

- B. Discussion and possible action implementing procedures for Sworn Affidavit of Disclosure, Recusal of Elected Official, or Commissioner and Affidavit for an Applicant Requesting Recusal of an Elected Official, or Commissioner, establishing ethical procedures regarding the use of Village legal services, when there is a conflict of interest established, regarding the process and procedures outlined in the Code of Ordinances as pertaining to the review and consideration of said application./Nace
- C. Discussion and possible action for establishing procedures for the Village of Volente regarding the Transparency of all Board Members, Elected Officials, Commissioners and Committee Members Appointed and Volunteers while conducting, discussing or performing any and all Village business and establishing procedures for conduct, social media and strict confidentiality of residential and village information and the transparency of responding to open records request./Nace/Cristian
- D. Discussion and possible action for a request by Ken Beck, on behalf of Thistle Dew Ranch for a Variance in accordance with Village of Volente Code of Ordinances 2009-O-103, Section 9.05.115, (Cut & Fill) to exceed 5' maximum allowed at the location (15502 Mary Street) Lot 1, Thistle Dew Ranch Subdivision, sur 10.23 acres./ Ken Beck Presenting
- E. Discussion and possible action for a request by Ken Beck, on behalf of Thistle Dew Ranch for a Variance in accordance with Village of Volente Code of Ordinances 2004-O-36, Section 33.340, (Slope Limits) no construction or land disturbing activities shall be permitted on natural grades with slopes 25% or steeper at the location (15502 Mary Street) Lot 1, Thistle Dew Ranch Subdivision, sur 10.23 acres./ Ken Beck Presenting
- F. Discussion and possible action acknowledging and approving legal expenses incurred for. /Nace
 - 1. Legal Expenses
 - Jan: \$1335.10
 - Feb: \$2167.39
 - Mar: \$7613.56
 - April: \$3782.10
 - May: \$1113.60
 - June: \$8702.30
 - July: \$8013.94
 - Aug: \$8034.07
 - 2. On AT&T Mobile bill: \$2,341.66 Phones are Returned
- G. Discussion and possible action on adopting Resolution 2020-R-1 authorizing the Mayor to enter into a professional services agreement with Debbie Gold for Interim City Secretary services./Nace
- H. Discussion and possible action for a council work session establishing the date and time for the review, edit and discussion of the Comprehensive Plan Update./Barrick
- I. Discussion and possible action regarding Public Works/Safety Committees on Travis County Bids, Phase One Signage, Phase Two Signage, Speed Bumps and addressing citizen concerns on Traffic Control, Speeding, Road Racing, Pedestrian Safety, Travis County Sheriff's Patrol and Litter, on all VoV roadways./Wilson/Racht/Nace
- J. Discussion on Integritek IT company, Quote #006191 version 1./Metro.



Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors

This publication is for educational purposes and meant to provide basic information regarding *state* conflict of interest and disclosure laws applicable to city officials, employees, and vendors. A home rule charter, local policy, or ordinance may provide for more stringent requirements in some circumstances. This paper is neither an exhaustive treatment of the law on this subject nor a substitute for the advice of an attorney. It is important to consult the individual state laws cited for detailed information about the issues discussed here and to consult an attorney in order to apply these legal principles to specific fact situations. You can find additional resources regarding many of the topics discussed in this paper on our Web site at www.tml.org.

Updated August 2019

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A common source of alleged wrongdoing revolves around conflicts of interest. Whether real or perceived, these allegations often arise out of situations involving personal financial gain, employment, or special treatment for family members or business relations. To protect city transactions from the undue influence of such conflicts, various state laws require disclosure of city officer, employee, and vendor interests. In the past decade, the number and type of interests that must be disclosed have increased. Keep in mind that each state law discussed here comes with its own separate legal requirements. Thus, complying with one does not fulfill the obligations imposed by the other. In some circumstances, the same financial interest may require a city officer, employee, or vendor to file more than one disclosure form.

I. Local Government Code Chapter 171: Real Property and Business Interests

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest.¹ It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public.²

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper (usually the city secretary), stating the nature and extent of the interest.³ In addition, a public official is required to abstain from further participation in the matter except when a majority of the members of the governing body also have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter.⁴

The term "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . or other local governmental entity who exercises responsibilities beyond those that are advisory in nature."⁵ This term includes a member of a planning and zoning commission.⁶

A public official has a substantial interest in a business entity if the official:

1. owns 10 percent or more of the voting stock or shares of the business entity;
2. owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or

¹ TEX. LOC. GOV'T CODE §§ 171.001-.010.

² *Id.* § 171.004.

³ *Id.* An example (not a model) affidavit is available here: <https://www.tml.org/DocumentCenter/View/276/Chapter-171-Conflict-of-Interest-Affidavit-Sample-PDF>.

⁴ TEX. LOC. GOV'T CODE § 171.004.

⁵ *Id.* § 171.001(1).

⁶ Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

3. receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.⁷

A public official has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more.⁸

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property.⁹ As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income which exceeds ten percent of her gross income.¹⁰

A business entity is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law."¹¹ A nonprofit corporation is considered a business entity.¹² The term also includes a business entity that represents an entity or person with an interest in a matter before the city council.¹³ Public entities such as a city, state university or school district, are not business entities.¹⁴

The limit on "further participation" by a public official who has a conflict does not preclude the public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations.¹⁵ Thus, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations.¹⁶

The question of whether a vote or decision has a "special economic effect" on a business entity or on the value of real property is generally a question of fact.¹⁷ However, a vote or decision will, as a matter of law, have a "special economic effect" if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest.¹⁸ Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property.¹⁹

⁷ TEX. LOC. GOV'T CODE § 171.002(a).

⁸ *Id.* § 171.002(b).

⁹ *Id.* § 171.002(c).

¹⁰ Tex. Att'y Gen. Op. No. JC-0063 (1999).

¹¹ TEX. LOC. GOV'T CODE § 171.001(2).

¹² Tex. Att'y Gen. Op. No. JM-424 (1986), at 2.

¹³ Tex. Att'y Gen. Op. No. DM-309 (1994), at 2.

¹⁴ Tex. Att'y Gen. Op. Nos. GA-0826 (2010), at 1, DM-267 (1993), at 2, JM-852 (1988), at 2.

¹⁵ Tex. Att'y Gen. Op. No. GA-0334 (2005), at 6.

¹⁶ *Id.*

¹⁷ Tex. Att'y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att'y Gen. LO-98-052.

¹⁸ Tex. Att'y Gen. Op. No. GA-0136 (2004), at 3.

¹⁹ Tex. Att'y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.—Dallas 1991, writ denied)).

Whether it is “reasonably foreseeable” that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific.²⁰ In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was “reasonably foreseeable.”²¹

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately.²² The affected member may not generally participate in consideration of that item.²³

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a substantial interest.²⁴ A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.²⁵

II. Local Government Code Chapter 176: Income and Gifts from, and Family Relationships with Vendors

Chapter 176 of the Local Government Code requires certain local government officers to disclose the receipt of gifts from and employment, business, and familial relationships with vendors who conduct business, or consider conducting business, with local government entities. The requirements apply to most political subdivisions, including cities.²⁶ The Chapter also applies to a “local government corporation, a board, commission, district, or authority” whose members are appointed by a mayor or the city council.²⁷

A “local government officer” (officer) includes: (1) a mayor or city councilmember; (2) a director, administrator, or other person designated as the executive officer of the city; and (3) an agent (including an employee) of the city who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.²⁸

An officer is required to file a conflicts disclosure statement in three situations.

²⁰ Tex. Att’y Gen. LO-96-049.

²¹ *Dallas Cty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied); Tex. Att’y Gen. Op. No. GA-0796 (2010), at 6.

²² TEX. LOC. GOV’T CODE § 171.005.

²³ *Id.*

²⁴ *Id.* § 171.006.

²⁵ *Id.* § 171.003; *see also Marra v. State*, 399 S.W.3d 664 (2013) (overturning a conviction under Local Government Code Section 171.003).

²⁶ TEX. LOC. GOV’T CODE § 176.001.

²⁷ *Id.*

²⁸ *Id.*

1. An officer must file a statement if the officer or officer's family member²⁹ has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months.³⁰ An officer who only receives investment income, regardless of amount, is not required to file a disclosure statement. Investment income includes dividends, capital gains, or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan.³¹
2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts (including lodging, transportation, and entertainment accepted as a guest) from a vendor that has an aggregate value of more than \$100 in the preceding twelve months.³² An officer is not required to file a statement in relation to a gift, regardless of amount, if the gift: (1) is a political contribution; (2) is food accepted as a guest; or (3) is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.³³
3. An officer is required to file a statement if the officer has a family relationship with the vendor.³⁴

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement.³⁵

An officer is required to file a statement no later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require a filing of the statement.³⁶

A "vendor" includes any person that enters or seeks to enter into a contract with a city.³⁷ The term also includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when that individual is acting in a private capacity; and (3) Texas Correctional Industries (but no other state agency).³⁸

²⁹ An officer's "family member" is a person related to the officer within the first degree by consanguinity (blood) or affinity (marriage). *Id.*

³⁰ *Id.* § 176.003(a)(2)(A).

³¹ *Id.* § 176.001.

³² *Id.* § 176.003(a)(2)(B). It is important to remember that state law prohibits the acceptance of certain gifts. *See, e.g.,* TEX. PENAL CODE §§ 36.02, 36.08.

³³ TEX. LOC. GOV'T CODE §§ 176.001(2-b), 176.003(a-1).

³⁴ *Id.* § 176.003(a)(2)(C). An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage). *Id.* § 176.001.

³⁵ *Id.* § 176.003(a-2).

³⁶ *Id.* § 176.003(b).

³⁷ *Id.* § 176.001.

