

### **Chapter 176, Local Government Code**

At its June 29, 2007, meeting the commission adopted updated Forms CIS and CIQ as required by H.B. 1491, 80th Leg., Regular Session, which became effective May 25, 2007. Please note that the commission does NOT have jurisdiction to interpret or enforce Chapter 176 of the Local Government Code.

The Office of the Attorney General issued the following advisory opinion interpreting this law: Opinion No. GA-0446. For further information, please see the following publication by the Office of the Attorney General: 2006 Texas Conflicts of Interest Laws Made Easy. Also, please note that these forms are NOT filed with the Texas Ethics Commission but filed with the City Secretary office, City of Schertz.

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## LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of the governing body of a local governmental entity; a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity; or an employee of a local governmental entity with respect to whom the local governmental entity has, in accordance with Section 176.005, extended the requirements of Sections 176.003 and 176.004. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a Class C misdemeanor.

Please refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

### INSTRUCTIONS FOR COMPLETING THIS FORM

*The following numbers correspond to the numbered boxes on the other side.*

- 1. Name of Local Government Officer.** Enter the name of the local government officer filing this statement.
- 2. Office Held.** Enter the name of the office held by the local government officer filing this statement.
- 3. Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code.** Enter the name of the person described by Section 176.002, Local Government Code with whom the officer has an employment or other business relationship as described by Section 176.003(a), Local Government Code.
- 4. Description of the nature and extent of employment or business relationship with person named in item 3.** Describe the nature and extent of the employment or other business relationship with the person in item 3 as described by Section 176.003(a), Local Government Code.
- 5. List gifts accepted, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed \$250.** List gifts accepted during the 12-month period (described by Section 176.003(a), Local Government Code) by the local government officer or family member of the officer, excluding gifts described by Section 176.003(a-1), from the person named in item 3 that in the aggregate exceed \$250 in value.
- 6. Affidavit.** Signature of local government officer.

# CONFLICT OF INTEREST QUESTIONNAIRE

## FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

### OFFICE USE ONLY

Date Received

**1** Name of person who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3** Name of local government officer with whom filer has employment or business relationship.

\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

Yes       No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes       No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes       No

D. Describe each employment or business relationship with the local government officer named in this section.

**4**

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date

H.B. No. 1491

## AN ACT

relating to disclosure of certain relationships with local government officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 176.001, Local Government Code, is amended by amending Subdivisions (1), (2), (3), (4), and (5) and adding Subdivisions (1-a), (1-b), (1-c), (1-d), (2-a), (2-b), and (6) to read as follows:

(1) "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.

(1-a) "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

(1-b) "Charter school" means an open-enrollment charter school operating under Subchapter D, Chapter 12, Education Code.

(1-c) "Commission" means the Texas Ethics Commission.

(1-d) "Contract" means a written agreement for the sale or purchase of real property, goods, or services.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code, except that the term does not include a person who is considered to be related to another person by affinity only as described by Section 573.024(b), Government Code.

(2-a) "Goods" means personal property.

(2-b) "Investment income" means dividends, capital gains, or interest income generated from:

(A) a personal or business:

(i) checking or savings account;

(ii) share draft or share account; or

(iii) other similar account;

(B) a personal or business investment; or

(C) a personal or business loan.

(3) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity; ~~or~~

(B) a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity; or

(C) an employee of a local governmental entity with respect to whom the local governmental entity has, in accordance with Section 176.005, extended the requirements of Sections 176.003 and 176.004.

(5) "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 this chapter and perform related functions.

(6) "Services" means skilled or unskilled labor or professional services, as defined by Section 2254.002, Government Code.

SECTION 2. Section 176.002(a), Local Government Code, is amended to read as follows:

(a) This chapter applies to a person who:

(1) enters ~~contracts~~ or seeks to enter into a contract ~~[for the sale or purchase of property, goods, or services]~~ with a local governmental entity; or

(2) is an agent of a person described by Subdivision (1) in the person's business with a local governmental entity.

SECTION 3. Section 176.003, Local Government Code, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) A local government officer shall file a conflicts disclosure statement with respect to a person described by Section 176.002(a) if:

(1) the person enters into a contract ~~[has contracted]~~ with the local governmental entity or the local governmental entity is considering entering into a contract ~~[doing business]~~ with the person; and

(2) the person:

(A) 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:

(i) a contract described by Subdivision (1) has been executed; or

(ii) the local governmental entity is considering entering into a contract with the person; or

(B) has given to the local government officer or a family member of the officer one or more gifts ~~[, other than gifts of food, lodging, transportation, or entertainment accepted as a guest,]~~ that have an aggregate value of more than \$250 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract described by Subdivision (1) has been executed; or

(ii) the local governmental entity is considering entering into a contract ~~[doing business]~~ with the person.

(a-1) 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) given by a family member of the person accepting

the gift;

(2) a political contribution as defined by Title 15, Election Code; or

(3) food, lodging, transportation, or entertainment accepted as a guest.

(d) It is an exception to the application of [a defense to prosecution under] Subsection (c) that the person filed the required conflicts disclosure statement not later than the seventh business day after the date the person received notice from the local governmental entity of the alleged violation.

SECTION 4. Section 176.004, Local Government Code, is amended to read as follows:

Sec. 176.004. CONTENTS OF DISCLOSURE STATEMENT. The commission shall adopt the conflicts disclosure statement for local government officers. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Section 176.003(a), including the nature and extent of the relationship; and

(B) gifts accepted [received] by the local government officer and any family member of the officer from a person described by Section 176.002(a) during the 12-month period described by Section 176.003(a)(2)(B) if the aggregate value of the gifts, excluding gifts described by Section 176.003(a-1), accepted by the officer or a family member from that person exceed \$250;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

(B) the statement covers the 12-month period described by Section 176.003(a) [176.003(a)(2)(B)]; and

(3) the signature of the local government officer acknowledging that the statement is made under oath under penalty of perjury.

SECTION 5. Sections 176.005(a), (b), and (d), Local Government Code, are amended to read as follows:

(a) The local governmental entity may extend the requirements of Sections 176.003 and 176.004 to any employee [all or a group of the employees] of the local governmental entity who has the authority to approve contracts on behalf of the local governmental entity, including a person designated as the representative of the local governmental entity for purposes of Chapter 271. The local governmental entity shall identify each employee made subject to Sections 176.003 and 176.004 under this subsection and shall provide a list of the identified employees on request to any person.

