

Traps For the Unwary

Information that a Public Officer Needs to Know

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Topic Overview

We'll definitely cover:

- **Nepotism** – Government Code Chapter 573
- **Dual Office Holding/Incompatibility**

If there's enough time:


- **Conflict of Interest**
 - Local Government Code Chapter 171
 - Local Government Code Chapter 176



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Nepotism

**Government Code
Chapter 573**



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What is Nepotism?

Gov. Code § 573.041

Prohibits a *public official* from:

- Appointing,
- Confirming the appointment of, OR
- Voting on the appointment of

a close relative of certain public officials to a paid public position or employment




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Nepotism: Government Code Chapter 573

Which Public Officials Does Nepotism Apply To?

- Public official who has **final hiring authority** or member of the governing body that has **final hiring authority**.
- **Final Hiring Authority** means the individual or entity that has control over hiring decisions.

Gov. Code § 573.001(3)




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Nepotism: Government Code Chapter 573

Who is Considered a Close Relative?

Close relative is a relative who is either in the:

1st, 2 nd or 3 rd degree of Consanguinity (blood)	1 st or 2 nd degree of Affinity (marriage)
<ul style="list-style-type: none"> • 1st degree: mother, father, son, daughter • 2nd degree: brothers, sisters, grandparents, grandchildren • 3rd degree: aunts, uncles, nieces, nephews <p><i>Adopted children and half brothers/sisters are considered full blooded under consanguinity.</i></p> <p><i>Step brothers/sisters are not.</i></p>	<ul style="list-style-type: none"> • 1st degree: wife, husband, stepchildren, son-in-law, daughter-in-law • 2nd degree: brother-in-law, sister-in-law, spouse's grandparents, spouse's grandchildren



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Nepotism: Government Code Chapter 573

What Happens if a Public Official has a Nepotism Conflict?

Neither the public official nor the other members of the governing body can hire the close relative, unless a specific statutory exception applies.

Gov. Code § 573.041



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Nepotism: Government Code Chapter 573

Prior Continuous Employment Exception

Employee may continue employment if the employee has been continuously employed for a **sufficient uninterrupted time period immediately prior** to the appointment or election of the close relative.

- *30 days* if the public official is appointed
- *Six months* if the public official is elected in an election other than the general county and state election
- *One year* if the public official is elected in the general county and state election

Gov. Code § 573.062




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Nepotism: Government Code Chapter 573

Consequences for Violating The Nepotism Law


- Public official commits official misconduct
- Fine not less than \$100 nor more than \$1000
- Public official can be removed from office if convicted and the conviction is final
- Employment contract is void

Gov. Code §§ 573.081 – 573.084



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**Dual Office Holding
&
Incompatibility**



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Dual Office Holding

Dual Office Holding

Texas Constitution Art. XVI, Section 40

- ▶ “No person shall hold or exercise at the same time, more than once civil office of emolument...”
- ▶ What is “civil office of emolument”?
 - A paid public office



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Dual Office Holding

Distinction Between “Public Office” and “Public Employment”

Public Office is determined by:

1. The officeholder’s authority to exercise governmental power for the benefit of the public, AND
2. Officeholder’s independence from the control of other governmental bodies or officials

Aldine Independent School District v. Standley, 280 S.W.2d 578 (Tex. 1955)



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Dual Office Holding

Definition of Emolument

Pay or some other benefit, compensation or thing of value received in exchange for the person's service as an officer.

Reimbursement for actual governmental related expenses is not considered emolument.

Tex. Att'y Gen. LO-93-33 (1993)



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Dual Office Holding

Incompatibility

- ▶ Prohibition against a person holding certain public offices at the same time because of a practical conflicts of interest that might arise.
- ▶ Three types of Incompatibility
 - Self Appointment
 - Self Employment
 - Conflicting Loyalties



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Incompatibility

Incompatibility: Self Appointment

Prevents a governing body from appointing one of its own members to a public office.

Ehlinger v. Clark, 8 S.W.2d 666 (Tex. 1928)

Incompatibility: Self Employment

A member of a governing body may not simultaneously serve as an employee of his/her entity.

Tex. Att'y Gen. LO-97-34



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Incompatibility

Incompatibility: Conflicting Loyalties

Prevents a person from holding two public offices when the interest of the two entities may conflict and when voting on behalf of one public entity would possibly compromise the interest of the other public entity.

Thomas v. Abernathy County Line Indep. Sch. Dist., 290 S.W. 152 (Tex. Comm'n App. 1927, judgm't adopted)



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Dual Office Holding / Incompatibility

Consequences for Violating the Dual Office Holding or Incompatibility

There are no criminal penalties for holding two conflicting public offices or for other types of prohibited dual office holding. Such a violation would have to be challenged through a civil action in a district court.



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**Conflict of Interest
Part 1**

**Local Government Code
Chapter 171**



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Conflict of Interest: Local Gov. Code Chapter 171

What is Conflict of Interest in Local Government Code Chapter 171?

Prohibits *local public officials* from:

- Discussing,
- Deciding, OR
- Voting on

Issues that the local public official has a *Substantial Interest in a Business Entity or Real Property*.



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Conflict of Interest: Local Gov. Code Chapter 171

Who is Considered a Local Public Official?