³⁸ *Id.*

Chapter 176 applies to any written contract for the sale or purchase of real property, goods (personal property), or services.³⁹ A contract for services includes one for skilled or unskilled labor, as well as professional services.⁴⁰

A vendor is required to file a conflict of interest questionnaire if the vendor has a business relationship with the city and has: (1) an employment or other business relationship with an officer or an officer's family member that results in the officer receiving taxable income that is more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer's family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer.⁴¹

A vendor is required to file a questionnaire not later than the seventh business day after the later of the following: (1) the date that the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date that the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member, or becomes aware of a family relationship with an officer.⁴²

The statements and disclosures must be filed with the records administrator of the city.⁴³ A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under Chapter 176.⁴⁴

A city that maintains a Web site is required to post on that site statements and disclosures that are required to be filed under Chapter 176.⁴⁵ However, a city that does not have a Web site is not required to create or maintain one.⁴⁶

An officer or vendor who knowingly fails to file a statement or a disclosure when required to do so commits a Class A, B, or C misdemeanor, depending on the amount of the contract.⁴⁷ It is an exception to prosecution that an officer/vendor files a statement/questionnaire not later than the seventh day after the date the person receives notice from the city of the alleged violation.⁴⁸ The validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire.⁴⁹

The Texas Ethics Commission is charged with creating statements and disclosure forms. The forms (Form CIS and Form CIQ) may be found at <https://www.ethics.state.tx.us/forms/conflict/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* §176.006(a).

⁴² *Id.* §176.006(a-1).

⁴³ *Id.* §§176.003(b), 176.006(a-1).

⁴⁴ *Id.* §176.001(5).

⁴⁵ *Id.* § 176.009.

⁴⁶ *Id.*

⁴⁷ *Id.* §§ 176.013.

⁴⁸ *Id.*

⁴⁹ *Id.* § 176.006(i).

III. Government Code Chapter 553: Property Acquired with Public Funds

Chapter 553 of the Government Code provides that a “[a] public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.”⁵⁰

Chapter 553’s affidavit requirement applies to a “public servant,” defined as a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as: (1) a candidate for nomination or election to public office; or (2) an officer of government.⁵¹

The term “public funds” is defined to “include[] only funds collected by or through a government.”⁵² The language of Chapter 553 suggests that a public servant is required to disclose his/her interest in property even when the property is to be acquired by a separate governmental entity with which the public servant is not affiliated. There appears to be no case or attorney general opinion that addresses this issue. Thus, a public servant or official subject to Chapter 553 should consult his/her private legal counsel regarding the application of Chapter 553 in this scenario.

Chapter 553 is not, by its language, limited to real property interests. Thus, if a public servant has a legal or equitable interest in any real (e.g., land) or personal (e.g., a vehicle) property acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant should file a Chapter 553 affidavit.⁵³

A Chapter 553 affidavit has to be filed within ten days before the date on which the property is to be acquired by purchase or condemnation.⁵⁴ The affidavit is filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located.⁵⁵

The affidavit must include: (1) the name of the public servant; (2) the public servant’s office, public title, or job designation; (3) a full description of the property; (4) a full description of the nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;” and (7) an acknowledgement of the same type required for recording a deed in the deed records of the county.⁵⁶ An affidavit example is available on our Web site at: <https://www.tml.org/DocumentCenter/View/275/Chapter-553-Property-Affidavit-Sample-PDF>.

⁵⁰ TEX. GOV’T CODE § 553.002(a).

⁵¹ *Id.* § 553.001(2).

⁵² *Id.* § 553.001(1).

⁵³ *Id.* § 553.002.

⁵⁴ TEX. GOV’T CODE § 553.002(a).

⁵⁵ *Id.* § 553.002(c).

⁵⁶ *Id.* § 553.002(b).

A person who violates Section 553.002 of the Government Code by failing to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property.⁵⁷

IV. Local Government Code Chapter 145: Financial Disclosure in Cities with a population of 100,000 or more

Local Government Code Chapter 145's financial disclosure requirements apply *only in a city with a population of 100,000 or more*.⁵⁸ In general terms, Chapter 145:

1. requires each mayor, each member of a city council, each city attorney, each city manager, and each candidate for city office filled by election to file an annual financial statement with the city clerk or secretary;⁵⁹
2. requires that the financial statement include an account of the financial activity of the covered individual and the individual's spouse and dependent children, if the individual had control over that activity; and⁶⁰
3. requires that the financial statement include all sources of income; shares of stocks owned, acquired, or sold; bonds, notes, or other paper held, acquired, or sold; any interest, dividend, royalty, or rent exceeding \$500; each person or institution to whom a personal debt of \$1,000 or more exists; all beneficial interests in real property or businesses owned, acquired, or sold; certain gifts received; income in excess of \$500 from a trust; and a list of all boards of directors on which the individual serves; and information about certain contracts with a governmental entity.⁶¹

Candidates for elected city office are required to file the financial disclosure statement not later than the earlier of: (1) the twentieth day after the deadline for filing an application for a place on the ballot in the election; or (2) the fifth day before the date of the election.⁶² Annually, the mayor, city councilmembers, the city manager, and the city attorney⁶³ must file a financial disclosure statement for the preceding year by April 30.⁶⁴ A new city manager or a new city

⁵⁷ *Id.* § 553.003.

⁵⁸ TEX. LOC. GOV'T CODE § 145.001.

⁵⁹ *Id.* §§ 145.002–.003.

⁶⁰ TEX. LOC. GOV'T CODE § 145.003(b)(2), TEX. GOV'T CODE § 572.023(a).

⁶¹ TEX. LOC. GOV'T CODE § 145.003(b)(2), TEX. GOV'T CODE § 572.023(b).

⁶² TEX. LOC. GOV'T CODE § 145.004(c).

⁶³ While there appears to be no case or opinion directly on point, advisory opinions issued by the Texas Ethics Commission suggest that an interim city manager or city attorney that has all the duties and powers of a permanent city manager or attorney would also be subject to this requirement. *See* Ethics Advisory Opinion Nos. 27 (1992), 265 (1995).

⁶⁴ TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(a).

attorney must file a financial disclosure statement within forty-five days of assuming the duties of office.⁶⁵

City officers and candidates for elected city office must generally file the financial statement on a form (Form PFS-LOCAL) provided by the Texas Ethics Commission, available here: <https://www.ethics.state.tx.us/forms/QuickFindAForm.php>.⁶⁶ A detailed listing of the required contents is found in Section 572.023 of the Texas Government Code. If information in the financial disclosure form is required to be filed by category, Section 572.022 sets forth reporting categories. The city secretary must deliver (by mail, personal delivery, e-mail, or other electronic transfer) copies of the form to city officers and candidates for city office within certain time deadlines.⁶⁷

The completed financial disclosure statement is filed with the city clerk or secretary.⁶⁸ These statements are public records and are to be maintained so as to be accessible to the public during regular office hours.⁶⁹

Both criminal and civil penalties may be imposed for failure to file a financial disclosure statement. An offense under Chapter 145 is a Class B misdemeanor, which is punishable by a fine up to \$2,000 and/or confinement up to 180 days.⁷⁰ Section 145.010 sets forth a process whereby a civil penalty up to \$1,000 may be assessed upon failure to comply after notice is received from the city attorney.

The city secretary shall grant an extension of not more than sixty days for the filing of the financial disclosure statement to a city officer or a person appointed to a city office if: (1) the individual makes an extension request before the filing deadline; or (2) the individual's physical or mental capacity prevents either the filing or the request for an extension before the filing date.⁷¹ Extensions shall not be granted to candidates for elected city office.⁷²

The city secretary shall maintain a list of the city officers and candidates required to file a financial disclosure statement. No later than ten days after the filing deadline, the city secretary shall provide a list to the city attorney showing for each city officer and candidate for city office: (1) whether the individual filed a timely statement; (2) whether the individual was granted an extension and the new filing deadline; or (3) whether the individual did not timely file a financial statement or receive an extension of time.⁷³

⁶⁵ TEX. LOC. GOV'T CODE § 145.004, TEX. GOV'T CODE § 572.026(c).

⁶⁶ TEX. LOC. GOV'T CODE § 145.005(a).

⁶⁷ *Id.* §§ 145.002, 145.005(b)

⁶⁸ *Id.* § 145.003(b).

⁶⁹ *Id.* § 145.007(a). On the written request of the municipal court judge or a candidate for municipal court judge, the residence address of the judge, the judge's spouse, or the candidate for judge shall be removed or redacted before the financial statement is made available to the public. *Id.* § 145.007(d). (Note: A municipal court judge appears to be subject to Chapter 145 only if the office is filled by election.)

⁷⁰ *Id.* § 145.009.

⁷¹ *Id.* § 145.004(e).

⁷² *Id.* § 145.004(f).

⁷³ *Id.* § 145.008.

V. Government Code Section 2252.908: Vendor Disclosure of Interested Parties

Government Code Section 2252.908 is a governmental transparency law originally enacted by H.B. 1295 in 2015. It prohibits a governmental entity (defined to include a city⁷⁴) or state agency from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (a Form 1295).

The Texas Ethics Commission (Commission) is charged with adopting rules to implement the statute, developing the disclosure of interested parties form, and posting the form on its Web site.⁷⁵

This new disclosure law applies only to contracts that: (1) require an action or vote by the city council before the contract may be signed; (2) have a value of at least \$1 million; or (3) are for services that would require a person to register as a lobbyist under Chapter 305.⁷⁶ Pursuant to the Commission's rules, a contract does not require an action or vote by the city council if:

1. The governing body has legal authority to delegate to its staff the authority to execute the contract;
2. The governing body has delegated to its staff the authority to execute the contract; and
3. The governing body does not participate in the selection of the business entity with which the contract is entered into.⁷⁷

It is important to note that the Commission defines the term "contract" to include an amended, extended, or renewed contract.⁷⁸ A new rule, effective January 1, 2017, further clarifies when a change to an existing contract triggers the filing of a disclosure form.⁷⁹

The business entities subject to this law are those entities "recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation."⁸⁰ The Commission's rules clarify that the term "business entity" includes nonprofits, but does not include a governmental entity.⁸¹ That means, for instance, if a city executes an interlocal agreement with another city the disclosure requirements of Section 2252.908 are not triggered.

⁷⁴ TEX. GOV'T CODE § 2252.908(a)(2) (defining "governmental entity" to include a city, county, public school district, or special-purpose district or authority).