(b) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this section.

(d) It is an exception to the application of [a defense to prosecution under] Subsection (c) that the person filed the required conflicts disclosure statement not later than the seventh business day after the date the person received notice from the local governmental entity of the alleged violation.

SECTION 6. Section 176.006, Local Government Code, is amended to read as follows:

Sec. 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER PERSONS; QUESTIONNAIRE. (a) A person described by Section 176.002(a) shall file a completed conflict of interest

questionnaire if the person has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with an officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A); or

(2) has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1).

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the person:

(A) ~~[(1)]~~ begins [contract] discussions or negotiations to enter into a contract with the local governmental entity; or

(B) ~~[(2)]~~ submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract [agreement] with the local governmental entity; or

(2) the date the person becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a); or

(B) that the person has given one or more gifts described by Subsection (a).

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a person's [affiliations or] business relationships [that might cause a conflict of interest] with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the person filing the questionnaire:

(1) describe each employment [affiliation] or business relationship the person has with each local government officer of the local governmental entity;

(2) identify each employment [affiliation] or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income, other than investment income, from the person filing the questionnaire;

(3) identify each employment [affiliation] or business relationship described by Subdivision (1) with respect to which the person filing the questionnaire receives, or is likely to receive, taxable income, other than investment income, that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity; and

(4) describe each employment [affiliation] or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of 10 percent or more. [7

~~[(5) -- describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to the~~

~~expenditure of money;~~

~~[(6) -- describe each affiliation or business relationship with a person who:~~

~~[(A) is a local government officer; and~~

~~[(B) -- appoints or employs a local government officer of the local governmental entity that is the subject of the questionnaire; and~~

~~[(7) -- describe any other affiliation or business relationship that might cause a conflict of interest.]~~

(d) A person described by Subsection (a) shall file an updated completed questionnaire with the appropriate records administrator not later than[+]

~~[(1) -- September 1 of each year in which an activity described by Subsection (a) is pending; and~~

~~[(2)] the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.~~

(e) A person is not required to file an updated completed questionnaire under Subsection (d)(1) in a year if the person has filed a questionnaire under Subsection (c) or (d)(2) on or after June 1, but before September 1, of that year.

(f) A person commits an offense if the person knowingly violates this section. An offense under this subsection is a Class C misdemeanor.

(g) It is an exception to the application of [a defense to prosecution under] Subsection (f) that the person filed the required questionnaire not later than the seventh business day after the date the person received notice from the local governmental entity of the alleged violation.

(h) A local governmental entity does not have a duty to ensure that a person described by Section 176.002 files a conflict of interest questionnaire.

(i) The validity of a contract between a person described by Section 176.002 and a local governmental entity is not affected solely because the person fails to comply with this section.

SECTION 7. Section 176.009(a), Local Government Code, is amended to read as follows:

(a) A local governmental entity that maintains an Internet website shall provide access to the statements and to questionnaires required to be filed under this chapter on that [the Internet] website [maintained by the local governmental entity]. This subsection does not require a local governmental entity to maintain an Internet website.

SECTION 8. Chapter 176, Local Government Code, is amended by adding Sections 176.011 and 176.012 to read as follows:

Sec. 176.011. MAINTENANCE OF RECORDS. A records administrator shall maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

Sec. 176.012. APPLICATION OF PUBLIC INFORMATION LAW. This chapter does not require a local governmental entity to disclose any information that is excepted from disclosure by Chapter 552, Government Code.

SECTION 9. Section 176.006(e), Local Government Code, is repealed.

SECTION 10. Not later than October 1, 2007, the Texas Ethics Commission shall adopt a conflicts disclosure statement consistent with Section 176.004, Local Government Code, as amended by this Act, and a conflict of interest questionnaire consistent with Section 176.006, Local Government Code, as amended by this Act.

SECTION 11. (a) Notwithstanding Chapter 176, Local

Government Code, a person is not required to file a conflicts disclosure statement or a conflict of interest questionnaire under that chapter during the period that begins on the effective date of this Act and ends September 30, 2007.

(b) A person who, in the absence of Subsection (a) of this section, would have been required to file a conflicts disclosure statement or a conflict of interest questionnaire during the period specified by that subsection shall file the statement or questionnaire in accordance with Chapter 176, Local Government Code, as amended by this Act, not later than the later of:

(1) October 9, 2007; or

(2) the seventh day after the date the person received notice from the local governmental entity that the statement or questionnaire was required to be filed.

SECTION 12. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 13. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1491 was passed by the House on March 15, 2007, by the following vote: Yeas 144, Nays 0, 3 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 1491 was passed by the Senate on May 10, 2007, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



TEXAS HIGHER EDUCATION  
COORDINATING BOARD

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OPINION COMMITTEE

February 6, 2006

OPEN RECORDS DIVISION

RQ-0446-GA

FILE # ML-44616-06  
I.D. # 44616

Laurie Bricker  
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Curtis Ransom  
A. W. "Whit" Riter, III

The Honorable Greg Abbott  
Texas Attorney General  
Price Daniel Building  
Post Office Box 12548  
Austin, Texas 78711-2548

Attention: Opinion Committee

Dear General Abbott:

Raymund A. Paredes  
COMMISSIONER  
OF HIGHER EDUCATION

512/427-6101  
Fax 512/427-6127

Web site:  
<http://www.thechb.state.tx.us>

I am writing to ask your opinion regarding the interpretation of Texas Education Code, Chapter 130, Subchapter D, specifically §§130.065 and 130.068 which were amended under HB2221 during the 79<sup>th</sup> Legislative Session. This request is being made on behalf of Coastal Bend College.

Section 130.065 of the Education Code sets forth requirements for the annexation of territory by a junior college district by petition. Under this section, for an annexation to occur, a petition proposing the annexation is presented to the governing board of the district, a public hearing is held, and an election is then ordered by the governing board on the measure.

Coastal Bend College would like their district's governing board to consider the extension of its boundaries under §130.068 which they argue provides exceptions to the petition requirements set forth under §130.065. Subsections (a) and (b) of §130.068 specifically provide that the governing board of a junior college or district may order an election to extend boundaries if:

- (a) ...more than 35 percent of the total number of students who enrolled in the junior college district in the most recent academic year resided outside of the existing junior college district.
- (b) ...more than 15 percent of the high school graduates for each of the preceding five academic years in the territory proposed to be added to the district have enrolled in the junior college district.

