmental entity (city secretary) prior to a vote or decision on the matter, disclosing the nature of the substantial interest
- As soon as the Chapter 171 conflict is realized, abstain from further participation in the matter
  - do not discuss issue with other members of the governmental entity who will consider the matter
  - Leave chambers or meeting when the item is being discussed or voted on
- Also applies to briefing sessions where the matter is being discussed
- If a majority of the members of a governmental entity have a similar conflict under Chapter 171 on a particular matter and they file the affidavits disclosing the conflict prior to a vote or decision on the matter as required, then those members may participate and vote on the matter

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## **PENALTIES**

### **Class A misdemeanor**

- ⇒ Punishable by a fine not to exceed \$4,000,**
- ⇒ Confinement in jail for up to**
- one year,**
- or**
- ⇒ Both**

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## **Remember -----**

- ☑ Chapter 171 is a requirement under state law.**
- ☑ The Chapter 171 preempts the common law conflict of interest rules; however, Chapter 171 requirements are in addition to the conflict requirements set forth in municipal charters and municipal ordinances.**

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