⁷⁵ *Id.* § 2252.908(g).

⁷⁶ *Id.* § 2252.908(b); *but see id.* § 2252.908(c) (expressly exempting certain contracts including a contract with a publicly traded business entity, a contract with an electric utility, and a contract with a gas utility).

⁷⁷ 1 T.A.C. § 46.1(c).

⁷⁸ *Id.* § 46.3(a).

⁷⁹ *Id.* § 46.4.

⁸⁰ TEX. GOV'T CODE § 2252.908(a)(1).

⁸¹ 1 T.A.C. § 46.3(b).

Exactly what types of interested parties must a business entity disclose? A business entity must disclose: (1) a person who has a controlling interest in the business; and (2) any intermediary.⁸² The Commission defines the terms “controlling interest” and “intermediary” as follows:

“Controlling interest” means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

“Intermediary,” . . . means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

- (1) receives compensation from the business entity for the person’s participation;
- (2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
- (3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.⁸³

It is quite possible that, although a business entity is subject to Section 2252.908, no interested parties will exist. Thus, a business entity may end up filing a form that has very little information on it.

The process for completing and submitting Form 1295 is as follows:

1. A business entity must use the Commission’s online filing application to enter the required information on Form 1295.⁸⁴
2. The completed Form 1295 must be filed with the city “at the time the business entity submits the signed contract” to the city.⁸⁵
3. The city must notify the Commission, using the Commission’s filing application, of the receipt of the filed Form 1295 and certification of filing not later than the 30th day after the date the city receives the disclosure.⁸⁶

To further explain the process, the Commission has prepared instructional videos and a “FAQ” document, available here: <https://www.ethics.state.tx.us/filinginfo/QuickFileAReport.php> (under “Filing a 1295 Certificate”).

⁸² *Id.* § 46.3(d).

⁸³ *Id.* § 46.3(c),(e).

⁸⁴ *Id.* § 46.5.

⁸⁵ TEX. GOV’T CODE § 2252.908(d).

⁸⁶ *Id.* § 2252.908(f), 1 T.A.C. § 46.5(c).

In order for a business entity to complete Form 1295, it will need some information from the city. Although not required by Section 2252.908, the Commission's rules provide that the business entity must include on the form an "identification number used by the [city] . . . to track or identify the contract for which the form is being filed."⁸⁷ Even though the rules provide for such a number, nothing in the rule requires a city to create a numbering system of any type.

The whole purpose behind this new disclosure requirement is to give the public more information about government contracts. To that end, the Commission is required to post the completed Form 1295 on its Web site within seven business days after receiving notice from the city that the city has received the filed Form 1295 and certification of filing.⁸⁸ In addition, cities must provide the completed forms in accordance with the Public Information Act.

The Commission takes the position that it does not have any authority (beyond rulemaking and adoption of the form) to enforce or interpret Government Code Section 2252.908.⁸⁹ All the possible ramifications for a city's failure to comply with Section 2252.908 are unclear at this time. As for a business entity, the statute requires a Form 1295 disclosure contain "a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury."⁹⁰

VI. Miscellaneous Conflicts Provisions

A. Plat Approval

A provision governing conflicts of interest in the plat approval process was added to state law in 1989. It requires "[a] member of a municipal authority responsible for approving plats [who] has a substantial interest in a subdivided tract" to file an affidavit stating the nature and extent of the interest and abstain from further participation in the matter.⁹¹ The affidavit must be filed with the municipal secretary or clerk before a vote or decision regarding the approval of a plat for the tract.

For purposes of this disclosure requirement, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.⁹²

A person has a substantial interest in a subdivided tract if the person:

1. has an equitable or legal ownership interest in the tract with a fair market value of \$2,500 or more;

⁸⁷ 1 T.A.C. § 46.5(a)(4).

⁸⁸ TEX. GOV'T CODE § 2252.908(g), 1 T.A.C. § 46.5(d).

⁸⁹ *Cf., e.g.*, TEX. GOV'T CODE §§ 571.061 (listing the laws that the Commission administers and enforces), 571.091 (listing the statutes about which the Commission may issue advisory opinions).

⁹⁰ *Id.* § 2252.908(e)(2); *see also* TEX. PENAL CODE ch. 37 (providing for offense of perjury).

⁹¹ TEX. LOC. GOV'T CODE § 212.017(d).

⁹² *Id.* § 212.017(a).

2. acts as a developer of the tract;
3. owns 10% or more of the voting stock or shares of or owns either 10% or more or \$5,000 or more of the fair market value of a business entity that:
 - (A) has an equitable or legal ownership interest in the tract with a fair market value of 2,500 or more; or
 - (B) acts as a developer of the tract; or
4. receives in a calendar year funds from a business entity described in (3) that exceed 10% of the person's gross income for the previous year.⁹³

A person is also considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity to another person who has a substantial interest in the tract. An offense under this subsection is a Class A misdemeanor.⁹⁴ The finding by a court of a violation of this requirement does not render voidable an action of the municipal authority responsible for approving plats, unless the measure would not have passed without the vote of the member who violated the requirement.⁹⁵

B. Selection of City Depository

Local Government Code Section 131.903 regulates conflicts of interest with respect to a city's selection of a depository. A bank is disqualified from serving as the depository of the city if an officer or employee of the city who has a duty to select the depository owns or has a beneficial interest, individually or collectively, in more than 10 percent of the outstanding capital stock of the bank.⁹⁶ In other words, a city council may not select a bank as the city's depository if a mayor or councilmember owns more than 10 percent of the bank.

If an officer or employee of the city is a director or officer of the bank, or owns 10 percent or less of the capital stock of the bank, the bank is not disqualified from serving as the city's depository so long as: (1) the interested officer or employee does not vote or take part in the proceedings; and (2) a majority of the other members of the city council vote to select the bank as the depository.⁹⁷

The attorney general has concluded that Section 131.903 is an exception to the general conflicts of interest statute in Chapter 171 of the Local Government Code.⁹⁸ That being said, TML attorneys advise that any local public official with a "substantial interest" in a bank, as that term is defined by Chapter 171 of the Local Government Code, comply with the Chapter 171 requirements of (1) filing an affidavit that discloses the potential conflict; and (2) abstaining

⁹³ *Id.* § 212.017(b).

⁹⁴ *Id.* § 212.017(e).

⁹⁵ *Id.* § 212.017(f).

⁹⁶ *Id.* § 131.903(a)(2).

⁹⁷ *Id.*

⁹⁸ Tex. Att'y Gen. LO-97-093.

from participating in the selection of the bank, even if the potential conflict doesn't trigger the specific conflict of interest provision under Local Government Code Section 131.903.

C. Prohibition Against Acting as a Surety

There are various instances in which a city may require an entity with which it contracts to utilize a surety (sometimes referred to as a guarantor or secondary obligor).⁹⁹ In addition, certain city officers may be required to execute a bond in conjunction with their office.¹⁰⁰

A local public official commits a Class A misdemeanor offense if the official knowingly: (1) acts as a surety for a business entity that has work, business, or a contract with the governmental entity or (2) acts as a surety on any official bond required of an officer of the governmental entity.¹⁰¹ For the purposes of these violations, a "local public official" is defined to mean "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . municipality . . . who exercises responsibilities beyond those that are advisory in nature."¹⁰²

D. Profession-Specific Requirements

While it is beyond the scope of this publication to discuss in detail, it is important to remember that vendors must sometimes comply with disclosure requirements that are specific to their profession. For instance, investment advisers must disclose to their clients (on Form ADV) ownership and other details about their firm through the Securities and Exchange Commission's Investment Adviser Public Disclosure Web site. See <https://www.sec.gov/fast-answers/answerscrdhtm.html>.

⁹⁹ See, e.g., *Wisembaker v. Johnny Folmar Drilling Co.*, 334 S.W.2d 465, 466 (Tex. Civ. App.—Texarkana 1960, writ dismissed) (describing that the City of Quitman had filed suit against a drilling company and its surety on the company's performance bond for breach of contract).

¹⁰⁰ See, e.g., TEX. LOC. GOV'T CODE § 22.072(c) (authorizing the city council in a type A general law city to require municipal officers to execute a bond payable to the city and conditioned that the officer will faithfully perform the duties of the office).

¹⁰¹ TEX. LOC. GOV'T CODE § 171.003; see also Tex. Att'y Gen. Op. No. KP-0132 (2017) (concluding that 171.003 does not prohibit a local public official from acting as a surety on a bail bond, i.e., a surety for an individual made to secure the release of an individual defendant from the State's custody).

¹⁰² TEX. LOC. GOV'T CODE § 171.001(1).

Chapter 553 of the Government Code – Disclosure Requirement

Christy Drake-Adams
TML Legal Counsel
July 2011

Chapter 553 of the Government Code provides that a “[a] public servant who has a legal or equitable interest in property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.” TEX. GOV’T CODE § 553.002(a).

Public Servant

Chapter 553’s affidavit requirement applies to a “public servant,” which is defined to mean a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as: (1) a candidate for nomination or election to public office; or (2) an officer of government. *Id.* § 553.001(2).

Public Funds

The term “public funds” is defined to “include[] only funds collected by or through a government.” *Id.* § 553.001(1). The language of Chapter 553 suggests that a public servant is required to disclose his/her interest in property even when the property is to be acquired by a separate governmental entity with which the public servant is not affiliated. We are not aware of a case or attorney general opinion that addresses this issue. Thus, a public servant or official subject to Chapter 553 should consult his/her private legal counsel regarding the application of Chapter 553 in this scenario.

Type of Property

Chapter 553 is not, by its language, limited to real property interests. Thus, if a public servant has a legal or equitable interest in any real (e.g., land) or personal (e.g., a vehicle) property acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant should file a Chapter 553 affidavit. *Id.* § 553.002.

Affidavit

A Chapter 553 affidavit has to be filed within ten days before the date on which the property is to be acquired by purchase or condemnation. *Id.* § 553.002(a). The affidavit is filed with the county clerk of the county in which the public servant resides as well as the county clerk of each county in which the property is located. *Id.* § 553.002(c).