Subsection 130.065(c) goes on to state:

Except as otherwise provided by this section, Section 130.065 applies to an action taken under this section, including the provisions of Section 130.065 requiring a petition to be submitted before an election may be called.

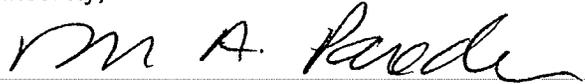
According to Coastal Bend College, the language under §130.068(c) establishes that §130.068 takes precedent over §130.065 including the petition requirements, except as otherwise required. In addition, Coastal Bend College

Opinion Request  
February 6, 2006  
Page Two

argues that the legislative intent supports their argument that §130.068 was to provide exceptions to the petition requirement set out in §130.065; otherwise §130.068 would be adding additional criteria to Section 130.065 rather than providing exceptions as the language in 130.068(c) indicates.

At our request, Coastal Bend College has provided a letter briefing on this issue that includes the legislative author of the statute and that letter is incorporated into this request. Thank you for your attention to this matter. Should you require any additional information, please feel free to contact Jan Greenberg, General Counsel at (512) 427-6143.

Sincerely,



Raymund A. Paredes

Attachments: Letter brief on behalf of Coastal Bend College dated 2006

cc: Marion E. Williams, Jr., J.D.  
Reynaldo Garcia, Ph.d., Texas Association of Community Colleges

**MARION WILLIAMS**  
ATTORNEY AT LAW  
P.O. Drawer 250  
BEEVILLE, TEXAS 78104-0250  
(361) 358-3710  
FAX (361) 358-3745

TEXAS HIGHER EDUCATION  
COORDINATING BOARD  
from Deputy Commissioner To \_\_\_\_\_

FEB 02 2006

Rec \_\_\_\_\_  
Prepare My Reply \_\_\_\_\_ For info \_\_\_\_\_  
Recommend Action \_\_\_\_\_ File \_\_\_\_\_  
Please Handle \_\_\_\_\_ Your Reply \_\_\_\_\_

January 31, 2006

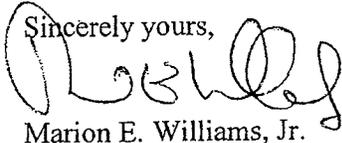
Texas Higher Education Coordinating Board  
ATTENTION: Jennifer Kaufman  
P. O. Box 12788  
Austin, Texas 78711

RE: Request for Attorney General's Opinion concerning  
Education Code Sections 130.068 and 130.065

Dear Ms. Kaufman:

Enclosed is my revised brief with exhibits to aid you in the submission of a request for an Attorney General's Opinion concerning the above referenced statutes. If you have any questions or you want further briefing in support of the request, please let me know. Thank you very much for your assistance in this matter.

Sincerely yours,



Marion E. Williams, Jr.

MEW/hb

enc.

cc: Dr. John Brockman, President  
COASTAL BEND COLLEGE  
3800 Charco Road  
Beeville, Texas 78102

Misc\CBC AG request

Question Presented: Is the petition requirement of section 130.065 of the Texas Education Code required if the section 130.068 (a) or (b) student residency percentages requirements are satisfied?

Short Answer: No

Discussion:

Section 130 of the Texas Education Code was amended by HB 2221 during the most recent legislative session.

Section 130.065 outlines the procedure through which citizens may petition to permit an election to annex a certain area into a community college district.

Section 130.068 (a) and (b) outline procedures through which the elected board of trustees of a community college may call on election to annex certain areas into a community college district.

Section 130.068(c) states in pertinent part as follows “ Except as otherwise provided by this section, Section 130.065 applies to an action taken under this section, including the provision of Section 130.065 requiring a petition to be submitted before an election may be called.”

Thus, does the Section 130.065 petition requirement apply to the fact situations described in Section 130.068 (a) and (b) ?

The beginning point in the analysis is Chapter 311 of the Government Code known as the Code Construction Act. Section 311.002 (2) of the chapter applies the Act to a revision of a Code made by the 60<sup>th</sup> or a subsequent legislature. The Code thus applies to HB 2221.

In re, E.D.L. 101 S. W. 3d 679 at 685, (Tex. App.- Fort Worth 2003) illustrates the process through which an appellate court proceeds “ with an issue of first impression in Texas regarding this question of statutory interpretation. The primary objective is to determine and give effect to the legislature’s intent. In determining the legislative intent, the first step is to look to the statute’s plain and common meaning and presume that the legislature intended the plain meaning of its words.”

The Fort Worth Court of Appeals was following the instruction of the Texas Supreme Court stated in Crown Life Ins. Co. v. Casteel 22 S. W. 3d 378, (Tex. 2000) citing the Code Construction Act Section 312.005. The Supreme Court stated “ when determining legislative intent, we look to the language of the statute, as well as its legislative history, the objective sought, and the consequences that would flow from alternate constructions.”

So, if the opening phrase of Section 130.068 (c) “except as otherwise provided by this

section....” is to be given plain and common meaning, we are told that Section 130.068 is going to carve an exception from something. We are immediately told “ Section 130.065 applies...” The plain and common meaning of Section 130.068 (c) is that Section 130.068 is carving an exception to Section 130.065.

The Code Construction Act 311.023 states what a court may consider when construing a statute whether or not the statute is considered ambiguous on its face. The entire act must be considered and not just isolated portions. We must presume that the legislature chose its words carefully, recognizing that every word in a statute was included for some purpose and that every word excluded was omitted for a purpose. In re, E.D. L., supra. at 685.

The principles stated in Crown Life Ins, supra. were applied as recently as July of 2005 in Ex parte Cummins, 2005 WL 1654765, (Tex App.- Fort Worth 2005) when the Fort Worth Court of Appeals was required to interpret a statute.

By giving the opening phrase of Section 130.068 (c) the plain and common meaning stated above, Section 130.065 and Section 130.068 (a) and (b.) fit together nicely and complement each other. Section 130.065 basically grants to individual residents a tool to initiate annexation into a community college district. Section 130.068 (a) grants to the board of trustees of a community college district an option to annex the entire service area if certain student residency requirements are met. Section 130.068 (b.) grants to the board of trustees of a community college district an option to annex a part of the service area if certain student residency requirements are met. All three sections are given meaning and the entire act fits together.

