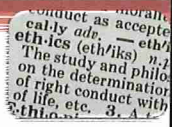


**Texas City Attorneys
Association (TCAA)
Summer Conference 2015**


Ethics in Municipal Law
Edwin P. Voss, Jr.
June 19, 2015

Chapter 171:
Conflicts of Interest



Conflicts Of Interest

- **Local Government Code Chapter 171 provides a baseline regarding conflict of interest requirements**
- **State law is cumulative of local regulations (i.e., charter, orders, ordinances, etc.)**
- **Some local regulations impose stricter requirements.**



Conflicts Of Interest

If a *local public official* has a *substantial interest* in a business entity or in real property, the official *shall* file, before a vote or decision on any matter involving the business entity or property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter under certain conditions.

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Whose Interest?

- “Local” is any political subdivision
- “Public Official” means elected, appointed, paid, unpaid...
- Examples: mayor, council member, county commissioner, planning & zoning commission member, city employee and relatives.

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Conflict of Interest Triggers

- What constitutes a business entity?
- What is a “substantial interest”?
- What about real property?



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Business Entity

- **Business Entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.**
- **Business Entity does not mean a city, a school district, an emergency services district, state university or other political subdivisions.**

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What is a Substantial Interest?

If considering a business entity:

- **Ownership of 10% or more of the voting stock or shares of the business entity.**
- **Ownership of 10% or more or \$15,000 or more of the fair market value of the business entity.**
- **Funds received from the business entity exceed 10% of the person's gross income for the previous year.**

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What is a Substantial Interest?

If considering real property:

- **Equitable or legal ownership in real property with a fair market value of at least \$2,500.**



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What is a Substantial Interest?

- Funds indirectly received from a business entity may be encompassed by a “substantial interest” if a business entity participated in causing the intervening party to engage in the transaction with the public official.



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Application to Relatives

If any of the following family members have a substantial interest:

- a person related to the official in the first degree by consanguinity, or
- a person related to the official in the first degree by affinity.

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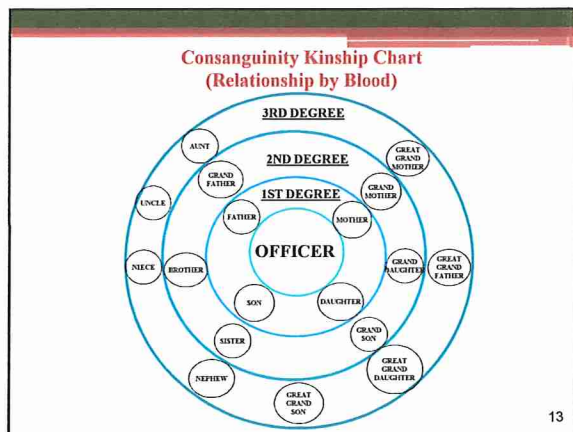
Application to Relatives

• Consanguinity:

- parents
- children



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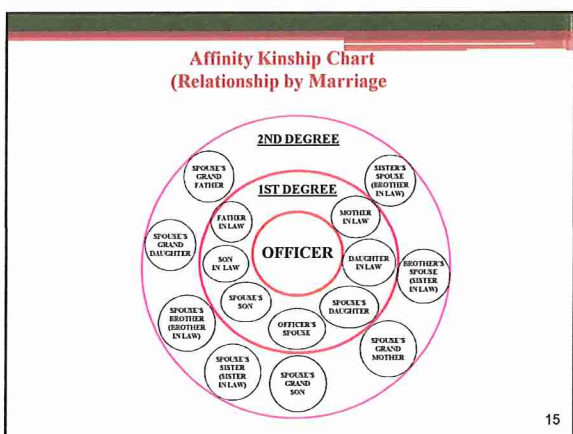


Application to Relatives

- **Affinity:**
 - spouse
 - spouse's parents
 - spouse's children
 - parent's spouse
 - children's spouse.



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Application to Relatives

- The affinity relationships continue after divorce or death if there is a living child of the marriage.



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Scenario No. 1

Uncle Jed has been appointed to the planning and zoning commission of the City of Beverly Hills. A zoning matter is on the agenda for the next meeting. In reviewing the zoning matter, Uncle Jed realizes that the matter covers the territory in which his homestead is located. Should you advise him to abstain from the vote? Could Uncle Jed make comments in support of the matter?