The affidavit must include: (1) the name of the public servant; (2) the public servant’s office, public title, or job designation; (3) a full description of the property; (4) a full description of the nature, type, and amount of interest in the property, including the percentage of ownership interest; (5) the date the public servant acquired an interest in the property; (6) the following verification: “I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code;” and (7) an

acknowledgement of the same type required for recording a deed in the deed records of the county. *Id.* § 553.002(b).

An affidavit example is available at: http://www.tml.org/legal_topics/legal_ethics.asp.

Enforcement

A person who violates Section 533.002 of the Government Code by failing to file the required affidavit is presumed to have committed a Class A misdemeanor offense if the person had actual notice of the acquisition or intended acquisition of the legal or equitable interest in the property. TEX. GOV'T CODE § 553.003. A Class A misdemeanor is punishable by a fine and/or confinement.

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. 23, 84th Leg., Regular Session.

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.

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

2 Office Held

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 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 each 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)(2)(B), 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

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 a local governmental entity; or an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. 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 misdemeanor.

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 vendor described by Sections 176.001(7) and 176.003(a), Local Government Code.** Enter the name of the vendor described by Section 176.001(7), Local Government Code, if the vendor: a) has an employment or other business relationship with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code; b) has given to the local government officer or a family member of the officer one or more gifts as described by Section 176.003(a)(2)(B), Local Government Code; or c) has a family relationship with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 4. Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in Item 3.** Describe the nature and extent of the employment or other business relationship the vendor has with the local government officer or a family member of the officer as described by Section 176.003(a)(2)(A), Local Government Code, and each family relationship the vendor has with the local government officer as defined by Section 176.001(2-a), Local Government Code.
- 5. List gifts accepted, if the aggregate value of the gifts accepted from vendor named in Item 3 exceeds \$100.** List gifts accepted during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the vendor named in item 3 that in the aggregate exceed \$100 in value.
- 6. Affidavit.** Signature of local government officer.

Local Government Code § 176.001(2-a): "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

Local Government Code § 176.003(a)(2)(A):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(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 between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Legal Q&A

By Christy Drake-Adams, TML Legal Counsel

August 2015

Q: What is Chapter 176 of the Local Government Code?

A: Chapter 176 is an ethics law. Originally enacted by H.B. 914 in 2005, Chapter 176 requires local government officers to disclose certain relationships with vendors who conduct business with local government entities. After the law was implemented, city officials and others realized that the law created several unintended consequences. Consequently, the bill's author sought an opinion from the Texas attorney general to clarify many provisions of Chapter 176. The attorney general's office released Opinion Number GA-0446, which concluded that legislative changes to the law were necessary. In response, the legislature passed H.B. 1491 during the 2007 regular legislative session. More recent amendments were made to Chapter 176 with the passage of H.B. 23 in the 2015 regular legislative session.

Q: What local government entities are subject to this law?

A: The requirements of Chapter 176 apply to most political subdivisions, including a city. TEX. LOCAL GOV'T CODE § 176.001(3). The chapter also applies to a local government corporation, board, commission, district, or authority whose members are appointed by a mayor or the city council. *Id.*

Q: What local government officers are subject to this law?

A: A "local government officer" (officer) under Chapter 176 includes: (1) a mayor or city councilmember; (2) a director, superintendent, administrator, president, or any other person who is designated as the executive officer of the local government entity; and (3) an agent (including an employee) of the local government entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Id.* §§ 176.001(1), 176.001(4).

Q: When is an officer required to file a "conflicts disclosure statement"?

A: An officer is required to file a "conflicts disclosure statement" (statement) in at least three situations.

1. An officer must file a statement if the officer or officer's family member has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months. *Id.* § 176.003(a)(2)(A). An officer who only receives investment income, regardless of amount, is not required to file a disclosure statement. *Id.* Investment income includes dividends, capital gains, or interest income gained from a personal or business checking or savings account or other

similar account, a personal or business investment, or a personal or business loan. *Id.* § 176.001(2-d).

2. An officer is required to file a statement if the officer or officer's family member accepts one or more gifts from a vendor that has an aggregate value of more than \$100 in the preceding twelve months. *Id.* § 176.003(a)(2)(B) (a "gift" includes transportation, lodging, and entertainment, even as a guest). An officer is not required to file a statement in relation to a gift, regardless of amount, if the gift: (1) is a political contribution; (2) is food accepted as a guest; or (3) is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. *Id.* §§ 176.001(2-b), 176.003(a-1).
3. An officer is required to file a statement if the officer has a family relationship with the vendor. *Id.* § 176.003(a)(2)(C).

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement. *Id.* § 176.003(a-2).

(Note: An officer is required to file a statement no later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require the filing of a statement. *Id.* § 176.003(b).)

Q: How does Chapter 176 define a "vendor," and what does it mean to have a "family relationship" with a vendor?

A: A vendor is any person who enters or *seeks to enter into* a contract with a city. *Id.* § 176.001(7). The term includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract; and (3) Texas Correctional Industries (but no other state agency). *Id.*

An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage). *Id.* § 176.001(2-a). An officer's family relationships within the third degree by blood include the officer's: mother, father, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, great-grandfather, great-grandmother, aunt, uncle, nephew, niece, great-grandson and great-granddaughter. An officer's family relationships within the second degree by marriage include the officer's: spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepchild, sister-in-law (brother's spouse or spouse's sister), brother-in-law (sister's spouse or spouse's brother), spouse's grandmother, spouse's grandfather, spouse's granddaughter, and spouse's grandson.

Q: How does Chapter 176 define a “family member” of an officer?

A: An officer’s family member is a person related to the officer within the first degree by consanguinity (blood) or affinity (marriage). *Id.* § 176.001(2). An officer’s family member includes the officer’s: father, mother, son, daughter, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, or step child.

Q: To what types of contracts does the law apply?

A: The law applies to any written contract for the sale or purchase of real property, goods (personal property), or services. *Id.* § 176.001(1-d), (2-c). A contract for services would include one for skilled or unskilled labor, as well as for professional services. *Id.* § 176.001(6).

Q: When is a vendor required to file a “conflicts of interest questionnaire”?

A: A vendor is required to file a “conflicts of interest questionnaire” (questionnaire) if the vendor has a business relationship with the city and: (1) has an employment or other business relationship with an officer or an officer’s family member that results in the receipt by the officer or family member of taxable income of more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer’s family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer. *Id.* § 176.006(a).

(Note: A vendor is required to file a questionnaire not later than the seventh business day after the later of the following: (1) the date the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date the vendor becomes aware of a employment or business relationship with an officer of officer’s family members, gives a gift to an officer or officer’s family member, or becomes aware of a family relationship with an officer. *Id.* § 176.006(a-1).)

Q: With whom should the statements and questionnaires be filed?

A: The statements and questionnaires must be filed with the records administrator of the city. *Id.* §§ 176.003(b), 176.006(a-1). A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under the chapter. *Id.* §176.001(5).

A city that maintains a website is required to post on that website statements and questionnaires that are required to be filed under the chapter. *Id.* § 176.009. However, a city that does not have a website is not required to create or maintain one. *Id.*

(Note: A records administrator must also maintain a list of local government officers and make it available to the public and any vendors that may be required to file a questionnaire. *Id.* § 176.0065(1).)

Q: What happens if a statement is not filed?

A: An officer or vendor who knowingly fails to file a statement or a questionnaire when required to do so commits either a Class A, B, or C misdemeanor, depending on the amount of the contract. *Id.* § 176.013. A Class C misdemeanor is punishable by a fine of up to \$500. A Class B misdemeanor is punishable by a fine up to \$2,000, confinement in jail for a term not to exceed 180 days, or both. A Class A Misdemeanor is punishable by a fine up to \$4,000, confinement in jail for a term not to exceed one year, or both. It is an exception to an offense if the officer or vendor file the statement or questionnaire not later than the seventh business day after receiving notice from the city of the alleged violation. *Id.* § 176.013(f)-(g).

In addition to possible criminal punishment, a city may reprimand, suspend, or terminate an employee who knowingly fails to comply with the requirements of Chapter 176. *Id.* § 176.013(d). And the city council may declare a contract void if the council determines the vendor failed to file a questionnaire. *Id.* § 176.013(e).

(Note: The validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire. *Id.* § 176.006(i).)

Q: Where can an officer or vendor obtain the necessary forms?

A: The Texas Ethics Commission is charged with creating statements and questionnaire forms. *Id.* §§ 176.003(e), 176.006(b). The forms can be found at www.ethics.state.tx.us or by contacting the TML Legal Department at 512-231-7400 or legalinfo@tml.org.

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor 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 vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

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

OFFICE USE ONLY

Date Received

1 Name of vendor 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 on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(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.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(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 between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

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

(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 vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) 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 with the local governmental entity; or

(2) the date the vendor 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);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

SAMPLE AFFIDAVIT

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

I, _____ (*printed name of affiant*), a local public official, make this affidavit and hereby on oath state the following:

I have a substantial interest in a business entity or real property that may receive a special economic effect that is distinguishable from the effect on the public by an action contemplated by the City of _____

The business entity or real property in which I have a substantial interest is: [*name and address of business and/or description of property*] _____

I or a person that is related to me within the first degree of consanguinity (blood) or affinity (marriage) as defined by state law has a substantial interest in this business entity or real property for the following reasons [*circle all that apply*]:

- (1) own 10% or more of the voting stock or shares of the business entity;
- (2) own 10% or more of the fair market valued of the business entity;
- (3) own \$15,000 or more of the fair market value of the business entity;
- (4) receive from the business entity funds that exceed 10% of _____ [*my, his, her*] gross income for the previous year;
- (5) have/has an equitable or legal ownership of real property with a fair market value of \$2,500 or more.

Upon filing of this affidavit with the official record keeper of the city, I affirm that I shall abstain from voting or further participating in any matter involving the business entity or real property, unless allowed by law.

Signed this _____ day of _____, 20_____

Signature of Affiant

Affiant

BEFORE ME, the undersigned authority, this day personally appeared _____ [*name of affiant*] and by oath stated that the facts herein stated are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME before me on this _____ day of _____, 20_____.