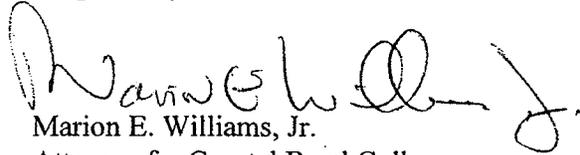
There are attached hereto and marked as exhibits “A” and “B” the following documents:

1. As Exhibit “A”, correspondence faxed on January 6, 2006 from Representative Vilma Luna, the sponsor of HB2221, stating her intention and opinion to Dr. John M. Brockman, President of Coastal Bend College .
2. As Exhibit “B”, a six (6) page House Research Organization bill analysis of HB 2221.

Although I concluded that the petition requirement of Section 130.065 did not apply to the fact situation described in 130.068(a) or (b) and the third and fourth paragraphs on page 3 of the House Research Organization bill analysis suggest “...the governing board of the district could order an election...” seems to suggest the same conclusion. An argument could be made and needs to be acknowledged reaching the opposite conclusion. This argument would also be grounded in the Code Construction Act, and would focus on the last phrase of Section 130.068(c). If Section 130.068(c) had been written “except as otherwise provided in this section, Section 130.065 applies to an action taken under this section...”, the argument would be that the Legislature’s intent was clearly stated; however, the Legislature added another phrase to Section 130.068(c) stating “.....including the provisions of Section 130.065 requiring a petition to

to be submitted before an election may be called.”. Why did the Legislature decide to add this phrase which at first seems to be redundant? The answer is to emphasize the obvious point that the petition requirement is a necessary element or precondition to the calling of any election. The same cases cited in support of the waiver of the election would be cited in support for the argument that the petition requirement is not waived and the plain meaning of the statute argument would be advanced. The Legislature would not include the phrase “including the provisions of Section 130.065 requiring a petition to be submitted before an election may be called” unless it was for some purpose and the only reason for including it is to emphasize the requirement of a petition prior to an election.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marion E. Williams, Jr.", with a stylized flourish at the end.

Marion E. Williams, Jr.  
Attorney for Coastal Bend College

# 2006 TEXAS CONFLICTS OF INTEREST LAWS MADE EASY

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*Answers to the most frequently asked questions  
about the Texas Conflicts of Interest Laws*

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# Texas Conflict of Interest Laws Made Easy

Every time a local public official participates in contracting with his governmental entity or owns real property that may be affected by that entity's actions, the official must consider whether his discussion, decision or vote on an item will violate either Texas conflict of interest laws or local conflict of interest provisions. Public officials need to be aware of the applicable standards for determining when such a conflict of interest may exist and how such conflicts must be handled. The following questions and answers provide a lay person's explanation of the general conflict of interest laws that apply to Texas local officials. This handbook is to provide general guidance on the issues raised in this area. The Municipal Affairs and County Affairs sections of the Office of the Attorney General are available to answer questions about this article from city and county officials, who should nonetheless consult with their local legal counsel regarding the application of the law to the facts of each particular situation. This document may give guidance to officials of other public entities, as well.

## 1. What conflict of interest laws apply to elected local officials in Texas?

The general conflict of interest law for Texas city and county officials, as well as officials of other Texas political subdivisions, is found in chapter 171 of the Texas Local Government Code.<sup>1</sup> Chapter 171 establishes the standard for determining when a local official has a conflict of interest that would affect her ability to discuss, decide or vote on a particular item.<sup>2</sup> Chapter 171 conflict of interest provisions apply to all local public officials.<sup>3</sup> Within a governmental unit, "local public officials" are defined to include:

- 1) elected officials such as the members of the city council or county commissioners (whether paid or unpaid); and
- 2) appointed officials (paid or unpaid) who exercise responsibilities that are more than advisory in nature.<sup>4</sup>

It should be noted that other state and federal laws, as well as local provisions in the case of cities, may be applicable to officials in a particular situation. Whether or not a law is applicable depends on the activity that the official is undertaking. Officials will want to work with local legal counsel on whether their activities are subject to any such provisions. However, the general conflict of interest provision for officials remains chapter 171 of the Local Government Code.

## 2. Do conflict of interest laws apply to persons appointed to local boards and commissions (e.g., planning and zoning commission members)?

Chapter 171 conflict of interest laws apply to persons appointed to local boards and commissions if the board or commission exercises powers that are more than advisory in nature.<sup>5</sup> For example, members of a city's planning and zoning commission would be subject to chapter 171 conflict of interest provisions. Accordingly, the ability of such officials to discuss or vote on an item would be limited by these laws if the official has what is considered a conflict of interest on the issue.

### **3. Do conflict of interest laws apply to members of purely advisory committees that are established by the local entity?**

Chapter 171 conflict of interest provisions apply to an officer who exercises responsibilities beyond those that are advisory in nature.<sup>6</sup> Whether an officer exercises such responsibilities depends upon the authority vested in him by law and not necessarily the title of a committee to which he or she belongs.

A city may by ordinance, or city charter if it is a home rule city, adopt other provisions defining and prohibiting conflicts of interest.<sup>7</sup>

### **4. What types of issues are covered by Texas conflict of interest laws?**

Texas conflict of interest statutes do not address every conceivable conflict that may arise for a local official. In fact, chapter 171 conflict laws only cover two types of conflicts of interest:

- 1) Business Entity Conflicts: Conflicts due to a local official's substantial interest in a "business entity" that has an issue before her governmental unit,<sup>8</sup> or
- 2) Real Property Conflicts: Conflicts due to a local official's substantial interest in "real property" that would be affected by his governmental unit's action.<sup>9</sup>

If an item is being considered by a local official that does not involve a business entity or real property, then chapter 171 conflict of interest laws would not be applicable.<sup>10</sup>

### **5. What is the definition of a "business entity" for purposes of the conflict of interest laws?**

For purposes of Texas conflict of interest laws, a "business entity" includes:

sole proprietorships; partnerships, firms, corporations, holding companies, joint-stock companies, receiverships, trusts, and any other entity recognized by law as a business entity.<sup>11</sup>

