



Ethics Considerations for Public Officials

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What is the typical rule of thumb for ethics?



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Summary of Relevant Statutes and Regulations

1) Conflicts of Interest

- Chapters 171 and 176, Local Government Code

2) Ethics

- Chapter 573, Government Code
- Chapters 36 and 39, Penal Code

3) Open Meetings Act

- Chapter 551, Government Code

4) Public Information Act

- Chapter 552, Government Code



Texas Local Government Code Chapter 171

Conflicts Requiring Abstention from Voting

- Business Interest:
 - Owning 10 percent or more of the voting stock or shares of the business entity;
 - Owning either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
 - Funds received from the business entity exceed 10 percent of the person's gross income for the previous year.
- Real Property:
 - equitable or legal ownership with a fair market value of \$2,500 or more

When the Interest is Substantial

- A public official holds the interest
- A person related to the public official by the first degree of consanguinity (blood) holds the interest:
 - Parents
 - Children
- A person related to the public official by the first degree of affinity (marriage) holds the interest:
 - Spouse
 - Spouse's parents
 - Spouse's children

Affidavit and Abstention from Voting

- If there is a conflict, the public official must:
 1. File an affidavit with the official record keeper of the governmental body stating the nature and extent of the substantial interest before a vote or decision on any matter involving the business entity or the real property; and
 2. Abstain from further participation in the matter

What happens if a quorum has a conflict?

- When a majority of public officials have a substantial interest in a matter, abstention is not required if all conflicted public officials file affidavits

Effects of Violations/Penalties

- Governmental body's action is not voidable unless the measure would not have passed without the conflicted public official's vote
- Failure to follow Chapter 171: Class A misdemeanor
 - Fine and up to 1 year in jail



Texas Local Government Code Chapter 176

Conflicts Disclosure Statement

- To be filed by officers and the Executive Officer of the governmental body
- To be filed when:
 - Employment or business relationship with a vendor, and receive more than \$2,500 from this relationship
 - Receipt of gifts totaling more than \$100 from an affected person who has executed a contract with the governmental body, or that the governmental body is considering doing business with
 - Applies to 12-month period preceding business relationship
 - Excludes only food accepted as a guest
 - Lodging, transportation, and entertainment now included in \$100 limit

Conflicts Disclosure Statement

- To be filed with the governmental body's records administrator within seven business days of becoming aware of conflict
- Applies to family members within the first degree by consanguinity or affinity
- Local government officer includes an agent of the governmental entity
- Failure to timely file is a Class C Misdemeanor

Conflict of Interest Questionnaire

- To be filed by "Vendors"
 - Consultants
 - Contractors
 - Includes phone company, electric company, etc.
- To be filed when:
 - A vendor or an agent of the vendor begins contract discussions with the governmental body
 - A vendor or agent of the vendor submits an application, response to RFP, or other correspondence related to a potential business agreement with the governmental body
- To be filed with the governmental body's records administrator within seven business days of "event" occurring (and updated annually)

A hurricane has just hit the City of Fruitopia. Mark, a city councilmember, is meeting with the City's emergency coordinator to inspect possible damage to the water treatment plant. They discover that part of the filtration system is irreparably damaged, thus threatening the City's water supply. Mark calls his brother-in-law, Ben, who happens to sell water supply parts, to ask if Ben has the parts to fix the filtration system. Ben does have the parts in stock, but thinks he may need them for another customer. Mark asks him to reconsider, promising that, in exchange for the parts, he will ensure that Ben will get the contract for all of the City's water infrastructure needs in the next year.

Ethics Laws:



Chapter 573, Government Code – Nepotism

Chapter 36, Penal Code – Bribery

***Chapter 36, Penal Code – Acceptance of
Gifts***

Chapter 39, Penal Code – Abuse of Office

Abuse of Office – Official Capacity

- A public official commits an offense ranging from a Class C misdemeanor to a first degree felony if, *with intent to obtain a benefit or with intent to harm or defraud another*, s/he intentionally or knowingly:

Abuse of Office – Official Capacity

1. Violates a law relating to the public official's office or employment; or
2. Misuses government property, services, personnel, or any other thing of value belonging to the governmental entity that has come into the elected official's custody or possession by virtue of the public official's office or employment

Nepotism

- A governmental body may not appoint, confirm the appointment of, or vote to place an individual in a position that is to be compensated from public funds or fees of office if the individual is related to any public official within the third degree by consanguinity or within the second degree by affinity

Nepotism

- Applies to the **entire governmental body**(related public official may not simply abstain from vote)
- Penalties for violation include immediate removal from office, conviction for official misconduct, and a fine
- **EXCEPTION:** If the employee was employed by the governmental entity for at least 30 consecutive days before the related public official was appointed

Leaving the water plant, Mark gets a call from his daughter, Janet, that a large tree has fallen across their driveway and needs to be removed. He assures her that he will bring home one of the City's tractors to move the tree in the evening. While he has her on the phone, he starts thinking about the mounting paperwork the City is going to have to process to comply with FEMA rules, and the fact that Janet has spent this summer after her junior year of high school texting and Snapchatting. He offers her a full time \$30/hour position with the City to process paperwork and help with data entry.

