

A Quick Refresher on Conflicts of Interest

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Anatomy of a Quick Refresher

By the time we are done, attendees should know:

- ◆ What is a Conflict of Interest?
- ◆ What are some sources of law regarding Conflicts of Interest?



Group Files Criminal Complaint Against Mike Pence's Chief of Staff, Alleges Violation of Conflict of Interest Law

JERRY LAMBE | Jun 4th, 2020, 11:21 am | 42

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Marc Short, Chief of Staff to Vice President Mike Pence

Governing Law:

Chapter 171

- ◆ Local Government Code Chapter 171 – Regulation of Conflicts among “Officers of Municipalities” etc.
- ◆ § 171.004 Defines improper activities for a City Official:
 - ◆ If a public official has a substantial interest in a business or in real property, the official must:
 - ◆ File an affidavit before any vote or decision on any matter involving the business or property
 - ◆ Not participate in the vote (171.005)
 - ◆ Unless the majority of the council also has such interest

Who is an “Official?”

- ◆ City Councilmember
- ◆ Member of a Planning & Zoning Committee (Tex. AG Op. KP-0105, DM-309)
- ◆ “Any other officer, whether elected, appointed, paid, or unpaid” “who exercises responsibilities beyond those that are advisory in nature.”



What is a “Substantial Interest?”



Governing Law:

Chapter 176

- ◆ Local Government Code Chapter 176 – Disclosure of Certain Relationships with Local Government Officers
- ◆ L.G.C. § 176.003 requires a conflicts disclosure statement from any Local Government Officer with respect to a vendor if:
 - ◆ The Vendor enters into a contract with the entity, or the entity is considering such a contract;
 - ◆ The Vendor has an employment or other business relationship with the Officer or a Family Member that results in receipt of taxable income, other than investment income, exceeding \$2,500 in the 12 months preceding;
 - ◆ The Vendor has given the officer or a family member a gift (or gifts) with an aggregate value of more than \$100 in the 12 months preceding; or
 - ◆ The Vendor has a family relationship with the Officer.

Who is an “Officer?”

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



When to file a Vendor Conflict Statement?

- ◇ No later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require filing of a statement.
 - ◇ Presumably, this would mean learning of the contract or the intent to contract.
 - ◇ But, then again...



Who is a “Vendor?”

- ◆ Any person who enters or seeks to enter into a contract with the City.
- ◆ Also an agent of that vendor



Don't vendors have to file a conflict statement?

- ◊ Yes.
- ◊ If the vendor has a relationship with an officer or officer's family member:
 - ◊ That results in \$2,500 or more in taxable income in the preceding 12 months
 - ◊ That results in gifts with aggregate value of \$100 or more within the preceding 12 months
 - ◊ That is a family relationship with that officer.
- ◊ When?
 - ◊ Not later than the 7th business day after the later of:
 - ◊ The beginning of discussions or negotiations to enter into a contract
 - ◊ Submission of an application or response to a bid proposal
 - ◊ The date the vendor becomes aware of the family relationship, or gives a gift to an officer

Governing Law:

Chapter 553

- ◇ Texas Government Code, Chapter 553 – Public Disclosure
- ◇ G.G. § 553.002 - A public servant who has a legal or equitable interest in property that is to be acquired with public funds shall **file an affidavit** within 10 days before the date on which the property is to be acquired by purchase or condemnation.
- ◇ “Public Servant” – A person who is elected, employed, or designated as
 - ◇ a candidate for nomination or election to public officer, or
 - ◇ an officer of government.
- ◇ The affidavit must be filed 10 days prior to the date of acquisition by purchase or condemnation.

Governing Law:

Chapter 145

- ◆ Government Code Chapter 145 – Financial Disclosure by and Standards of Conduct for Local Government Officers
 - ◆ (In cities with a population of 100,000 or more)
- ◆ Requires a financial disclosure statement from every candidate for elected City office, as well as each city attorney and city manager
 - ◆ Must account for financial activity of the individual and the individual's spouse and dependent children, if the individual had control over that activity.