Governmental entities such as cities or school districts are not considered business entities.<sup>12</sup> Accordingly, if the issue before a city council involves a governmental entity, an official's relationship with that entity would not subject that official to conflict of interest laws. However, an economic development corporation is a business entity, so an official with a substantial interest in the corporation would have to comply with chapter 171.<sup>13</sup>

## **6. What is considered a “substantial interest” in a business entity (such that it would amount to a potential conflict of interest)?**

There are four ways that a person could be deemed to have a “substantial interest” in a business entity that would raise a potential conflict of interest. A person has a substantial interest in a business entity if the person has a(n):

- 1) Stock Interest: If the official owns 10 percent or more of the total voting stock or shares of the business entity;<sup>14</sup>
- 2) Other Ownership Interest: If the official owns 10 percent or more or \$15,000 or more of the fair market value of the business entity;<sup>15</sup>
- 3) Income Interest: If the official received 10 percent or more of his or her gross income for the previous year from the business entity;<sup>16</sup>
- 4) Close Family Member with any of the Above Interests: If a close relative of the local official has any of the above types of interest in a business entity. A local official is considered to have the same interest in a business entity that his close relatives have in that business entity. In this context, close relatives of an official would include persons who are related to the official within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).<sup>17</sup> Such relatives would include an official’s father, father-in-law, mother, mother-in-law, daughter, daughter-in-law, son, son-in-law, and the spouse of the official.

## **7. Is the fact that a local official is employed by a business entity sufficient to create a potential conflict?**

Being employed by a business entity will prevent a local official from discussing or voting on his governmental unit’s contract involving that business, provided 10 percent or more of the official’s previous year’s income came from his employment with that business.

## **8. What is the test for conflict of interest regarding a business entity?**

State law provides a two-part test for ascertaining whether a local official has a conflict of interest regarding a business entity that would prevent the official from participating in a vote or discussion on that item.<sup>18</sup> To determine whether a conflict exists that would prevent that official’s participation, one should follow the following two-step analysis:

Step One (Substantial Interest Analysis): First, the official must determine if he received 10 percent or more of his gross income in the previous year from that business entity or if he had a stock or other substantial ownership interest in the business entity.<sup>19</sup> If the official has such an interest or a close relative of the official has such an interest,<sup>20</sup> the official must consider the second part of the test for determining if a conflict of interest exists.

Step Two (Special Economic Effect Analysis): The official must determine whether the action that the local entity is considering would have a special economic effect on the business entity that is distinguishable from its general effect on the public.<sup>21</sup>

If it is determined that the official has a substantial interest in the business entity and it is likely that the action would have a special economic effect on the business entity that is distinguishable from its effect on the general public,<sup>22</sup> a conflict of interest would exist. If a conflict of interest exists, the official is prevented from discussing or voting on an issue involving that business entity.<sup>23</sup>

## **9. May an indirect benefit from a contract with a business constitute a possible conflict of interest?**

In certain situations, an indirect benefit that a local official may receive regarding a business entity may be sufficient to constitute a conflict of interest. For example, the Dallas Court of Appeals concluded that the definition of “substantial interest” did not distinguish between funds received directly from a business entity and funds received indirectly. Whether a particular interest was a “substantial interest” was a question of fact.<sup>24</sup>

## **10. What is considered a “substantial interest” in real property (such that it would amount to a potential conflict of interest)?**

There are two ways that a person could be deemed to have a “substantial interest” in “real property” (such that it would amount to a potential conflict of interest).<sup>25</sup> A person has a substantial interest in real property if he has:

- 1) A \$2,500 Ownership Interest in the Real Property: If the official has a \$2,500 or more legal or equitable interest in real property that would be affected by the local entity’s action;<sup>26</sup> or
- 2) A Close Family Member with a \$2,500 Ownership Interest in the Real Property: If a close relative of the local official has a \$2,500 or more legal or equitable interest in real property that would be affected by the local unit’s action. An official is considered to have the same interest in a piece of real property that his close relatives have in the real property. In this context, close relatives of an official would include persons who are related to the official within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).<sup>27</sup> Such relatives would include an official’s father, father-in-law, mother, mother-in-law, daughter, daughter-in-law, son, son-in-law, and the spouse of the official.

## **11. What is the test for conflict of interest regarding real property ?**

State law provides a two-part test for ascertaining whether a local official has a conflict of interest regarding real property that would prevent the official from participating on that item.<sup>28</sup> To determine whether a conflict exists that would prevent that official’s participation, one should follow the following two-step analysis:

- 1) Step One (Substantial Interest Analysis): First, the official must determine if the official has a \$2,500 or more legal or equitable interest in real property that would be affected by the local entity's action. If the official has such an interest or a close relative of the official has such an interest,<sup>29</sup> the official must consider the second part of the test for determining if a conflict of interest exists.
- 2) Step Two (Special Economic Effect Analysis): The official must determine whether the action that the local unit is considering would have a special economic effect on the value of the property that is distinguishable from its general effect on the public.<sup>30</sup>

If it is determined that the official has a substantial interest in the real property and it is likely that the action would have a special economic effect that is distinguishable from its effect on the general public,<sup>31</sup> a conflict of interest would exist. If a conflict of interest exists, the official is prevented from discussing or voting on an issue involving that business entity.<sup>32</sup>

The fact that an action would affect property close to an official's own property does not in itself establish a conflict of interest that would prevent an official from voting on that item. The official must consider whether the proposed governmental action would have a special economic effect on the value of her own property that is distinguishable from its effect on the general public.<sup>33</sup> For example, if a zoning, variance or platting request would have a special economic effect on a city official's own property or the real property of a close relative of the official, the official could not participate in the discussion or vote on that matter.

## **12. Might the part-time or summer job of an official's child create a conflict of interest?**

If a local official's child worked at a job that constituted more than 10 percent of the child's income for the previous year, that might create a potential conflict of interest for the parent. If the child had such an interest, the parent could not vote on or discuss local governmental business that would have a special economic effect on the child's employer.<sup>34</sup>

## **13. May a local official discuss or vote on an item if the effect of the vote on the official's business or property interest is no different than its effect on the general public?**

An official may discuss and vote on an item if there is no distinguishable difference between the item's effect on the local official and its effect on the general public.<sup>35</sup> For example, a city may be considering the adoption of a setback requirement that would apply to all residential lots. Such a requirement arguably may not impact a city official's property in a more significant manner than it would impact the property of other members of the general public. In such a situation, the official could fully participate in the discussion and vote. Of course, if the official's property would be specially enhanced by a change in the setback requirement, then it would be more likely to present a conflict of interest issue for the official.

