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Conflict Disclosures for Board Members and District Employees

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Introduction

To protect school district transactions from the potential undue influence of the business or other financial interests of district officials, several state laws require public disclosure of public officials' financial interests. This article provides a brief overview of the various disclosure requirements with which school board members, superintendents, and other district employees must comply.

As an additional resource, TASB Policy BBFA(LEGAL) provides a summary of conflict of interest disclosures.

Purpose and importance of disclosures: The purpose of these disclosures is to provide transparency as to potential conflicts of interest, not embarrass the official. Having an interest that requires a disclosure does not imply that a person has done anything inappropriate or that the district is prohibited from proceeding with a legal transaction.

In many instances, however, an individual school official who has a financial relationship with a potential vendor must timely make the disclosures required by law and abstain from participation in the decision-making process. Further, a failure to comply with disclosure requirements exposes a school official to potential criminal penalties.

Multiple Laws on Required Disclosures

Three key laws, discussed in more detail below, apply to the conflict of interest disclosure requirements for board members and employees:

- **Chapter 171 of the Texas Local Government Code:** Substantial interest in a business or real property;
- **Chapter 553, subchapter A of the Texas Government Code:** Interest in real property to be acquired by the district; and
- **Chapter 176 of the Texas Local Government Code:** Income, gift, and family relationship disclosures by local government officers and similar disclosures by vendors related to vendor contracts.

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Compliance with one disclosure requirement does not satisfy the other requirements: Each of the disclosure requirements is a separate legal requirement; complying with one disclosure requirement does not fulfill the obligations imposed by the other, separate requirements. As a result, in some instances the same financial interest may require a school district official to file more than one disclosure form. In addition, a school district official may have to file disclosures as to the same interest in different capacities. For example, a board member may have to file disclosures under Chapter 176 as both a board member and a district vendor if applicable.

Required Disclosures May Extend to Interests of School Officials' Relatives

In addition to disclosing personal financial interests, a public official as defined by the particular disclosure law may have to disclose certain relatives' financial interests as well. The requirements as to which degree of relationship and interests must be disclosed varies based on the specific disclosure law.

First-degree relative disclosures: The disclosures below apply to the interests of school officials' first-degree relatives by either consanguinity (blood) or affinity (marriage):

- Chapter 171 substantial interest in business or real property, Tex. Loc. Gov't Code § 171.002(c); and
- Chapter 176 income or gifts from district vendors, Tex. Loc. Gov't Code §§ 176.001(2), .003(a)(2)(A)-(B).

As discussed below, the disclosure of a family relationship with district vendors includes first-degree relatives and extends to additional degrees of relatives. Tex. Loc. Gov't Code §§ 176.001(2-a), .003(a)(2)(C).

Who are first-degree relatives by blood and marriage? A school official's first-degree relatives *by blood* are: (1) the school official's parents; and (2) the school official's children, including children by adoption. Tex. Gov't Code §§ 573.022-.023.

A school official's first-degree relatives *by marriage* are: (1) the school official's spouse; (2) the spouse of one of the official's first-degree relatives by blood; and (3) the first-degree blood relatives of the official's spouse. Tex. Gov't Code § 573.024.

Chapter 176 additional degrees for "family relationship" disclosure: Chapter 176 disclosures based on a *family relationship* add to the degrees of relatives that require disclosure beyond first-degree relatives. If a local government officer's relatives are employees or agents of a district's vendor, then those relatives within the first, second and third-degree *by blood* and the first and second-degree *by marriage* must be disclosed as a family relationship. Tex. Loc. Gov't Code §§ 176.001(2-a), .003(a)(2)(C).

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Who are second-degree relatives by blood and marriage? Second-degree relatives *by blood* are (1) the school official's grandparents, (2) the school official's grandchildren, and (3) the school official's brothers and sisters. Tex. Gov't Code §§ 573.022-.023.

A school official's second-degree relatives *by marriage* are (1) the spouse of one of the school official's second-degree relatives by blood and (2) the second-degree blood relatives of the official's spouse. Tex. Gov't Code § 573.024.

Who are third-degree relatives by blood? Third-degree relatives *by blood* are (1) the school official's great grandparents, (2) the school official's great grandchildren (3) the school official's aunts and uncles, and (4) the school official's nieces or nephews. Tex. Gov't Code §§ 573.022-.023.

Third-degree relatives *by marriage* are *not covered* by any of the required disclosures.

What is the impact on relationships by marriage following the death or divorce of a spouse? For school officials, the ending of a marriage by divorce or death ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue until the youngest child of the marriage reaches the age of 21 years. Tex. Gov't Code § 573.024(b)-(c).