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Result?

- A violation does not render an action voidable unless the measure would not have been approved without the vote of the person who violates its provisions.
- A person who knowingly violates chapter 171 requirements commits an offense punishable as a Class A misdemeanor (fine + up to 1 year confinement).

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Chapter 176: Conflict Disclosure Statements

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Conflicts Disclosure Statements

- Applies to City Council, City Manager, Planning and Zoning, Zoning Board of Adjustments, Type A and B Economic Development Boards, County Commissioners, and other political subdivisions.

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Chapter 176

- Requires a *local governmental officer* to file a conflicts disclosure statement with respect to a vendor if the vendor
 - enters into a contract with the local governmental body; or
 - the local governmental body is considering entering into a contract with the third person; and
- the vendor has an *employment* or other *business relationship* with the *local governmental officer* or his or her *relative* under certain circumstances...

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Chapter 176

- The employment or business relationship results in the receipt of taxable income (other than investment income) that exceeds \$2,500 during the applicable 12-month period; or
- Results in the official or family member receiving one or more gifts that have an aggregate value of more than \$250 during the applicable 12-month period.

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Chapter 176

- Not required to file statement for a gift accepted by the officer or family member if the gift:
 - Is given by a family member;
 - Is a political contribution; or
 - Is food, lodging, transportation, or entertainment accepted as a guest.

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Application to Officers

- A member of the governing body
- A director, superintendent, administrator, president or other person designated as the executive officer of the local governmental entity
- Any employee to whom the entity has extended the requirements of Sections 176.003 and 176.004.

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What is a Business Relationship?

- A connection between two or more parties based on commercial activity of one of the parties, excluding a connection based on:
 - A transaction that subject to a rate or fee set by law,
 - A transaction conducted at a price and subject to terms available to the public, or
 - A purchase/lease of goods or services from a person that is licensed and regulated by a state or federal agency.

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Application to Relatives

• Consanguinity:

- parents
- children



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Application to Relatives

• Affinity:

- spouse
- spouse's parents
- spouse's children
- parent's spouse
- children's spouse.



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Filing Requirements

- **Statement must be filed**
 - with the records administrator of the local governmental body,
 - not later than 5:00 p.m. on the 7th business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

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Vendor Requirements

- A person who contracts or seeks to contract with the local governmental entity must timely file a completed questionnaire disclosing that person's affiliation and business relationship with each member of the governing body and executive officers of the entity.

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Forms

- Forms can be found on the Texas Ethics Commission website
- FORM CIS for Local Government Officers
- FORM CIQ for Conflict of Interest Questionnaires
- Forms are NOT filed with the Texas Ethics Commission.

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Enforcement

- A local government officer commits an offense if the officer knowingly violates the requirement to timely file the conflicts disclosure statement.
- A vendor commits an offense if the person knowingly violates the requirement to timely file the questionnaire.
- An offense is a Class C misdemeanor (fine of up to \$500).

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Exceptions

- A local governmental official or vendor who files the required statement not later than the 7th business day after the date the person receives notice from the local governmental body of the alleged violation is excepted from a criminal penalty.

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Scenario No. 2

City Attorney Claire is preparing for Monday's City Council meeting when the Mayor comes into her office and closes the door. He tells Claire that he wants to tell her something in confidence. Claire is not sure what the Mayor wants to say, but assume Claire has heard that the Mayor got a bit out of control while attending an out-of-state mayor's conference.

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Scenario No. 2 (cont.)

- Is there anything that Claire should say before she hears what the Mayor has to say?
- Assume that the Mayor is Claire's former law partner. Does that make any difference?

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Scenario No. 2 (cont.)

- Assume that the Mayor's conduct at the conference was not criminal, but could be a violation of the city's ethics code.
- Does Claire have a duty to report the Mayor's conduct?

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Scenario No. 2 (cont.)

- Assume that Claire decides not to report the Mayor's conduct, but that the conduct is brought up during a City Council meeting.
- A councilmember asks Claire whether she was aware of the Mayor's conduct and what should be done about it.
- What does Claire say?