#### **14. What actions must a local official take if the official has a conflict of interest under chapter 171?**

If a local official has a conflict of interest under the two-part test of chapter 171, the official must take three actions:

- 1) File an Affidavit: The official must file an affidavit with the local unit's official record keeper stating the nature and extent of his interest in the matter.<sup>36</sup> This affidavit must be filed before any vote or decision on the matter.<sup>37</sup> A sample conflict of interest affidavit is attached to the end of this handbook;
- 2) Abstain from Discussion on the Item: The official must abstain from discussions or other proceedings regarding the item;<sup>38</sup> and
- 3) Abstain from Voting on the Item:<sup>39</sup> The official must not vote on the item.

#### **15. May a local official deliberate about an issue for which the official has a conflict of interest if the official abstains from voting on the issue?**

A local official may not discuss an issue for which he has a conflict of interest even if he abstains from voting on the item.<sup>40</sup> If a conflict of interest exists, the official must file the required affidavit, and both abstain from discussing the matter and abstain from voting on the item.<sup>41</sup>

A member of a governmental body does not participate by merely attending an executive session on the matter and remaining silent during the deliberations. However, it may be wise for the interested public officer to refrain from attending open or closed meetings that address the matter in which he is interested.<sup>42</sup>

#### **16. May a local entity separate out an item from a budget to allow the official with the conflict to vote on the budget?**

A governing body of a local unit shall take a separate vote on any budget item involving a business entity in which a local official has a substantial interest.<sup>43</sup> The remaining officials without a conflict may separately discuss and vote on the item involving that business entity. The official with the conflict may then vote on the final overall budget once the matter for which there was a conflict is resolved.<sup>44</sup> The official with the conflict must also have filed the required affidavit with the official record keeper regarding the conflict.<sup>45</sup>

#### **17. What may a local entity do if a majority of the members of the governmental body have a conflict of interest regarding an item to be considered?**

Chapter 171 conflict of interest laws do not prevent discussion or voting on the item if a majority of the members of a governmental body have a conflict of interest on an item.<sup>46</sup> However, prior to any deliberations on the matter, each of the members of the governmental body with a conflict must have filed the required affidavit noting their interest in the item.<sup>47</sup>

**18. May a home rule city provide further conflict of interest limitations on its city officials and employees?**

A home rule city (a city with a population of 5,000 or more that has adopted a city charter) may provide further and more restrictive conflict of interest limitations on its officials and employees.<sup>48</sup> Such restrictions may be contained in a city ordinance, city policy or within the city charter. For example, some cities have ethics ordinances or city charter provisions that prevent their city officials from discussing or voting on items if the official has any financial interest in the item.

**19. Are there state statutes that provide stricter conflict of interest restrictions for particular situations or for certain public officials or contain additional reporting requirements?**

There are certain state statutes that provide stricter conflict of interest restrictions in particular areas. For example, there are conflict of interest statutes within Chapter 312 of the Tax Code that completely prohibit a local unit's governing body from approving a tax abatement if a member of that body owns the property that is the subject of the tax abatement.<sup>49</sup> If a local official has some type of interest in the item before the governing body, the official will want to visit with local counsel as to whether the interest constitutes a chapter 171 conflict of interest or presents a conflict pursuant to some other state law.

Chapter 176 of the Local Government Code, adopted in 2005 through House Bill 914, requires members of the governing body and executive officers of local government entities to file a conflicts disclosure statement relating to a person that the entity has contracted with or is considering contracting with if the local officer or her family members have certain business relationships with that person. It also requires a person who contracts or seeks to contract with for the sale or purchase of property, goods, or services to file a statement disclosing the person's affiliations and business relationships with each member of the governing body and executive officer of the entity. The disclosure statement forms are prepared by the Texas Ethics Commission, available at [http://www.ethics.state.tx.us/whatsnew/conflict\\_forms.htm](http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm), and these must be filed by the entity's records administrator and posted on the internet. This statute is broad in scope, and local officials are urged to study a pending opinion request with the Attorney General's Office designated RQ-451-GA and the resulting opinion that will help interpret this statute.

**20. Are there special conflict of interest provisions that apply to the selection of a local depository?**

There are special conflict of interest provisions that apply to the selection of a local depository. Prior to 1967, local entities were prohibited from using a bank as a depository if a member of the governing body was an officer, director or shareholder of the bank.<sup>50</sup> However, this prohibition has been substantially diminished under current law.<sup>51</sup> Local units can now contract with a depository even if a local official or employee with the duty to select the depository is also an officer, director or shareholder of the bank, unless the official or employee owns more than 10 percent of the bank's stock.<sup>52</sup> In such a situation, the entity is required to have the interested official or employee follow all of the procedures required for a chapter 171 conflict of interest. These procedures would include

filing an affidavit, abstaining from deliberations and abstaining from the vote regarding the depository.<sup>53</sup> If a majority of the remaining members of the governing body vote to select the bank as a depository, it may serve as the local entity's depository.

A city may adopt stricter conflict of interest provisions that would be applicable to the selection of a city depository. For example, a city ordinance or city charter provision may prohibit the selection of a city depository if a city official or employee has any financial interest in the bank. When a city chooses its depository, its local legal counsel will want to review Local Government Code Section 131.903 for its general provisions and exceptions, as well as any local provisions that may be applicable.

## **21. Are there special conflict of interest laws that apply to municipal court judges?**

Chapter 171 of the Local Government Code does not contain special conflict of interest laws that apply to judges. However, judges are subject to the Judicial Conduct Code.<sup>54</sup> In basic terms, these rules require that judges avoid actions that would suggest even the appearance of impropriety.<sup>55</sup> They also prohibit judges from having any financial interest in any aspect of a case that they handle as judges. Furthermore, Article V, Section 11 of the Texas Constitution prohibits a judge from presiding over any case where he or she may have either a direct personal or pecuniary interest. Additionally, a judge may not preside over any case where he or she is related to either party by affinity or consanguinity.<sup>56</sup> For further information on the conflict of interest provisions that apply to judges, contact the State Judicial Conduct Commission. The staff of the Commission can be reached at (512) 463-5533 or (877) 228-5750. If the judge is a lawyer, the judge would also be subject to the canons of ethics applicable to lawyers as described in the following question.