Notary Public in and for the State of Texas

My commission expires: _____

Chapter 171 of the Local Government Code – Conflicts of Interest

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest. TEX. LOC. GOV'T CODE §§ 171.001-.010. It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public. *Id.* §171.004(a).

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper, stating the nature and extent of the interest. *Id.* §171.004(b). In addition, a public official is required to abstain from further participation in the matter. *Id.* However, a public official that is required to file an affidavit is not required to abstain from participating in the matter if a majority of the members of the governing body have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter. *Id.* §171.004(c).

Local Public Official

A "local public official" is defined as "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any...municipality ... or other local governmental entity who exercises responsibilities beyond those that are advisory in nature." *Id.* §171.001(1). This term includes a member of a planning and zoning commission. Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

Substantial Interest

A public official has a substantial interest in a business entity if the official:

- (1) owns 10 percent or more of the voting stock or shares of the business entity; (2) owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
- (3) receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.

TEX. LOC. GOV'T CODE §171.002(a).

A person has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more. *Id.* §171.002(b).

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property. *Id.* §171.002(c). As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. TEX. GOV'T CODE §§ 573.023-.024; Tex. Att'y Gen. Op. No. DM-267 (1993), at 2; Tex. Att'y Gen. LO-95-080, at 3. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income. *See* Tex. Att'y Gen. Op. No. JC-0063 (1999).

Business Entity

A business entity is defined as “a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.” TEX. LOC. GOV’T CODE § 171.001(2). A nonprofit corporation is also considered a business entity. Tex. Att’y Gen. Op. No. JM-424 (1986) at 2. The term also includes a business entity that represents an entity or person with an interest in a matter before the city council. Tex. Att’y Gen. Op. No. DM-309 (1994), at 2. A city and other public entities, such as a state university or school district, are not a business entity. Tex. Att’y Gen. Op. Nos. DM-267 (1993), at 2, JM-852 (1988), at 2.

Further Participation

The limit on “further participation” does not preclude the interested public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations. Tex. Att’y Gen. Op. No. GA-0334 (2005), at 6. As such, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations. *Id.*

Special Economic Effect

The question of whether a vote or decision has a “special economic effect” on a business entity or on the value of real property is generally a question of fact. Tex. Att’y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att’y Gen. LO-98-052. However, a vote or decision will, as a matter of law, have a “special economic effect” if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest. Tex. Att’y Gen. Op. No. GA-0136 (2004), at 3. Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property. Tex. Att’y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.-Dallas 1991, writ denied)).

Reasonably Foreseeable

Whether it is “reasonably foreseeable” that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific. Tex. Att’y Gen. LO-96-049. In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was “reasonably foreseeable.” *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied), Tex. Att’y Gen. Op. No. GA-0796 (2010), at 6.

Budget Adoption

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately. TEX. LOC. GOV’T CODE § 171.005. The affected member may not generally participate in consideration of that item. *Id.*

Depositories

A city may select a bank as its depository even if one or more of the members of the governing body is an officer or director of the bank or owns or has a beneficial interest, individually or collectively, in ten percent or less of the outstanding capital stock of the bank, so long as two conditions are met. *Id.* §131.903(a)(2). First, a majority of the members of the governing body must vote to select the bank as a depository. *Id.* §131.903(a)(2)(A). Second, the interested

member must abstain from voting or taking part in the proceedings. *Id.* §131.903(a)(2)(B). The attorney general has concluded that this provision regarding conflicts of interests in the selection of depositories is an exception to Chapter 171. Tex. Att’y Gen. LO-97-093.

Public Official Acting Individually

The attorney general has concluded that when the law contemplates an individual public official perform a specific duty, Chapter 171’s disclosure and abstention requirements may not apply. Tex. Att’y Gen. Op. Nos. GA-0784 (2010), GA-0510 (2007). The attorney general recognizes that the term “local public official” as defined in Chapter 171 could be an individual official or an official who is a member of a governing body. Tex. Att’y Gen. Op. No. GA-0784 (2010), at 4. And while an official acting individually does not “vote,” arguably such an official may make a “decision.” *Id.* Thus, when the law imposes on a single, specific official a duty and the official has a conflict under Chapter 171, the attorney general has concluded that the legislature could not have intended for the disclosure and abstention requirements to apply. *Id.* (concluding that section 171.004’s disclosure and abstention requirements did not apply to a sheriff’s statutory bail bond and forfeiture duties).

Enforcement

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a “substantial interest.” TEX. LOC. GOV’T CODE §171.006. A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.

Updated November 2017

Conflict of Interest Disclosure Form

Note: A potential or actual conflict of interest exists when commitments and obligations are likely to be compromised by the nominator(s)' other material interests, or relationships (especially economic), particularly if those interests or commitments are not disclosed.

This Conflict of Interest Form should indicate whether the nominator(s) has an economic interest in, or acts as an officer or a director of, any outside entity whose financial interests would reasonably appear to be affected by the addition of the nominated condition to the newborn screening panel. The nominator(s) should also disclose any personal, business, or volunteer affiliations that may give rise to a real or apparent conflict of interest. Relevant Federally and organizationally established regulations and guidelines in financial conflicts must be abided by. Individuals with a conflict of interest should refrain from nominating a condition for screening.

Date:

Name:

Position:

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest:

I have no conflict of interest to report.

I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own:

1. _____

2. _____

3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Signature: _____

Date: _____

Transparency:

Social Media & Open Government

Alan Bojorquez – Attorney at Law – March 7, 2018
Texas Municipal League – Region 10 Meeting – Bastrop, TX

*“For there is nothing hidden that will not become visible,
and nothing secret that will not be known and come to light.”*

LUKE 8:17

Introduction

As I began to share my remarks as the featured speaker at a TML Region 10 quarterly dinner meeting, I asked if everyone had silenced their cellphones. I doubted it, and quipped that they were probably checking in on Facebook. I was certain the last thing the audience of city officials did before walking in tonight was check Twitter to see if we're at war with North Korea. I *hate* social media (except to the extent I *love* social media).

In terms of examples, I'd like to set the president aside as an anomaly, but is there any doubt that more and more Americans want to hear news straight from the horse's mouth? They don't want to learn what's happening from press releases, spin doctors, or the traditional media. They want *Transparency*. Honesty. Real thoughts in real time. Many public officials want to give it to them.

In Bastrop, Texas, we just recently experienced a phenomenon as a Top 5 Finalist in a competition to be featured on the reality show, *Small Business Revolution- Main Street*.¹ That's not my story to tell, but it was amazing to see city hall, without time to equip or strategize, successfully utilize social media to unite, focus, engage and empower a diverse citizenry with no history of coming together (outside of 4 natural disasters in 10 years).

Leaders on Social Media

As community leaders, we feel the pressure to be more involved with social media. People want to see you and get to know you that way. Recent studies show that when corporate executives are active on social media their employees are more trusting and productive, and their customers are more loyal. Recruitment improves when prospective employees see their future bosses online. Leaders and celebrities alike have higher approval ratings if they are active on social media because it makes them more human, likeable and approachable.² However, before

¹ <https://www.deluxe.com/small-business-revolution/main-street/season-three/>

² Joanna Belbey, The Social CEO: Executives Are Using Social Media To Transform Firms, <https://www.forbes.com/sites/joannabelbey/2016/11/30/the-social-ceo-executives-are-using-social-media-to-transform-firms/#146b4f322a88>; Rohan Jagan, Hootsuite Report Finds That CEOs on Social Media Boost Credibility, June 14, 2017, <https://martechseries.com/social/social-media-marketing/hootsuite-report-finds-that-ceos-on-social-media-boost-credibility13634/>

mindlessly hurtling each thought into cyberspace, you're encouraged to define your goals and your brand, consider the law, then gauge your messages before hitting the send button.

The Demand for Openness

Beyond social media, there's increasing pressure to be open with how we govern. Citizens demand we crack open the black box and expose the inner workings of government. Some newly-elected city council members insist they've got nothing to hide and pressure staff to share data widely. Furthermore, there are special interest groups insisting on sunshine.³ There are advocacy groups representing the media.⁴ Some newspapers routinely have a sting operation where they file open records requests across a region then report the response in a front page series.⁵ In fact, March 11-17, 2018 is *SUNSHINE WEEK!*⁶

There are commercial enterprises who market services and software almost as if they were advocacy groups.⁷ There's even a new form of online survey that uses crowdsourcing and data visualization to identify areas of possible consensus, not just division.⁸

Finally, there are awards, such as the Texas Comptroller of Public Accounts' *Transparency Stars* program, which recognizes local governments for going above and beyond in their financial transparency efforts.⁹ Conversely, there are more dubious distinctions, such as the *Golden Padlock Award* recognizing the most secretive publicly-funded agency or person in the U.S.¹⁰

Matter of Trust

Ultimately, what we should be working toward is enhancing public trust. We should want our citizens to be confident we're working on the community's behalf. Because we serve democracies, we should also want our citizens to feel informed, engaged, and capable of influencing city hall. In that regard, Texas is failing.

Released last month was a 2017 study on Civic Engagement by the University of Texas that ranked our state 47th in voter turnout, which is 3 points higher than where we were 5 years ago. We ranked 44th among other states for voter registration, which is also a little bit better than where we were 5 years ago (but still disappointing).¹¹

³ e.g., Public Citizen, www.citizen.org.