Bribery

- A public official commits a second degree felony if s/he solicits, accepts, or agrees to accept any “benefit” as consideration for:
 - An exercise of his or her discretion as a public official ;
or
 - A violation of a duty imposed by law
- A “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest

Acceptance of Gifts

- An elected official may not solicit, accept, or agree to accept an honorarium in consideration for services that s/he would not have been requested to provide but for his or her position as a public official
- A public official may accept transportation and lodging expenses and meals in connection with a conference or similar event in which s/he renders more than perfunctory services

Acceptance of Gifts (cont'd)

- A public official may solicit, accept, or agree to accept any “benefit” from a person s/he knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of the public official’s discretion
- A “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest

Feeling good about making Janet a productive member of society, Mark starts to think that maybe he should get approval from the rest of the City Council to buy the water plant supplies from Ben. He sends a group text to his other 4 Councilmembers, Lucy, Art, Matthew and Susan, to see if they're available for an afternoon meeting. Art wants to know what the meeting is about, and he and Mark trade several texts about the situation at the water treatment plant. Matthew jumps in and hints that he's been trying to buy Ben's coin collection, and that if Ben threw in a free buffalo nickel it might help him vote to award the contract.

Texas Open Meetings Act



What is a Meeting?

- Deliberation by a quorum of a governmental body which public business or public policy over which the governmental body has control of is discussed.
- Every regular, special, or called meeting of a governmental body must be open to the public.
- “Open to the public”
 - (1) location physically accessible to the public
 - (2) public is permitted to attend

Notice of the Meeting

- Written notice of all meetings is required.
 - Must include: date, hour, place, and subject.
- Must be posted at least 72 hours before the meeting in a place readily accessible to the general public
 - Municipalities typically must also concurrently post the notice on the city's website.
- The governmental body may only act on posted items, and any actions taken at a meeting in violation of the notice requirement may be voidable.

Walking Quorums

- Updated in the 2019 Legislative Session following *Doyal* decision in Texas Court of Criminal Appeals
- Court struck down Section 551.143 of the Texas Open Meetings Act for being “unconstitutionally vague”
- Timeline:
 - *Doyal* decision published February 27
 - Senate Bill 1640 filed on March 6
 - Effective June 10

551.143(a) - A public official commits an offense if s/he:

(1) knowingly engages in at least one communication among a series of communications that each:

- occur outside of a public meeting; and
- concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and

552.143(a) continued

(2) knew at the time the member engaged in the communication that the series of communications:

(A) involved or would involve a quorum;
and

(B) would constitute a deliberation once a quorum of members engaged in the series of communications



Helpful Exceptions to the Texas Open Meetings Act

Exception to 72 Hours' Notice

- With 1 hour posted notice, a meeting can be held to address an emergency or item of “urgent public necessity” (Previously 2 hours before SB 494)
- Immediate action required because of:
 - Imminent threat to public health or safety; or
 - A reasonably unforeseeable situation.
- Includes adding an emergency item to an already posted agenda
 - Non-emergency items must have 72 hours notice
- “Emergency” is very strictly construed

SB 494 (Effective 9/1/2019)

- “Reasonably unforeseeable situation” specifically includes:
 - (A) fire, flood, earthquake, hurricane, tornado, or wind, rain, or snow storm;
 - (B) power failure, transportation failure, or interruption of communication facilities;
 - (C) epidemic; or
 - (D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence

Conduct A Meeting By Conference Call (Emergency Only)

- An open or closed meeting by conference call may be held only if:
 1. An emergency or public necessity exists; and
 2. Convening the meeting at one location is impossible
- Notice still required
- Open portions of the meeting shall be audible to the public at the location where meetings are typically held
- This location must provide two-way communication
- Remember: emergency situation is strictly construed



The Texas Public Information Act

What is Public Information?

- Information that is collected, assembled, or maintained under a law or ordinance or in connection with a transaction or official business of a governmental body
- Presumed to be open to the public
- May exist as paper, microfilm, video, audio tape, e-mail, text message, etc.

Senate Bill 944 (2019)

- A current *or former* officer or employee of a governmental body who maintains public information on a privately owned device must:
 - Forward or transfer the public information to the governmental body or a governmental body server to be preserved; or
 - Preserve the public information in its original form in a backup or archive and on the privately owned device

SB 944 – Temporary Custodians

- “Temporary Custodian” means an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer’s agent.

Public Information Held by a TC

- Public information from TC must be returned to the governmental body within **10 calendar days** from date requested by public information officer
- If information from TC is subject to a PIA request, the request is considered to be received (for purposes of requesting an AG determination) on date information is received from the TC

SB 494 (Effective 9/1/2019)

- Allows suspension of TPIA during a catastrophe
- Notice of suspension posted publicly and provided to Attorney General
- Initial period of suspension may not exceed 7 days, but may be extended for up to an additional 7 days.
- PIA requests received during the suspension period will be considered “received” the first business day after the suspension period ends
- Deadlines for requests received before the suspension period are tolled during the suspension period.

Mark sets the meeting for three hours later and everyone can be there but Lucy, who is just going to call Mark's phone and participate. The meeting will be held at the typical meeting place – the Fruitopia City Hall – which is currently closed to the public as the emergency command station, but the council chambers are not in use. An agenda is drafted up using the template for other council meetings, and a City staff member posts it on the bulletin board after it stops raining – approximately 20 minutes before the meeting. The meeting is held and all council members approve the award of the contract to Ben. Ben, happy with his new contract, sends each councilmember new generators to show his appreciation.

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