Once the marriage is so ended, the affinity disclosure requirements based on that marriage no longer apply. Tex. Loc. Gov't Code §§ 171.002(c), 176.001(2), (2-a).

Consequently, a school official should identify the applicable degree of relatives for the particular disclosure law and make a good-faith effort to determine if any of those relatives have the above financial interests or relationship that require disclosure.

Chapter 171 Disclosures of Interest in a Business Entity or Real Property

Board member substantial interest in a business entity: If a school board member, or a first-degree relative of a school board member has a *substantial interest* in a business entity that a school district does business with, the school board member must take certain steps to disclose this interest. Tex. Loc. Gov't Code § 171.001(1), .002(c), .004.

A school board member has a *substantial interest* in a business entity when the member or his or her first-degree relative:

- owns 10% or more of the voting stock or shares of the business entity,
- owns either 10% or more or $15,000 or more of the fair market value of the business entity; or
- received 10% or more of his or her gross income for the previous year from the business entity.

Tex. Loc. Gov't Code § 171.002(a).

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Board member substantial interest in real property: Also, a school board member must take steps to disclose a *substantial interest* in a board matter involving real property, which occurs when the member or his or her first degree relative has legal or equitable ownership with a fair market value of $2,500 or more in the real property. Tex. Loc. Gov't Code § 171.001(1), .002(b)-(c), .004.

Process for Chapter 171 disclosures: Remember that discovering a substantial interest does not mean that the district cannot continue to do business with the entity or purchase the property. It simply means that the board member must disclose this interest through a two-step process: filing an affidavit and abstaining from further participation.

First Step: Filing the Affidavit

Texas law requires a board member with a substantial interest to file an affidavit stating the nature and extent of the board member's interest in the business entity or real property before a vote or a decision on any matter involving the business entity or the real property. Tex. Loc. Gov't Code § 171.004(a). A sample affidavit may be found in the TASB Regulation Resource Manual at BBFA(EXHIBIT).

The substantial interest affidavit must be filed with the district's official record keeper, the person designated in policy CPC(LOCAL). Tex. Loc. Gov't Code § 171.004(b). Usually the record keeper is the superintendent or another person responsible for maintaining the records of the district.

Second Step: Abstaining from Further Participation

If the board's action will have a special economic effect on the business entity or the real property's value that is distinguishable from the effect on the public, the board member with the substantial interest must also abstain from further participation in the official decision-making process. Tex. Loc. Gov't Code § 171.004(a).

In essence, a board member may not vote on the matter and, though not required, would be wise to refrain from attending such deliberations. Tex. Att'y Gen. Op. No. GA-334 (2005).

Chapter 171 criminal offense: A school board member commits a Class A misdemeanor if the member knowingly (1) violates the affidavit or abstention requirements; (2) acts as a surety for a business entity that has work, business, or a contract with the district; or (3) acts as a surety on any official bond required of an officer of the district. Tex. Loc. Gov't Code § 171.003.

Board action may be voidable: The finding by a court of a violation under Chapter 171 does not make a district's action voidable *unless* the action in question would not have passed without the vote of the person who violated the chapter. Tex. Loc. Gov't Code § 171.006.

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Commissioner ordered personal financial statement: If the commissioner of education finds that a board member failed to properly file required affidavits and abstain from participation, the commissioner must require the entire board to file the personal financial statements required of state officials under Texas Government Code chapter 572. Failure to file a statement ordered by the commissioner with the Texas Ethics Commission and the board is a class B misdemeanor. Tex. Educ. Code § 11.064(a-3)(1), (c).

Chapter 171 application to district employees by local policy: By law, a board member as a *local public official* must follow the Chapter 171 substantial interest disclosure requirements. Tex. Loc. Gov't Code § 171.001(1). Districts may extend these requirements to superintendents and other district employees by local policy. Your district's policy at DBD(LOCAL) and (EXHIBIT) reflects this decision.

Chapter 553 Disclosure of Interest in Real Property to Be Acquired with Public Funds

As mentioned above, sometimes a school board member must make more than one disclosure for the same interest. Such is the case if a board member or candidate has an interest in real property the school district in interested in purchasing.

Board member affidavit: If a school board member or candidate has a legal or equitable interest in property that is to be acquired with public funds he or she must file a separate affidavit under Chapter 553, Subchapter A of the Texas Government Code, stating the name and office of the board member and describing the property and the member's interest in the property along with other details. This affidavit must be filed with the county clerk of the county in which the trustee or candidate resides and the county clerk of each county in which the property is located. Tex. Gov't Code § 553.002. A sample affidavit may be found in the TASB Regulation Resource Manual at BBFA(EXHIBIT).