⁴ e.g., Freedom of Information Foundation of Texas, "Protecting the Public's Right to Know", www.foift.org (mostly comprised of the newspaper industry and their lawyer); and the Texas Press Association, www.texaspress.com

⁵ Deborah McKeon, Open record requests shine light through sometimes cloudy issues Mar 17, 2017, http://www.tdtnews.com/news/article_b89f09a2-0b76-11e7-9666-0b7e56eb01ca.html

⁶ Sunshine Week, March 11-17, 2018, by the American Society of News Editors and Reporters Committee for Freedom of the Press, <http://sunshineweek.org/>

⁷ e.g., see ClearGov, www.ClearGov.com ; and <https://www.pagefreezer.com/government/texas-public-record-laws-for-website-socialmedia/>

⁸ Tom Simonite, The Internet Doesn't Have to Be Bad for Democracy, MIT Review, June 2, 2017, <https://www.technologyreview.com/s/607990/the-internet-doesnt-have-to-be-bad-for-democracy/>

⁹ <https://comptroller.texas.gov/transparency/local/stars/>

¹⁰ given by Investigative Reporters and Editors, Inc. (IRE), <https://www.ire.org/awards/>

¹¹ 2017 Texas Media & Society Survey, Annette Strauss Institute for Civic Life, Moody College of Communication, University of Texas at Austin, https://moody.utexas.edu/sites/default/files/TMASS_2017Topline_final.pdf ;

On a federal level, it gets even worse. A 2017 survey by the Pew Research Center found that the public's trust in the federal government continues to be at historically low levels. Only 19% of Americans today say they can trust the government in Washington to do what is right "just about always" (3%) or "most of the time" (16%). Twenty-seven percent of registered voters say they think of government as an enemy. Just 50% say ordinary citizens can do a lot to influence the government in Washington, if they are willing to make the effort, while about as many (47%) say there's not much ordinary citizens can do to influence the government.¹²

Perhaps we can consider it good news that a Gallup poll in 2016 confirmed that for the past 15 years, Americans have expressed more confidence in their local government than their state government to handle problems.¹³ With the statistics demonstrating a considerable level of disconnect between the government and those we serve, I've wondered why we are so closed off.

State Secrets

Early 20th Century scholars observed that governments and bureaucracies tend to protect, rather than share, information. There was a time when *arcana imperii* ("state secrets") was the prevailing characterization of information in the hands of the government, and that data was not routinely shared with those outside. Empirical studies confirmed that organizations consistently put rules and regulations in place to enforce secrecy, particularly in relation to controversial or competitive matters.¹⁴ More recent research into organizational theory reveals the informal elements that permeate an organization such as group dynamics and culture.¹⁵

Seldom in my 22 years of municipal lawyering have I seen city officials who purposefully strive to keep the masses in the dark. Instead, I've observed opaqueness as a result of:

- **Absentmindedness:** a genuine lack of awareness that someone would want to know what's going on.
- **Protectiveness:** a sincere instinct to shelter and preserve data that, if released into the wild, may cause harm to the city or others.
- **Frugality:** an inability to prioritize the resources needed to gather, filter, and present data in a manner that would make it easily accessible or meaningful.
- **Time:** not enough hours in a day to implement procedures or install equipment to make data sharing easier.

<https://communityimpact.com/guides/austin/news/top-stories/2018/02/14/texas-ranks-among-lowest-u-s-political-civic-participation-new-study-finds/>

¹² Pew Research Center, <http://www.people-press.org/2015/11/23/1-trust-in-government-1958-2015/>

¹³ 71% trust local government, compared with 62% for state. Gallop,

<http://news.gallup.com/poll/195656/americans-trusting-local-state-government.aspx>

¹⁴ Moon, Danielle and Carolyn Adams, "Too Much of a Good Thing: Balancing Transparency and Government Effectiveness in FOI Public Interest Decision Making," AIAL Forum 82 (Nov), 2015 [commenting on the work of Max Weber and Carl J Friederich].

¹⁵ Moon and Adams citing Florence Heffron, "Organization Theory and Public Organizations: the Political Connection" (Prentice Hall, 1989) 219.

The law requires us to reveal some things, and shield others. As we work to develop protocols and processes to foster a more open environment at city hall, we should keep in mind that transparency is just one value among many.

Safeguard Data

While I want to encourage the use of social media to let the people know what's going on, my profession requires me to remain mindful of the duty to protect certain secrets. I've spent most of my career telling city officials when they can and can't have closed meetings. When they must and mustn't release documents. How many times have I stated that it's not prudent to openly discuss pending litigation? Legally, it's prudent to play with your cards close to your vest. It is unwise to divulge too much, and possibly unlawful.

There are many times when there are very good legal reasons to be cautious with what data is released and how. There are mandates in state and federal statutes demanding privacy protections.¹⁶ There is common law and constitutional privacy doctrines.¹⁷ We must remember that certain proprietary information, trade secrets and financial data is confidential by law.¹⁸ Often, we have a duty to safeguard the sensitive information that has been entrusted to us (or that in some cases, we actually demanded from others).

Beyond mandatory exceptions to disclosure, there are discretionary exceptions, such as the privileges regarding law enforcement, like the Informer's Privilege.¹⁹ Would the public interest truly be served if cities had to release all information regarding competitive bidding prior to a contract being awarded,²⁰ or data on a real estate transaction?²¹ Is it not in the best interest of the citizenry and the public treasury for municipal decision-makers to receive candid legal guidance in private?²² If we become too carefree or sloppy with social media, we risk unlawfully disclosing data that could be harmful to the city, its citizenry, or others.

Open Meetings & Records

As you prepare to hit send, be prepared for the open records requests seeking your text messages, and your blog posts. The federal Freedom of Information Act (FOIA) was enacted in 1967 – 50 years ago.²³ As a municipal lawyer who was born in 1967, I've seen the tension between the withholding and releasing of data rise to become one of the most pressing challenges for government agencies. Since Texas enacted its open records law six years later, there has been steadily increasing pressure from a growing segment of the population to disclose *more* info,

¹⁶ e.g., U.S. Health Insurance Portability and Accountability Act of 1996 (HIPPA), Pub.L. 104-191, privacy and security rules enacted as 45 CFR Part 160 and 164; Tex. Gov't Code §§ 552.102 [Certain Personnel Info]; .119 [Peace Officer Photos] and .1175 [Peace Officer's Home], .136 [Credit Card Numbers]; Tex. Loc. Gov't Code §143.090 [Peace Officer Photos]; Tex. Fam. Code §§ 58.007 [Juvenile Criminal Records] and 261.201 [Child Abuse Records];

¹⁷ Tex. Gov't Code §§ 552.101, .108, and .1085.

¹⁸ Tex. Gov't Code § 552.110.

¹⁹ *Roviaro v. U.S.*, 353 U.S. 53(1957); Tex. Gov't Code 552.101.

²⁰ Tex. Gov't Code § 552.104.

²¹ Tex. Gov't Code § 552.105.

²² Tex. Gov't Code § 551.10__ and 552.107; see also Texas Rules of Evidence and Texas Rules of Civil Procedure.

²³ The Texas Public Information Act, originally known as the Texas Open Records Act, was approved by the Legislature in 1973 in a reform atmosphere following the Sharpstown stock fraud scandal involving state officials.

faster. It's not enough to tell the public *who* we are, *what* we're doing, *when* it will occur, or *how* it will happen. They want to know that 5th W. They want to know *why*.

Twenty-one years ago this month, I joined the Texas Municipal League (TML) as a staff attorney. Since that time, I've conducted training multiple times a year on the topic of Open Government, explaining the intricacies of Records Retention²⁴, Open Records²⁵, and Open Meetings²⁶. The Texas Attorney General has told us that social media posts fall under the Public Information Act.²⁷ The AG has also ruled that email can constitute a "deliberation" under the Open Meetings Act.²⁸ I can say with certainty that your city-related text messages and tweets fall under that umbrella.

Balancing Transparency with Effectiveness

Some have suggested that transparency is not an absolute or an end in itself; instead, it is argued that it has value only insofar as it enhances *accountability*. A proper balance must be struck between transparency, efficiency and effectiveness.²⁹ For all that transparency does to drive out wasteful practices and promote collaboration and shared learning, too much of it can trigger distortions of fact and counterproductive inhibitions.³⁰

Involvement Beyond Data

Transparency extends not just to data and gatherings, but to the selection of the people who function in the process. Even in towns where city hall functions smoothly there's increasing pressure to open up volunteer advisory boards and commissions to broader, more diverse groups of citizens. In the 1920s, it was not enough that Mussolini *made the trains run on time* (which he didn't).³¹ In 2018, those of us in government service are expected to get results and do so in a more open and inclusive manner. The old system might be working just fine in terms of results, yet there's growing political demands to be more inclusionary and to recruit from beyond customary social circles.³² That sometimes creates pressure to amend ordinances or home-rule charter provisions detailing how volunteers are selected and appointed so we can involve a more diverse cross-section of our communities.

Closing

There's an expectation that we use social media to keep our citizens informed (about more than just road closures). I'm encouraging you to think about transparency not just as a regulatory mandate, but as a cultural value, and as an ethical imperative. Rather than curse transparency as a distraction or hindrance, I urge you to please ponder how transparency isn't just an obligation,

²⁴ Local Government Records Act, Tex. Loc. Gov't Code Chs. 201, 202, and 203.

²⁵ Texas Public Information Act, Tex. Gov't Code Ch. 552.

²⁶ Texas Open Meetings Act, Tex. Gov't Code Ch. 551.

²⁷ Op. Tex. Att'y Gen. No. OR2016-23161 (___).

²⁸ Op. Tex. Att'y Gen. No. GA-0896 (___).

²⁹ Moon, Danielle and Carolyn Adams, "Too Much of a Good Thing: Balancing Transparency and Government Effectiveness in FOI Public Interest Decision Making," AIAL Forum 82 (Nov), 2015.

³⁰ Ethan Bernstein, October 2014 Issue Harvard Business Review, <https://hbr.org/2014/10/the-transparency-trap>

³¹ <https://www.citylab.com/transportation/2016/11/the-problem-with-mussolini-and-his-trains/507764/>

³² Lakeway to Make Board and Committee Selections More Transparent <https://communityimpact.com/austin/lake-travis-westlake/city-county/2018/02/12/lakeway-make-board-committee-selections-transparent/>

but is a means to an end, that being *an informed, engaged citizenry that trusts City Hall*. Consider how transparency changes the way we govern. Ponder the opportunity to reboot and reword our approach to daily tasks.