## **22. Are there special conflict of interest laws that apply to lawyers (e.g., city attorneys)?**

Lawyers are subject to special canons of ethics as a part of their state licensing as attorneys.<sup>57</sup> In basic terms, these rules require that attorneys advise their clients of any potential conflict of interest that the lawyer may have in his representation of a client. The lawyer must also avoid any action that would compromise the interests of his client.<sup>58</sup> For further information on the conflict of interest provisions that apply to lawyers, contact the Texas State Bar. The staff of the State Bar can be reached at (512) 463-1463.

## **23. If an official's vote on a contract violates the conflict of interest laws, is the contract illegal and void?**

If an official's vote or other action on a matter violated the conflict of interest laws, the violation would not render the ultimate action or contract voidable unless it would not have passed without the vote of the official who violated the conflict of interest law.<sup>59</sup>

**24. Must a local official be removed from office if the official violates the conflict of interest laws?**

State law does not provide for an automatic removal of a local official from office due to an alleged or proven violation of a conflict of interest law.<sup>60</sup> However, if such a violation is proven, it may be used as the basis for a removal of a member of a governing body for misconduct or under other statutory or city charter criteria that allow a local official to be removed for cause.<sup>61</sup>

**25. May a person be charged with a crime if the official violates the conflict of interest laws?**

Chapter 171 of the Local Government Code provides four situations in which a public official may be prosecuted for his or her actions or inaction regarding a conflict of interest.<sup>62</sup> Specifically, a local official can be prosecuted for:

- 1) Failure to file an Affidavit Noting a Conflict: Failing to file an affidavit with the official record keeper noting the official’s substantial interest in an item if such a filing is required by Local Government Code Section 171.004,<sup>63</sup>
- 2) Participating in Discussions Regarding an Item for Which There is a Conflict: Discussing or otherwise participating on an item if such participation is prohibited under Local Government Code Section 171.004 due to a conflict of interest on that item,<sup>64</sup>
- 3) Serving as a Surety for Certain Businesses: Acting as a surety for any business entity that has work, business or a contract of any amount with the local entity,<sup>65</sup> or
- 4) Serving as a Surety for Local Official Bonds: Acting as a surety on any official bond that is required for an official of a governmental body of the local entity.<sup>66</sup>

Violation of any of the above four items can be prosecuted as a class A misdemeanor<sup>67</sup> and is punishable by a fine not to exceed \$4000 and/or up to one year in jail.<sup>68</sup> Whether to prosecute an alleged violation of the conflict of interest laws is subject to the prosecutorial discretion of the local district attorney or prosecuting criminal county attorney. The Attorney General does not have original jurisdiction to prosecute violations of conflict of interest laws by public officials.

**26. Does the conflict of interest law apply to directors of an economic development corporation?**

Chapter 171 of the Local Government Code does not apply to the directors of an economic development corporation.<sup>69</sup> A corporation created under the Development Corporation Act of 1979 “is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the constitution and the laws of the state.”<sup>70</sup> However, the corporation “shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon’s Texas Civil Statutes),” as amended, not inconsistent with Article

5190.6.<sup>71</sup> The Texas Non-Profit Act prohibits loans being made by the corporation to its director.<sup>72</sup> “If a loan is made to a director, the directors who vote for making the loan and any officers participating in making the loan, ‘shall be jointly and severally liable to the corporation for the amount of such loan until repayment thereof.’”<sup>73</sup> A corporation’s board members should also check the corporate bylaws for any discussion of board conflicts.

**27. Do the conflict of interest laws apply to board members of a municipal utility district?**

Chapter 171 of the Local Government Code does apply to members of a municipal utility district (MUD).<sup>74</sup> MUD board members may not participate in a vote on a matter involving a business entity or real property if they have substantial interests in the matter and it is reasonably foreseeable that action on the matter would confer an economic benefit on the business entity or real property.<sup>75</sup> Chapter 171 also imputes to a MUD board member the substantial interests of certain near relatives in a business entity or real property.<sup>76</sup>

**28. Do the conflict of interest laws apply to members of a local governing body who have a direct, personal matter pending before the governing body?**

Chapter 171 of the Local Government Code does not apply to direct, personal matters of a member of a local governing body. It only applies to public officials that have a substantial interest in a business entity or real property. However, public policy in Texas bars public officials from casting a deciding vote in a matter concerning an issue in which the official has a direct, personal interest.<sup>77</sup> For example, a member of a governing body would be disqualified from voting on a resolution to pay her legal fees, or the legal fees of another member indicted on charges for Open Meetings Act violations.<sup>78</sup>

**SAMPLE AFFIDAVIT**

THE STATE OF TEXAS

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, as a member of the  
(Name)

\_\_\_\_\_, make this affidavit  
(Governing body, board, commission)

and hereby under oath state the following:

I have a substantial interest in a business entity or real property that may receive a special economic

effect by a vote or decision of the \_\_\_\_\_ and the  
(Governing body, board, commission)

economic effect on my business entity or real property is distinguishable from its effect on the general public. What constitutes a "substantial interest," "business entity," "real property" and a "special economic effect" are terms defined in chapter 171 of the Texas Local Government Code.

I affirm that the business entity or real property referred to above is :

The nature of my substantial interest in this business entity or real property is:

- an ownership interest of 10 percent or more of the voting stock or shares of the business entity;
- an ownership interest of 10 percent or \$15,000 or more of the fair market value of the business entity;
- funds received from the business entity exceed 10 percent of \_\_\_\_\_ (my, his, her) gross income for the previous year;
- real property is involved and \_\_\_\_\_ (I, he, she) have/has an equitable or legal ownership with a fair market value of at least \$2500;

- a person who is related to me within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the involved real property or business entity. I have also checked which of the above types of interests my relative has in the item.

Upon the filing of this affidavit with the official record keeper for the local governmental entity, I affirm that I shall abstain from any discussion, vote, or decision involving this business entity or real property and from any further participation in this matter whatsoever.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Signature of public official

\_\_\_\_\_  
Title

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_ and by oath swore that the facts herein above stated

(Name of affiant)

are true and correct to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires: \_\_\_\_\_

## Conflict of Interest Endnotes

The authors would like to thank Susan Garrison for her assistance in reviewing this article.