It is important to note that the filing of a Chapter 171 affidavit as to a substantial interest in real property does not satisfy this additional affidavit required under Chapter 553.

Criminal offense: A school board member or candidate commits a Class A misdemeanor if the individual has actual notice of the acquisition or intended acquisition of the property interest and does not file the required affidavit. Tex. Gov't Code § 553.003.

Superintendent by local policy: Most districts require the superintendent to comply with these provisions as a matter of local policy. See TASB Policies DBD(LOCAL) and (EXHIBIT).

Chapter 176 Disclosures by Local Government Officers and Vendors

Local Government Officer (LGO) disclosures: Chapter 176 of the Texas Local Government Code requires *local government officers* (LGOs) to disclose relationships with certain district vendors. Local government officers means school board members, superintendents, and school district employees or agents who exercise discretion in the planning, recommending, selecting, or contracting of a vendor. Tex. Loc. Gov't Code § 176.001(4).

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These officers must file a sworn disclosure statement using form CIS (see below) with respect to a district vendor if: (1) the vendor has entered into a contract with the district or the district is considering entering into a contract with the vendor, *and* (2) the vendor provides certain *income* or *gifts* to the officer or first degree relatives of the officer, or a *family relationship* exists between the officer and the vendor's employees or agents. Tex. Loc. Gov't Code § 176.003.

For purposes of Chapter 176, a *contract* is a written agreement for the sale or purchase of real property, goods, or services. Tex. Loc. Gov't Code § 176.001(1-d).

Administrative agency interlocal contract exception: However, a local government officer is not required to file a statement when the governmental entity or vendor is an administrative agency created to supervise the performance of an interlocal contract under Section 791.013 of the Texas Government Code. Tex. Loc. Gov't Code § 176.003(a-2).

LGO Income Disclosure

If the vendor has an employment or other *business relationship*with the official or the official's first-degree relative, then the relationship must be disclosed if the relationship generates *taxable income* for the officer or family member exceeding $2,500 during the 12 months preceding the date the officer becomes aware of the contract or prospective contract. Tex. Loc. Gov't Code § 176.003(a)(2)(A).

Business relationship means a connection based on commercial activity. 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. Tex. Loc. Gov't Code § 176.001(1-a).

Taxable income does not include investment income. Investment income for purposes of Chapter 176 includes dividends, capital gains, or income generated from personal or business checking or savings accounts, investments, or loans. Tex. Loc. Gov't Code §§ 176.001(2-d), .003(a)(2)(A).

LGO Gift Disclosure

Also, the officer must disclose the relationship with a district vendor if the officer or the officer's first-degree relative has accepted one or more gifts from the vendor that total over $100 in the 12-month period preceding the date that the officer becomes aware of the contract or prospective contract. The relationship need not be disclosed if the gift is (1) offered on account of kinship or a personal, professional or business relationship independent of the officer's official status, (2) a political contribution, or (3) food accepted as a guest. Tex. Loc. Gov't Code §§ 176.001(2-b), .003(a)(2)(B), (a-1).

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Unless covered by another exception, lodging, transportation, and entertainment, even if accepted as a guest, are *not* exceptions to the gift disclosure requirements.

LGO Family Relationship Disclosure

Finally, CIS disclosure is triggered by a family relationship, which means the vendor's employees or agents are related to the officer within the third degree by consanguinity (blood) or the second degree by affinity (marriage), as those relations are defined by Subchapter B, Chapter 573, Texas Government Code. Tex. Loc. Gov't Code § 176.003(a)(2)(C).

LGO Disclosure Form CIS

This disclosure form for local government officers is called Form CIS (Conflict of Interest Statement). The form is maintained by the Texas Ethics Commission Website. To comply with the law, an officer must file Form CIS with the district's records administrator by 5 p.m. on the seventh business day after the official becomes aware that there is an interest to disclose. Tex. Loc. Gov't Code § 176.013(a).

The *records administrator* is the superintendent of the school district or another person designated by the district to maintain the disclosures. See TASB Policy CPC(LOCAL).

LGO criminal offense: Violating the disclosure requirement is a Class A, B, or C misdemeanor, depending on the value of the contract. Tex. Loc. Gov't Code § 176.013(c).