The difficulty is not whether to be open and accessible. The law clearly favors disclosure. Politically, the demands – the expectation, the *assumption* – of openness is ever-increasing. Does anyone really think that millennials are going to accept having to file an open records request, or tolerate waiting 10 business days or longer to receive data? They'll want an app with which they can search for whatever they want using just their index finger (probably while they are in the backseat of a rideshare driving them to pick up the \$10 double soy mochaccino they purchased online).

Rather, the challenges stem from the questions of *when, how much*, through *what means*, and *how to balance* a desire to be open and honest with a duty to protect the privacy of 3rd parties, plus safeguard the agency's financial, legal and strategic positions.

What I am asking you to accept and wrestle with is the reality that we are in an *Age of Transparency*, and that's good, but transparency isn't an end itself, and there are limitations we must acknowledge and reconcile. Every city must devise a means of coping with these countervailing pressures and sometimes reconcile your conflicting goals.

Thank you Lynda Humble and Mayor Schroeder for inviting me to speak.

Ok, I'm a lawyer, so here's the legal stuff. The views expressed from this soap box are mine alone and don't necessarily reflect the views of the City of Bastrop. If you hate what I've written, please don't take it out on our team at the law firm. However if you found what I've shared worthwhile, a copy of it is available on LinkedIn!

"Information is the currency of democracies."

Ralph Nader, 1971

Are committees and subcommittees of a city's governing body subject to the Open Meetings Act?

It depends. Committees and subcommittees that are composed of less than a quorum of the governing body are subject to the Open Meetings Act if they have control over public business, or if their decisions may have influence on the governing body. See *Finlan v. City of Dallas*, 888 F. Supp 779 (N.D. Tex. 1995); Attorney General Opinions JC-60 (1999) and H-238 (1974). Furthermore, standing committees and subcommittees composed of one or more members of the governing body should generally comply with the Open Meetings Act due to their potential influence on the governing body. See Attorney General Opinions JM-1072 (1989) and H-3 (1973). Committees consisting only of staff of the governing body may also be subject to the Open Meetings Act if they have authority over public business. See Attorney General Opinion JC-053 (1999). By contrast, purely advisory committees without any control or supervision over public business or policy are not subject to the Open Meetings Act. See Attorney General Opinion No. H-994 (1977). For example, a court has held that a city grievance committee is not a governmental body subject to the Open Meetings Act where it has no power to make binding decisions, but only to make recommendations. *City of Austin v. Evans*, 794 S.W. 2d 78 (Tex. App.- Austin 1990, no writ). A planning and zoning commission, even when advisory only, is nevertheless subject by statute to open meeting laws. TEX. LOC. GOV'T CODE., § 211.0075. City officials should always consult the laws creating the committee, be it an ordinance, resolution, or state statute, to determine whether or not the committee is subject to the Open Meetings Act. When in doubt, seek legal counsel and err on the side of caution. Who may examine the certified agenda or tape recording of a closed meeting? The certified agenda or tape recording of a closed meeting may not be disclosed to the public. TEX. GOV'T CODE § 551.104(c). In fact, disclosing the agenda or tape to member of the public without authority could constitute a criminal misdemeanor. TEX. GOV'T CODE § 551.146. However, attorney general opinions have concluded that members of the governing body, which includes the mayor and council members, may examine certified agendas and tapes



June 2, 1999

The Honorable Jack Skeen, Jr.
Smith County Criminal District Attorney
Smith County Courthouse
Tyler, Texas 75702

Opinion No. JC-0060

Re: Whether a committee appointed by a
commissioners court to recommend the selection
of an architect is subject to the Open Meetings
Act (RQ-0063)

Dear Mr. Skeen:

You have requested our opinion as to whether a committee appointed by a commissioners court to recommend the selection of an architect is subject to the Open Meetings Act. Under the circumstances you describe, we conclude that it is. Section 2254.003 of the Government Code provides, in relevant part:

(a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

TEX. GOV'T CODE ANN. § 2254.003 (Vernon 1999).

You indicate that, pursuant to section 2254.003, the Commissioners Court of Smith County appointed an "Evaluation Committee" composed of the county judge, one commissioner, the county auditor, the county purchasing agent, the county engineer, the county director of maintenance, and three members of a citizens' task force. The function of the Committee is to receive written information from interested architectural firms, "evaluate written documents, listen to presentations, research previous work history and then rank them as to the most qualified. The recommendation presented to the [commissioners] court . . . is not in any form binding [on] the court." Letter from Nancy F. Braswell, Smith County Auditor, to Honorable John Cornyn, Attorney General 2 (May 4, 1999) (on file with Opinion Committee) [hereinafter Braswell letter of 5/4/99]. After the

court has “determined the ‘most qualified,’ then the same committee would begin negotiations with that firm, and then the negotiated price [will] be considered by [the] commissioners court.” *Id.* You ask whether the presence of the county judge and one commissioner on the Evaluation Committee violates any open meeting requirement.

The Open Meetings Act, chapter 551 of the Government Code, defines “governmental body” to include, on the state level, “a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members,” TEX. GOV’T CODE ANN. § 551.001(3)(A) (Vernon 1994), and on the local level, “a county commissioners court in the state,” *id.* § 551.001(3)(B), as well as “a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality,” *id.* § 551.001(3)(D). The Act further defines “meeting” as “a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action.” *Id.* § 551.001(4). Because the Act defines a meeting to involve discussion, consideration, or final action on public business or public policy over which the governmental body has supervision or control, a governmental body must have the authority to supervise or control public business or policy in order to fall within the Act’s scope. *See Gulf Reg’l Educ. Television Affiliates v. University of Houston*, 746 S.W.2d 803, 809 (Tex. App.—Houston [14th Dist.] 1988, writ denied). *See also* Tex. Att’y Gen. Op. No. JM-331 (1985) (citizens advisory panel to state agency with no power to supervise or control public business not subject to Open Meetings Act); Tex. Att’y Gen. LO-93-064 (public university’s student fee advisory committee that made recommendations for consideration by board of regents not subject to Act).

There are five members of the commissioners court in Smith County—four commissioners and the county judge. The Evaluation Committee thus consists of less than a quorum of the commissioners court. An entity appointed by a governmental body but containing less than a quorum of members of that governmental body may be subject to the Open Meetings Act, either because it falls within a definition of the term “governmental body” or as a subcommittee of a governmental body. In Attorney General Opinion JC-0053 (1999), we recently said that a pricing committee appointed by the Board of Directors of the Texas Public Finance Authority to act on the board’s behalf in negotiating a bond sale and executing a bond purchase contract is a state level “governmental body” within the meaning of section 551.001(3)(A), subject to the Open Meetings Act. And in Letter Opinion No. 97-058, this office concluded that a committee of the Texas Funeral Commission consisting of two Commission members and other individuals and that was delegated authority to investigate complaints and supervise investigations exercised and controlled public business and was itself a governmental body for purposes of that provision. Tex. Att’y Gen. LO-97-058, at 5. On a few occasions, we have concluded that a subcommittee is subject to the Act exclusively on the basis of its membership. In Attorney General Opinion H-238 (1974), for example, the attorney general said that standing committees of the Harris County Hospital District, each composed of three but less than a quorum of the District’s board of managers, were subject to

the Open Meetings Act. *See also* Tex. Att’y Gen. Op. No. JM-1072 (1989) (subcommittees of board of trustees of independent school district are subject to Open Meetings Act).

But not every body that includes less than a quorum of a governmental body is subject to the Act. In Attorney General Opinion H-994, the attorney general found that a fifteen-member “Committee to Study the Selection Process of Chief Administrative Officers of the Component Institutions of The University of Texas System” was not subject to the Act, even though it was appointed by the Chairman of the Board of Regents and itself contained three regents. Tex. Att’y Gen. Op. No. H-994 (1977) at 3. The “presence of three Regents on the fifteen-member committee” was insufficient to “bring it within the provisions of the Open Meetings Act as a committee of the Board.” *Id.* at 2. *Despite the recognized danger that a “board might become the rubber stamp of its committees . . . this danger is diminished in the present case by the appointment of twelve other members who might represent different viewpoints within the university system.” Id.* The committee’s purpose, according to its enabling resolution, was “to make an extensive study of the selection process and submit its recommendations to the Board of Regents.” *Id.* The opinion concluded that “[t]his resolution appears to make the Committee an advisory body only, without power to supervise or control public business.” *Id.* Because of “the absence of facts showing that the Committee is more than an advisory body,” the attorney general was unable to “say that its meetings are required to be open by the Open Meetings Act.” *Id.*

The Evaluation Committee, which contains less than a quorum of the commissioners court, is not itself a “commissioners court” for purposes of section 551.001(3)(B) of the statute. Nor is it obvious that it may properly be classified as “a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county” within the meaning of section 551.001(3)(D). Thus we consider whether the Evaluation Committee is subject to the Open Meetings Act based on its membership, which includes two members of the commissioners court.

In our view, the initial work of the Evaluation Committee falls within the ambit of Attorney General Opinion H-994. The Evaluation Committee’s mission is to perform evaluations of architectural firm applicants and submit a recommendation in the form of a ranking of the firms to the commissioners court. As you indicate, the Committee’s recommendation is not binding in any way on the court. Even though two members of the commissioners court are members of the Committee, the presence of seven other individuals attests to the likelihood that other viewpoints will be considered. In these circumstances, the commissioners court is less likely to “rubber-stamp” the Committee’s choice. On the contrary, you indicate that, even if the Committee ranked one firm in last place, the court could nevertheless award that firm the contract. The Committee’s initial work thus appears to be that of an advisory body only, without power to supervise or control public business.