Governing Law: Texas Disciplinary Rules of Professional Conduct

- ◆ Applies to you, not your City Council.
 - ◆ Still, helpful guidance is helpful.
- ◆ 1.06 through 1.09 – Conflicts of Interest
 - ◆ 1.06 – General Rule
 - ◆ Shall not represent opposing sides in the same litigation
 - ◆ But also shall not represent a person:
 - ◆ With interests averse to the interests of another client; or
 - ◆ Whose representation will be limited by responsibilities to another client.
 - ◆ Unless:
 - ◆ Reasonable, good faith belief that representation will not be materially affected; and
 - ◆ Full disclosure to the affected client(s).

Governing Law: Case Law

- ◇ *Dallas County Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271 (Tex.App—Dallas 1991, writ denied).
- ◇ *State v. Marra*, 13-13-00449-CR, 2015 WL 392752 (Tex. App.—Corpus Christi Jan. 29, 2015, no pet.)
- ◇ *City of Leon Valley v. Wm. Rancher Estates Joint Venture*, 04-14-00542-CV, 2015 WL 2405475, at *5 (Tex. App.—San Antonio May 20, 2015, no pet.)
- ◇ *Arlington Indep. Sch. Dist. v. Hope Found., Inc.*, 4:08-CV-0575-BE, 2009 WL 10678309, at *2 (N.D. Tex. Mar. 6, 2009)

Governing Law: AG Opinions!

- ◆ KP-0105 (2016)
 - ◆ The P&Z is also subject to Conflicts laws.
- ◆ GA-0826 (2010)
 - ◆ Public entities such as a city are not business entities.
- ◆ GA-0796 (2010)
- ◆ GA-0136 (2004)
 - ◆ A vote or decision will have “special economic impact” if the body purchases goods or services from a business entity in which the official has a substantial interest.

Governing Law: Your City

- ◆ City may have a Conflicts policy. L.G.C. § 171.007(b).
 - ◆ Consistent with State Law.
- ◆ So what's the benefit?
 - ◆ Training manual for new Councilmembers
 - ◆ Put out fires before they start

New Prosecutor in Ahmaud Arbery Case Refutes Conflict of Interest Complaint

By [The Charleston Chronicle](#) | May 31, 2020 | 0 



Some see Raleigh mayor's new job as potential conflict of interest

Tags: [Mary-Ann Baldwin](#), [construction](#)

Posted May 28, 2020 2:56 p.m. EDT

Rialto mayor disputes conflict-of-interest findings, refuses to recuse herself

For years, Deborah Robertson has voted to approve federal funding for nonprofit of which her daughter is president



Letters to the Editor: Conflict of interest, racism, development

Published: 03 June 2020 Written by Los Altos Town Crier Staff



MAYOR PEPPER HAS CONFLICT OF INTEREST

Los Altos is considering reach codes to ban natural gas in all new homes. The codes were developed by Silicon Valley Clean Energy and Peninsula Clean Energy.

Mayor Jan Pepper is the CEO of Peninsula Clean Energy. Her position presents a clear conflict of interest, which is why I filed complaints with the Fair Political Practices Commission.

Adopting a Conflict of Interest Policy

- ◆ If your City does not have an express conflict of interest policy, consider:
 - ◆ 1. Identification of the class of individuals covered by the policy;
 - ◆ 2. Definition of "actual" and "potential" conflicts of interest;
 - ◆ 3. Articulation of the duty of disclosure of officers and directors;
 - ◆ 4. Appropriate "trigger" mechanisms to help identify potential conflicts;
 - ◆ 5. Annual, episodic disclosure obligations of individuals covered by the policy;
 - ◆ 6. Written conflicts disclosure questionnaires;
 - ◆ 7. A process for review of disclosed potential conflicts by a committee of disinterested directors with outside counsel's input;
 - ◆ 8. The applicability of the corporate opportunity doctrine to the board;
 - ◆ 9. Disclosure obligations regarding outside board service of officers and directors; and
 - ◆ 10. Disclosure obligations regarding outside business activities of senior executive leadership.

What are the takeaways?

- ◆ Transparency!
 - ◆ Tell everybody!
- ◆ Clarity!
 - ◆ Tell everybody everything!
- ◆ Promptness!
 - ◆ Tell them before the newspapers do!

Enjoy your weekend.

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