Local Gov. Code § 171.001(1)

Local Public Officials include:

- Elected Officials, and
- Appointed Officials,

Whether paid or unpaid, who exercise responsibilities that are more than advisory in nature.



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Conflict of Interest: Local Gov. Code Chapter 171

Two Types of Conflict of Interest

1. Substantial Interest in a Business Entity: Conflict due to a local public official's substantial financial interest in a *business entity* that has an issue before the governmental unit.
2. Substantial Interest in Real Property: Conflict due to a local public official's substantial financial interest in *real property* that would be affected by the governmental unit's action.



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Conflict of Interest: Local Gov. Code Chapter 171

What does a Local Public Official do if He/She has a Conflict of Interest?

Local Gov. Code § 171.004(a) & (b)

1. File an Affidavit stating the nature and extent of the official's interest with the governmental body's record keeper;
2. Abstain from discussion or other proceedings regarding the item; and
3. Abstain from voting on the item.



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Conflict of Interest: Local Gov. Code Chapter 171

Consequences for Violating Conflict of Interest Law

Local Gov. Code § 171.003

1. **Civil:** Action taken is voidable
2. **Criminal:** Four situations in which a public official may be prosecuted for action or inaction that is a *Class A misdemeanor punishable by a fine not to exceed \$4,000 and/or up to one year in jail:*
 - a. Failure to file an affidavit
 - b. Participating in discussion regarding an item when there is a conflict
 - c. Serving as surety for a business entity that has work, business, or a contract with the governmental body
 - d. Serving as surety on any official bond required for an official of a governmental body
3. **Possible Removal from office**



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**Conflict of Interest
Part 2**

**Local Government Code
Chapter 176**



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Conflict of Interest: Local Gov. Code Chapter 176

What is Conflict of Interest in in Local Government Code Chapter 176?

Requires a vendor or a local government officer of a local governmental entity to disclose certain business relationships.



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Conflict of Interest: Local Gov. Code Chapter 176

Who are the “Conflict Disclosure Statements” and “Conflict of Interest Questionnaires” Filed With?

Local Gov. Code §§ 176.003(b) & 176.006(a-1)

- The statements and questionnaires must be filed with the record administrator of the local governmental entity.
- **Record Administrator** is the director, county clerk, city secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity, or another person who is designated by the local governmental entity to maintain the statements and questionnaires. Local Gov. Code § 176.001(5)
- If the local governmental entity maintains a website, then the statements and questionnaires must be posted on the website. Local Gov. Code § 176.009



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Conflict of Interest: Local Gov. Code Chapter 176

When is Chapter 176 Triggered?

Local Gov. Code §§ 176.003, 176.006

Two-Part Test

Part 1

- The Vendor enters into a contract with a Local Governmental Entity;
- OR
- The Local Governmental Entity considers entering into a contract with the Vendor.

Part 2

1. A **LGO** (or LGO's close family member*) has an **employment or business relationship** with a vendor resulting in taxable income that is more than **\$2,500** in the preceding twelve months before becoming aware that person was/is vendor.
2. A **LGO** (or LGO's close family member*) accepts from a vendor in the preceding twelve months one or more **gifts** (including transportation, lodging, and entertainment) that have an aggregate value of **more than \$100**.
3. A **LGO** has a **family relationship* with a vendor**.

[*A person within the third degree by blood or second degree by marriage.]



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Conflict of Interest: Local Gov. Code Chapter 176

When is the “Conflict Disclosure Statements” Required to be Filed?

Local Gov. Code § 176.003(b)

No later than 5:00 p.m. on the seventh business day after the date in which the officer becomes aware of facts that require a filing of the statement.



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Conflict of Interest: Local Gov. Code Chapter 176

Consequences of Not Filing “Conflict Disclosure Statement”?

Local Gov. Code § 176.013

- ▶ An officer commits an offense if:
 - ▶ Is requires to file a statement; AND
 - ▶ Knowingly fails to file the statement when the officer becomes aware of the facts that requires the filing of the statement.
- ▶ **Exception to prosecution** if officer files a statement or questionnaire not later than the seventh day after the date the person receives notice from the local governmental entity of the alleged violation.
- ▶ Local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply.



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Conflict of Interest: Local Gov. Code Chapter 176

Possible Offenses for Knowingly Failing to file the Statement or the Questionnaire

Local Gov. Code § 176.013(c)

1. Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;
2. Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or
3. Class A misdemeanor if the contract amount is less than \$5 million.



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For More Information

- **Nepotism**
 - Texas Nepotism Laws Made Easy:
<https://www.tml.org/DocumentCenter/View/267/Texas-Nepotism-Laws-Made-Easy-PDF>
- **Dual Office Holding / Incompatibility**
 - Dual Office Holding/Incompatibility Laws Made Easy:
<https://www.tml.org/DocumentCenter/View/268/Dual-Office-Holding-and-Incompatibility-Made-Easy-2018-PDF>
- **Conflict of Interest – Local Government Code Chapter 171 & 176**
 - Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors:
<https://www.tml.org/DocumentCenter/View/264/Chapter-171-Conflicts-of-Interest-Requirements-PDF>
<https://www.tml.org/DocumentCenter/View/265/Chapter-176-Conflicts-Disclosure-Requirements-PDF>



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