1. TEX. LOC. GOV'T CODE ANN. §§ 171.001 – 010 (Vernon 1999 & Supp. 2005).
2. *Id.* § 171.002.
3. *Id.* § 171.001(1).
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.* § 171.007.
8. *Id.* § 171.002 (a).
9. *Id.* § 171.002 (b).
10. Another restriction that rarely arises is in section 171.003, which prohibits an official from acting as a surety for businesses doing business with the governmental entity and as a surety on bonds involving public officials.

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11. TEX. LOC. GOV'T CODE ANN. § 171.001(2) (Vernon 1999).
12. Ops. Tex. Att'y Gen. DM-267 (1993); GA-31 (2003).
13. Op. Tex. Att'y Gen. JC-547 (2002).
14. TEX. LOC. GOV'T CODE ANN. § 171.002(a)(1) (Vernon 1999).
15. *Id.*
16. *Id.* § 171.002(a)(2).
17. *Id.* § 171.002(c).
18. *Id.* § 171.004.
19. *Id.* § 171.002(a)(2).
20. *Id.* § 171.002(c).
21. *Id.* § 171.004(a)(1).
22. *Id.*
23. *Id.* § 171.004(a).
24. *Dallas County Flood Control District No. 1 v. Cross*, 773 S.W.2d 49, 55 (Tex. App.—Dallas 1989, no writ).
25. TEX. LOC. GOV'T CODE ANN. § 171.002(b) (Vernon 1999).
26. *Id.*
27. *Id.* § 171.002(c).
28. *Id.* § 171.004.

29. *Id.* § 171.002(c).
30. *Id.* § 171.004(a)(2).
31. *Id.*
32. *Id.* § 171.004(a).
33. *Id.* § 171.004(a)(2).
34. Op. Tex. Att’y Gen. JC-63 (1999).
35. TEX. LOC. GOV’T CODE ANN. § 171.004 (Vernon 1999).
36. *Id.* § 171.004(a)-(b).
37. *Id.* § 171.004(a).
38. *Id.*
39. *Id.*
40. *Id.* § 171.004(a).
41. *Id.* § 171.004(a)-(b).
42. Op. Tex. Att’y Gen. GA-334 (2005).
43. TEX. LOC. GOV’T CODE ANN. § 171.005(a) (Vernon 1999).
44. *Id.* § 171.005(b).
45. *Id.* § 171.004(b).
46. *Id.* § 171.004(c).
47. *Id.*
48. *Id.* § 171.007(b); Op. Tex. Att’y Gen. GA-68 (2003).
49. TEX. TAX CODE ANN. § 312.204(d) (Vernon Supp. 2005).
50. Ops. Tex. Att’y Gen. V-640 (1948); WW-957 (1960).
51. TEX. GOV’T CODE ANN. § 404.0211 (state agencies) (Vernon 2005); TEX. LOC. GOV’T CODE ANN. § 131.903 (other political subdivisions) (Vernon 1999).
52. TEX. LOC. GOV’T CODE ANN. § 131.903(a)(2) (Vernon 1999).
53. *Id.* § 171.004.
54. Code of Judicial Conduct, *reprinted in* Gov’t Code tit. 2, subtit. G. app. B (Vernon 2005).
55. *Id.* Canon 2.
56. TEXAS CONST. Art. V § 11 (Vernon Supp. 2005). *See also* *City of Oak Cliff v. State*, 79 S.W. 1068, 1069 (Tex. 1904), Op. Tex. Att’y Gen. DM-109 (1992).
57. Texas Disciplinary Rules of Professional Conduct (1990), *reprinted in* Gov’t Code tit. 2, subtit. G. app. A (Vernon Supp. 2005).
58. *Id.* Rules 1.06 - 1.09 (1990).

59. TEX. LOC. GOV'T CODE ANN. § 171.006 (Vernon 1999); *see* Op. Tex. Att'y Gen. JC-155 at 3 (1999).
60. TEX. LOC. GOV'T CODE ANN. § 171.003 (Vernon 1999).
61. *Id.* §§ 21.025, 22.077 (Vernon Supp. 2005).
62. *Id.* § 171.003 (Vernon 1999).
63. *Id.* § 171.003(a)(1).
64. *Id.*
65. *Id.* § 171.003(a)(2).
66. *Id.* § 171.00(a)(3).
67. *Id.* § 171.003(b).
68. TEX. PEN. CODE ANN. § 12.21 (Vernon 2003).
69. Op. Tex. Att'y Gen. JC-338 (2001).
70. TEX. REV. CIV. STAT. ANN. art. 5190.6 § 22 (Vernon Supp. 2005).
71. *Id.* art. 5190.6 § 23(a).
72. *Id.* art. 1396-2.25(A) (Vernon 2003).
73. *Id.* art. 1396-2.25(B); Att'y Gen. Op. JC-338 (2001).
74. Op. Tex. Att'y Gen. JC-184 (2000).
75. *Id.*
76. *Id.*
77. Op. Tex. Att'y Gen. JC-294 (2000); *see Hager v. State ex rel. TeVault*, 446 S.W.2d 43, 49 (Tex. Civ. App.—Beaumont 1969, writ ref'd n.r.e.).
78. Op. Tex. Att'y Gen. JC-294 (2000).

# LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

**FORM CIS**

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

**OFFICE USE ONLY**

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

Date Received

**1** Name of Local Government Officer

**2** Office Held

**3** Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code

**4** Description of the nature and extent of employment or other business relationship with person named in item 3

**5** List gifts accepted by the local government officer and any family member, excluding gifts described by Section 176.003(a-1), if aggregate value of the gifts accepted from person named in item 3 exceed \$250 during the 12-month period described by Section 176.003(a)(2)(B)

Date Gift Accepted \_\_\_\_\_ Description of Gift \_\_\_\_\_

Date Gift Accepted \_\_\_\_\_ Description of Gift \_\_\_\_\_

Date Gift Accepted \_\_\_\_\_ Description of Gift \_\_\_\_\_

(attach additional forms as necessary)

**6** **AFFIDAVIT**

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a), Local Government Code.

\_\_\_\_\_  
Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
Signature of officer administering oath

\_\_\_\_\_  
Printed name of officer administering oath

\_\_\_\_\_  
Title of officer administering oath