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Scenario No. 3

You are defending a personal injury suit in which the plaintiff alleges that a sudden lane change by a police squad car caused plaintiff to lose control and crash into a telephone pole. The parties are in serious settlement negotiations. Then one afternoon you are "cc'd" on an e-mail.

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Scenario No. 3 (cont.)

The e-mail you received was from opposing counsel sent to the plaintiff. Plaintiff's counsel said in the message that he has lost track of an important eyewitness to the accident, and that plaintiff should settle for whatever amount the city offers her.

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Scenario No. 3 (cont.)

- What obligations, if any, do you have at this point?
- Can you share this e-mail with the Mayor? City staff?
- Can you use this email in further negotiations with plaintiff's counsel?

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Scenario No. 3 (cont.)

- What if the e-mail was actually sent by a junior lawyer in the plaintiff's counsel's firm that you know/suspect will lose his job over this?
- What if disclosure of your receipt of this e-mail will cause the settlement to fall apart?

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Scenario No. 4

Claire has always been a pretty good judge of people, but she has now realized that she made a mistake with the newest addition to the City Attorney's office. Al came to the City Attorney's office after working in government procurement at another firm.

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Scenario No. 4 (cont.)

- Claire wondered how Al could guess what direction or decision the City Council might go on a particular issue, but then she found out why.
- Al has been having an affair with the Mayor pro tem.

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Scenario No. 4 (cont.)

- Does it make any difference if Al met the Mayor pro tem before he took the job in Claire's office?
- Does it make any difference that the Mayor pro tem rarely runs the City Council meetings?
- Can Claire let Al do any work that may involve City Council action?

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Scenario No. 4 (cont.)

- Must Claire put Al in or create an ethics wall around him?
- Can Claire fire Al?
- What if the affair ends poorly and the Mayor pro tem claims that Al harassed her into the relationship. Can Claire defend the City in the sexual harassment lawsuit?

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Scenario No. 5

The City is facing significant liability because several of its police officers misused their authority and took advantage of vulnerable persons they arrested (excessive force and inappropriate contact of a sexual nature). Claire briefs the City Council in executive session to discuss settling the matter before it becomes public.

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Scenario No. 5 (cont.)

Claire's briefing makes one councilmember very upset. He decides that the case should not be settled quietly because he believes it is more important that the City be perceived as being tough on its employees if they break the law. He also believes it would help his future plans to run for Mayor if he is perceived as a strong leader.

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Scenario No. 5 (cont.)

The councilmember calls an investigative reporter at the local newspaper and tells the reporter that the City is planning to offer \$500,000 to each of three victims, but the councilmember does not think that that is enough money to be paid.

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Scenario No. 5 (cont.)

- Does the attorney-client privilege protect Claire's briefing to the City Council in executive session?
- Was the privilege lost when the councilmember called the investigative reporter?

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Scenario No. 5 (cont.)

- Who is authorized to claim or waive the City's attorney-client privilege?
- Can the lawyers for the three victims use this disclosure in pursuing their damages case?

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Scenario No. 5 (cont.)

- What if Claire knows that the councilmember is currently under criminal investigation by the Texas Rangers in an unrelated matter.
- Can Claire disclose this information to the City Council?

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Scenario No. 6

The City Council has a number of members who are successful business people, contractors, bankers, etc. Remember Chapters 171 and 176 of the Texas Local Government Code mentioned earlier.

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Scenario No. 6 (cont.)

- Can Claire answer individual councilmembers' questions about their ethical responsibilities?
- Should the councilmembers seek the advice of private lawyers?
- Should Claire consult with each councilmember separately?

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Scenario No. 6 (cont.)

- Assume that Claire concludes that Councilmember A's interests do not trigger any responsibilities under Chapters 171 or 176 or other law.
- If an ethics complaint is later filed by a citizen complaining that Chapter 171 was violated, can Claire represent the Councilmember?

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Scenario No. 6 (cont.)

- Must Claire represent Councilmember A?
- What if Councilmember A deceived Claire to get the favorable ethics advice?
- Claire learns of the deceit.
- Must Claire disclose the information?

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Resources

- **Texas Ethics Commission:**

www.ethics.state.tx.us/filinginfo/conflict_forms.htm

- **Office of the Attorney General:**

www.texasattorneygeneral.gov/opinion/index-to-opinions

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