Violation based on *knowingly*: However, penalties for failing to file such a disclosure are only triggered if a person *knowingly* violates the disclosure requirement. Consequently, if the official files a conflicts disclosure statement by the seventh business day after receiving notice from the district of an alleged violation, the official will not violate the law. Tex. Loc. Gov't Code § 176.013(a), (f).

Vendor Disclosures

Chapter 176 also requires vendors to make disclosures through a conflict of interest questionnaire (CIQ). If you are a board member, this could affect you if you are also a district vendor that (1) has provided income or gifts to a school district officer, (2) has a family relationship with a school district officer, (3) serve as an officer or director of the vendor, or (4) holds a vendor ownership interest of one percent or more. Tex. Loc. Gov't Code § 176.006.

Board members who have a business relationship with the district should consult the district's attorney or their own attorney to determine if the vendor disclosure requirements discussed below apply.

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Vendors who must disclose: The vendor disclosure requirements apply to: (1) a person who enters or seeks to enter into a contract with the district; and (2) a third party agent or employee of such a person (in the person's business with the district). Tex. Loc. Gov't Code §§ 176.001(1), (7), .002, .006.

Vendor exceptions: The following entities are *not* subject to these disclosure requirements: a state, a political subdivision of a state, the federal government, a foreign government, or an employee of these governmental entities. Tex. Loc. Gov't Code § 176.002(b).

Vendor disclosures on form CIQ: A vendor must file a Form CIQ (Conflicts of Interest Questionnaire) if the vendor has an employment or other business relationship with a local government officer and one or more of the following exists:

- the vendor has an employment or other business relationship with an LGO or LGO's family member that generated more than $2,500 in taxable *income* (exclusive of investment income) in the preceding year;
- the vendor has given an LGO or LGO's family member one or more *gifts* (with certain exceptions) valued at over $100 in the preceding year; or
- an employee or agent of the vendor has a *family relationship* with the LGO.

Vendors must also disclose that a school district officer serves as an officer or director of the vendor, or holds a vendor ownership interest of one percent or more. Tex. Loc. Gov't Code § 176.006.

Like Form CIS, Form CIQ can be found on the Texas Ethics Commission's Website and must be filed with the district's records administrator.

Vendor CIQ filing period: A vendor must file a conflict of interest questionnaire with the district's records administrator not later than the seventh business day after the later of:

- the date the vendor begins contract discussions or negotiations with the district, or submits to the district an application, response to a request for proposals or bids, correspondence, or other writing related to a potential contract with the district; or
- the date the vendor becomes aware: (1) of an employment or other business relationship with an LGO or LGO's family member that generates the appropriate taxable income; (2) that the vendor has given one or more qualifying gifts to an LGO or LGO's family member; or (3) of a family relationship with a LGO.

Tex. Loc. Gov't Code § 176.006(a-1).

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Vendor CIQ updating: Each vendor shall file an updated questionnaire with the district records administrator no later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the original questionnaire incomplete or inaccurate. Tex. Loc. Gov't Code § 176.006(d).

Vendor criminal offense: A vendor who knowingly fails to timely file a Form CIQ commits a Class A, B, or C misdemeanor, depending on the value of the contract. A vendor avoids criminal penalties if he or she files a conflict of interest questionnaire no later than the seventh business day after receiving notice from the district of an alleged violation. Tex. Loc. Gov't Code § 176.013(b)-(c), (g).

School District Records Administration for Chapter 176 Disclosures

School districts also have some administrative responsibilities under Chapter 176.

List of local government officers: The district records administrator shall maintain a list of local government officers of the district and shall make that list available to the public and any person who may be required to file a questionnaire. Tex. Loc. Gov't Code § 176.0065(1). A sample form for the LGO list may be found in the TASB Regulation Resource Manual at BBFA(EXHIBIT).

Retention of CIS and CIQ disclosures: The school district must retain all statements (CIS) and questionnaires (CIQ) in accordance with the district's records retention schedule. Tex. Loc. Gov't Code § 176.0065(2).

Website posting: A district that maintains a website shall provide access to all conflict of interest statements and questionnaires on that website. A district is not required to maintain a website solely to comply with these requirements. Tex. Loc. Gov't Code § 176.009.

In Conclusion

While the number of disclosures required of public officials might seem daunting at first, understanding of the basic requirements reviewed in this article is a good starting place for determining if you need to disclose an interest to the public. For a more in depth look at these disclosure requirements see TASB Policy BBFA(LEGAL). And, as always, we are available to help school district decision makers through the TASB Legal Line, 800.530.5345.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/conflict-disclosures-for-bd-mems-and-dist-employee.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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