The negotiation process, however, which begins after the commissioners court has selected the “most qualified” firm, raises different concerns. In *Finlan v. City of Dallas*, 888 F.Supp. 779 (N.D. Tex. 1995), city taxpayers and residents sought an injunction against an “Ad Hoc

Committee—Downtown Sports Development Project,” appointed by the Mayor of Dallas for the purpose of conducting negotiations with the owners of professional basketball and hockey teams regarding their proposed move from a city-owned arena. The committee was composed of five council members, less than a quorum of the full council of fifteen. As the court found, the group comprised “an official committee appointed by the Mayor for the purpose of negotiating behind closed doors with third parties, involving millions of dollars of taxpayer money with no public input. . . .” *Id.* at 785 (footnote omitted). Even though the committee was required by the city charter and council rules to comply with the Open Meetings Act, it was necessarily subject to the Open Meetings Act’s requirements under “a fair reading of the [Act] itself in light of the strong public policy considerations for which the law was created.” *Id.* The court noted that the composition of the committee weighted the work in favor of whatever recommendation it rendered: “With the five members of the Committee in favor of a new arena, as well as the Mayor who appointed them, only two more votes are needed from the remaining nine City Council members to go along with whatever deal the Committee cuts.” *Id.* at 785-86. The court even found “circumstantial evidence that the Committee was designed to circumvent the [Act].” *Id.* at 786.

Likewise, in the situation you pose, the Evaluation Committee is appointed by the commissioners court to conduct negotiations with private parties regarding the expenditure of public funds. Unlike the ranking of architectural firms in the initial stage of the process, from which the commissioners court is at liberty to select the firm that the Evaluation Committee ranked in last place, the result of the negotiating process leaves no room for the commissioners’ input: the court must either adopt or reject the contract negotiated by the Evaluation Committee. If the county judge and the commissioner who serve on the Committee agree on the terms negotiated, only one more vote would be needed from the remaining commissioners to adopt the privately-negotiated terms. These circumstances, we believe, render the Committee’s work more than advisory and suggest that the commissioners court is more likely to act as a rubber-stamp.

The information you have supplied indicates that “[i]t would be difficult or impossible for the commissioners court to negotiate fees in open court.” See Braswell letter of 5/4/99 *supra*, at 2. Although, contrary to the court in *Finlan*, we have no reason to believe that the appointment of the Evaluation Committee “was designed to circumvent the Act,” neither this office nor any Texas court has recognized that the “difficulty” or “impossibility” of conducting business in public is a valid reason for exempting a governmental body from the command of the Open Meetings Act. To the contrary, the provisions of the Act are to be liberally construed in favor of open government. See *Cox Enterprises, Inc. v. Board of Trustees, Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986); *Acker v. Texas Water Comm’n*, 790 S.W.2d 299, 300 (Tex. 1990).

Although we have in our analysis considered the two distinct tasks of the Committee, we do not believe that the Committee’s work can be effectively bifurcated for purposes of its compliance with the Open Meetings Act. It would be anomalous to conclude that an identical group of individuals, created by the same appointing power to perform two distinct tasks that nevertheless form a coherent whole, is a “governmental body” at one moment but not the next. If one of its functions renders it a “governmental body” for purposes of the Open Meetings Act, it must be so

in all its endeavors. In our opinion, therefore, under the terms of the order of the Commissioners Court of Smith County dated April 12, 1999, appointing an Evaluation Committee, and under the terms of the Request for Qualifications dated March 17, 1999, the Evaluation Committee is a "governmental body" subject to chapter 551 of the Government Code, the Open Meetings Act.

You also ask whether the Evaluation Committee would be a "governmental body" under the Open Meetings Act if the county judge and commissioner are "removed from the committee." Although the question is close, we believe that the exclusion of those individuals would place the Committee more squarely in the category of a strictly "advisory" body, and thus remove it from the designation of "governmental body." The absence of any member of the commissioners court on the Evaluation Committee will necessarily require the court to consider afresh the negotiated contract, without the risk that two members will have already made up their minds. We therefore conclude that, if, under the circumstances you have described, the county judge and commissioner are excluded from the Evaluation Committee, the Committee is more clearly identifiable as an advisory body only. As was said in Attorney General Opinion H-994, in the absence of facts showing that such a reconstituted committee is more than advisory, its meetings are not required to be open by the Open Meetings Act.

S U M M A R Y

An "Evaluation Committee" appointed by the Smith County Commissioners Court to recommend the selection of an architect and negotiate a contract with the selected firm is, under the facts described, a "governmental body" subject to the Open Meetings Act. If, however, the county judge and one commissioner are excluded from the Committee, it becomes merely an advisory body not subject to the Act.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn", written over a vertical line that serves as a separator between the signature and the typed name below.

JOHN CORNYN
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First Assistant Attorney General

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Chair, Opinion Committee

Prepared by Rick Gilpin
Assistant Attorney General



**THE ATTORNEY GENERAL
OF TEXAS**

July 12, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Ernestine V. Glossbrenner
Chairman
Public Education Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

Opinion No. JM-1072

Re: Whether certain
subcommittees of the
board of trustees of
school districts are
subject to the Texas
Open Meetings Act,
article 6252-17,
V.T.C.S. (RQ-1702)

Dear Representative Glossbrenner:

As chair of the House Public Education Committee, you inquire about the extent to which the Texas Open Meetings Act, article 6252-17, V.T.C.S., applies to committees of the board of trustees of a school district. In specific, you ask about a committee of members of the board of trustees that comprises less than a quorum of the board. You indicate that the committee at issue "performs functions regarding matters affecting the school district." We presume that your question is limited to those functions that such a committee may lawfully perform. See Webster v. Texas & Pac. Motor Transp. Co., 166 S.W.2d 75, 76 (Tex. 1942).

The Open Meetings Act requires that each "governmental body" in this state post notice for and deliberate at meetings that are open to the public unless a closed session is expressly permitted. V.T.C.S. art. 6252-17, § 2(a); see Cox Enterprises, Inc. v. Board of Trustees of Austin Indep. School Dist., 706 S.W.2d 956, 960 (Tex. 1986); see also Attorney General Opinion H-3 (1973) (act opens decision-making process); but see City of San Antonio v. Aguilar, 670 S.W.2d 681, 686 (Tex. App. - San Antonio 1984, writ ref'd n.r.e.) (attorney-client privilege may form separate basis for closed meeting). The act encompasses each "meeting," which is defined, in part, as "any deliberation between a quorum of members of a governmental body." V.T.C.S. art. 6252-17, § 1(a) (emphasis added). A "quorum" is a majority of the governing body. Id. § 1(d). Many governmental bodies believe that the act does not apply when a quorum is

not present. Whether such subcommittees are themselves subject to the act depends, in part, on the act's definition of "governmental body."

Section 1(c) of the Open Meetings Act provides:

'Governmental body' means any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district, and every county board of school trustees and county board of education; and the governing board of every special district heretofore or hereafter created by law.

V.T.C.S. art. 6252-17, § 1(c). For a local-level entity to constitute a "governmental body" under section 1(c), as a general rule, the entity must fall within one of the section's three specific descriptions. Attorney General Opinions JM-794 (1987); JM-340 (1985). Subcommittees of school districts are not listed expressly.

The first category includes "every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city." V.T.C.S. art. 6252-17, § 1(c). Subcommittees or agencies of a city or county therefore fall within the definition of "governmental body" when they have rule-making or quasi-judicial power. See, e.g., Attorney General Opinions JM-1007 (1989), H-1281 (1978) (salary grievance committees); MW-506 (1982) (board of trustees of firemen's retirement fund has quasi-judicial powers and is agency of city); MW-177 (1980) (higher education authority created by city or cities); H-554 (1975) (hospital authority that performs governmental function and that is created by city). The act does not cover a purely "advisory" agency of a county or city that is not composed of members of the governmental body. See Attorney General Opinion H-467 (1974) (city's library board).

The definition of "governmental body" also lists two other categories of local-level entities: school districts and special districts. The definition does not list

agencies or committees subordinate to school districts and special districts. Attorney General Opinion JM-340 (1985). This omission implies that subcommittees of school districts and other special districts are not covered by the act. This does not, however, prevent a subcommittee of a special district covered by the act from falling within the scope of the Open Meetings Act. This is true particularly in regard to subcommittees comprising members of the parent governmental body.

When a subcommittee includes members of a parent governmental body, the subcommittee itself may be covered by the Open Meetings Act. In 1973, the attorney general considered whether a state-level entity, the Texas Board of Mental Health and Mental Retardation, could institute a practice of dividing board members into several specialized committees. Attorney General Opinion H-3 (1973). The committees were to meet with the board's staff to study specific matters and recommend actions at open meetings of the whole board. Reasoning that the board might simply "rubber-stamp" the committees' recommendations and that this would deprive the public of access to the board's actual decision-making process, the attorney general concluded that committees composed of members of the board, even if less than a quorum, must comply with the Open Meetings Act. Id. at 10; see also Attorney General Opinion H-823 (1976). A similar approach applies to analysis of special districts' subcommittees. For example, standing committees of special districts that are composed of members of the governing board of the special districts must comply with the Open Meetings Act when the standing subcommittees discuss public business or policy. Attorney General Opinion H-238 (1974) (standing committee of board of managers of hospital district).

You indicate that the school district subcommittee at issue "performs functions regarding matters affecting the school district." If the committee at issue is composed of one or more members of the school board, the committee itself is subject to the Open Meetings Act.¹ Moreover, as

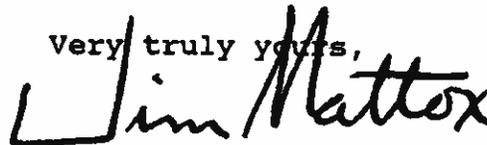
1. The criminal sanctions of the act may also be of concern when the members of an entity covered by the act divide into or participate in subcommittees. See, e.g., Attorney General Opinions MW-390 (1981); MW-28 (1979). Proving a criminal offense depends on proof of the requisite culpable state of mind. Violation of the criminal provi-
(Footnote Continued)

indicated, it is not clear that the board lawfully may delegate to a subcommittee the power to act on behalf of the board. See Webster v. Texas & Pac. Motor Transp. Co., supra.

S U M M A R Y

If a committee comprising one or more members of the board of trustees of a school district meets to discuss public business or policy, the committee itself is subject to the Texas Open Meetings Act, article 6252-17, V.T.C.S.

Very truly yours,



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(Footnote Continued)

sions of the act depends on what constitutes "meeting in numbers less than a quorum for the purpose of secret deliberations" to "knowingly conspire to circumvent" the Open Meetings Act. V.T.C.S. art. 6252-17, § 4(b).