

Substantial Interest Affidavit and Abstention under Local Government Code Chapter 171

If a local public official, such as a member of a college district board of trustees, 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 the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

1. In the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
2. In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

The affidavit must be filed with the official recordkeeper of the governmental entity.

Local Gov't Code 171.004

Definitions

Substantial Interest

A person has a substantial interest in a business entity if:

1. The person owns:
 - a. Ten percent or more of the voting stock or shares of the business entity, or
 - b. Either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
2. Funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

A local public official is considered to have a substantial interest if a person related to the official in the first degree by consanguinity or affinity, as determined under Government Code Chapter 573 [see DBE], has a substantial interest as defined above.

Local Gov't Code 171.002

Local Public Official

"Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), central appraisal district, or other local governmental entity, including a college district, who ex-

	<p>ercises responsibilities beyond those that are advisory in nature. <i>Local Gov't Code 171.001(1)</i></p>
<i>Business Entity</i>	<p>“Business entity” means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. <i>Local Gov't Code 171.001(2)</i></p> <p>A public entity, such as a city, school district, or state institution of higher education, whose purpose is not to produce financial benefits for private persons is not a business entity. <i>Atty. Gen. Op. GA-826 (2010), GA-31 (2003), DM-267 (1993), JM-852 (1988)</i></p>
Majority Conflict	<p>If a local public official is required to file and does file an affidavit, the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and do file affidavits of similar interests on the same official action. <i>Local Gov't Code 171.004(c)</i></p>
Separate Vote on Budget	<p>The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest. The affected member may not participate in that separate vote. The member may vote on a final budget if the member has complied with Local Government Code Chapter 171, described herein, and the matter in which the member is concerned has been resolved. <i>Local Gov't Code 171.005</i></p>
Violations	<p>A local public official commits an offense if the official knowingly:</p> <ol style="list-style-type: none">1. Violates Local Government Code 171.004, above;2. Acts as surety for a business entity that has work, business, or a contract with the governmental entity; or3. Acts as surety on any official bond required of an officer of the governmental entity. <p><i>Local Gov't Code 171.003(a)</i></p>
Voidable Actions	<p>The finding by a court of a violation under Chapter 171 does not render an action of the governmental body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter. <i>Local Gov't Code 171.006</i></p>

Substantial Interest
Declaration and
Abstention under
Education Code
51.923

An institution of higher education, including a college district, is not prohibited from entering into a contract or other transaction with a business entity in which a member of the governing board of the institution of higher education has an interest if the interest is not a substantial interest or, if the interest is a substantial interest, the board member discloses that interest in a meeting held in compliance with Government Code Chapter 551 and refrains from voting on the contract or transaction requiring board approval. Any such contract or transaction requiring board approval must be approved by an affirmative majority of the board members voting on the contract or transaction.

A nonprofit corporation is not disqualified from entering into a contract or other transaction with an institution of higher education even though one or more members of the governing board of the institution of higher education also serves as a member, director, officer, or employee of the nonprofit corporation.

A violation of this section does not render an action of the governing board voidable unless the contract or transaction that was the subject of the action would not have been approved by the governing board without the vote of the member who violated this section.

Education Code 51.923(b), (d), (f)

Definitions

*Substantial
Interest*

For purposes of this section, a member of a governing board has a substantial interest in a business entity if:

1. The member owns one percent or more of the voting stock or shares of the business entity or owns either one percent or more or \$15,000 or more of the fair market value of the business entity;
2. Funds received by the member from the business entity exceed one percent of the member's gross income for the previous year;
3. The member is an officer of the business entity or a member of the governing board of the business entity; or
4. An individual related to the member in the first degree by consanguinity or affinity, as determined under Government Code Chapter 573 has an interest in the business entity as described by item 1, 2, or 3.

Education Code 51.923(e)

Business Entity

"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, firm, corporation, limited liability company, holding com-

pany, joint stock company, receivership, or trust. *Education Code 51.923(a)(1)*

Conflicts Disclosure Statement

A local government officer shall file a conflicts disclosure statement with respect to a vendor if the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and the person:

1. Has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that a contract between the local governmental entity and vendor has been executed or the local governmental entity is considering entering into a contract with the vendor;
2. Has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that a contract between the local governmental entity and vendor has been executed; or the local governmental entity is considering entering into a contract with the vendor; or
3. Has a family relationship with the local government officer.

A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

1. A political contribution as defined by Election Code Title 15; or
2. Food accepted as a guest.

A local government officer is not required to file a conflicts disclosure statement if the local governmental entity or vendor described is an administrative agency created under Government Code 791.013.

A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement. [See CIA for records retention requirements]

The Texas Ethics Commission shall adopt the conflicts disclosure statement for local government officers for use under this section.

Local Gov't Code 176.002(a), .003(a)-(b), (e)

Internet Posting Requirement	A local governmental entity that maintains an internet website shall provide access to the statements and questionnaires required to be filed under Chapter 176 on that website. <i>Local Gov't Code 176.009</i>
Violation	A local government officer commits an offense if the officer is required to file a conflicts disclosure statement under Local Government Code 176.003 and knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement. It is an exception to the application of the penalty that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation. <i>Local Gov't Code 176.013(a), (f)</i>
Definitions	
<i>Local Government Officer</i>	“Local government officer” means a member of the governing body of a local governmental entity, including a college district; a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. <i>Local Gov't Code 176.001(4)</i>
<i>Agent</i>	“Agent” means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee. <i>Local Gov't Code 176.001(1)</i>
<i>Family Member</i>	“Family member” means a person related to another person within the first degree by consanguinity or affinity, as described by Government Code Chapter 573, Subchapter B. [See DBE(EXHIBIT)] <i>Local Gov't Code 176.001(2)</i>
<i>Family Relationship</i>	“Family relationship” means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Government Code Chapter 573, Subchapter B. [See DBE(EXHIBIT)] <i>Local Gov't Code 176.001(3)</i>
<i>Vendor</i>	“Vendor” means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. <i>Local Gov't Code 176.001(7)</i>

*Records
Administrator*

“Records administrator” means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under Local Government Code Chapter 176 and perform related functions. [See CIA] *Local Gov’t Code 176.001(5)*

Gift

“Gift” means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. *Local Gov’t Code 176.001(2-b)*

*Investment
Income*

“Investment income” means dividends, capital gains, or interest income generated from:

1. A personal or business:
 - a. Checking or savings account;
 - b. Share draft or share account; or
 - c. Other similar account;
2. A personal or business investment; or
3. A personal or business loan.

Local Gov’t Code 176.001(2-d)

**Affidavit Disclosing
Interest in Property**

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. The affidavit must:

1. State the name of the public servant;
2. State the public servant’s office, public title, or job designation;
3. Fully describe the property;
4. Fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest;
5. State the date when the person acquired an interest in the property;
6. Include a verification as follows: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code” [see BBFA(EXHIBIT)]; and

7. Contain an acknowledgment of the same type required for recording a deed in the deed records of the county.

The affidavit must be filed with the county clerk of the county in which the public servant resides and the county clerk of each county in which the property is located.

Gov't Code 553.002

Violations

A person commits an offense if the person violates Government Code 553.002, above and the person has actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property. A person who violates Section 553.002 by not filing the affidavit required by that section is presumed to have the intent to commit an offense. *Gov't Code 553.003(a)-(b)*

Definition of Public
Servant

"Public servant" means a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as:

1. A candidate for nomination or election to public office; or
2. An officer of government.

Gov't Code 553.001(2)