



Ethics for City Boards and Commissions

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Ethics is defined as:



A set of principles of right or good behavior; a theory or a system of moral values; the rules or standards of a person or the members of a profession.

A board or commission member is?



- a. A public servant
- b. A local public official
- c. A local government officer
- d. A city official
- e. A presidential candidate
- f. Some of the above
- g. All of the above

A board or commission member is?



Answer: SOME OF THE ABOVE!
Board or commission members are:

“Public servant” - A person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties: an officer, employee, or agent of government. *Texas Penal Code Section 1.07*

“Local public official” - A member of governmental body or another officer appointed that exercises duties beyond that of being advisory in nature.

- Some board or commission members are local public officials, by virtue of the function of their board or commission (known as “officer” boards). *Texas Local Government Code Chapter 171*

“City officer” – Some board or commission members are “officers” if they perform sovereign functions for the City for the benefit of the public largely independent of the control of others. *Aldine Ind. Sch. Dist. v. Standley*, 154 Tex. 547 (1955).

A board or commission member is?



“Local Government Officer”—Local Government Code, Chapter 176

Board or commission members are local government officers as members of a governing body of a local governmental entity (i.e., board to which members are appointed by the Mayor or City Council)

“City official”—City of Houston Code of Ordinances, Chapter 18

All board and commission members are city “officials”, as defined in Section 18-2 of the Code of Ordinances.

Best and Recommended Practices



Know and Follow the Rules!



The Rules

- Texas Penal Code
- Texas Government Code and Local Government Code
- City Charter
- Code of Ordinances

Texas Penal Code



Bribery & Corrupt Influence

- A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts or agrees to accept from another any “benefit” in exchange for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion. *Texas Penal Code, Chapter 36.*
- What is a “benefit”?
 - A pecuniary gain or advantage (money or in-kind gift) to you or to someone else whose welfare is of interest to you (like a family member).

Texas Penal Code (cont'd)



Honorarium

- A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties. *Penal Code, Section 36.07.*
- Translation: if the invitation is because of your public office, you cannot accept.
- EXCEPTION: You may accept transportation/lodging expenses and meals in connection with public servant rendering services (addressing the audience or engaging in an seminar).

Texas Penal Code (cont'd)



Gifts

Recommendation:

- Don't ask for 'em, don't take 'em.
- Exceptions, but be very careful!
- Most applicable laws and regulations carry criminal penalties for violations



Texas Penal Code (cont'd)



Exceptions – Gifts Allowed

A gift/benefit may be accepted if:

- It is a gift or benefit from a personal/professional relationship independent of your status as a board/commission member;
- A political contribution under the Election Code;
- An item with a value of less than \$50, **EXCLUDING** cash or a negotiable instrument (i.e., checks, etc.);
or
- It is food, entertainment, or travel accepted as a guest.
 - Host/Donor must be present with the public official at the time the gift is used

Texas Law on Ethics



Conflicts of Interest

If a member of a board or commission has a “substantial interest” in a business entity or real property, before a vote or decision on any matter involving the business entity or real property, that member must file an affidavit describing that interest, and abstain from further participation in the matter. *Texas Local Government Code, Chapter 171.*

Conflicts of Interest



Texas Local Government Code, Chapter 171

- A person has a substantial interest in a business entity or real property if he or she:
 - Owns 10 percent or more of stock in the business entity or 10 percent or more or \$15,000 or more of the fair market value (FMV) of the business entity;
 - Receives funds from business entity > 10 percent of the person's gross income for the previous year; or
 - Has equitable or legal ownership in real property with FMV of \$2,500 or more.
- A local public official is also considered to have a substantial interest if the official or a person related to the official in the first degree of consanguinity or affinity has a substantial interest.

Texas Law on Ethics



Conflicts of Interest

What is a substantial interest in a business entity entity?

- a. 100%
- b. 51%
- c. 10% or more ownership or value
- d. \$15,000 or more of fair market value
- e. All of the above.

Answer: C and D

Disclosure of Vendor Conflicts



Local Government Code Chapter 176

- Local government officer must file a “conflicts disclosure statement” with City Secretary to disclose information relating to vendors or potential vendors with whom the officer or family member of the officer has:
 1. An employment or business relationship that results in taxable income of more than \$2,500 in a 12-month period;
 2. A family relationship; or
 3. Received gifts that total more than \$100 in a 12-month period.
- “Family member” – person within first degree by consanguinity or affinity
- “Family relationship” – relationship within 3rd degree by consanguinity or 2nd degree by affinity

Don't be this guy!



Open Government



Open Meetings Act

Compliance with the Texas Open Meetings Act is required for boards or commissions that make final decisions, issue permits or licenses, or adopt rules regarding public business. *Texas Government Code, Chapter 551.*



Open Government



Open Meetings Act (cont'd)

- If your board or commission typically posts its agenda 72 hours in advance of the meeting and otherwise complies with the Act, be consistent and make sure you comply every meeting.
- Board and commission members must have a minimum of one hour of open meetings training.
- Training is free, online and may be completed by accessing the Texas Attorney General's website at <https://www.texasattorneygeneral.gov/og/oma-training>

Open Government



Texas Public Information Act

- Boards and commission members are encouraged to receive training about the Texas Public Information Act. *Texas Government Code, Chapter 552.*
- The training is free, and online and may be completed by accessing the Texas Attorney General's website at:

<https://www.texasattorneygeneral.gov/og/pia-training>

Open Government



Texas Public Information Act (cont'd)

- Just because you are not required to receive training, the laws still apply to you.
- So, your records during your service on a board or commission may be public, if they were prepared and maintained in performing your duties as board/commission members.
- Be careful with email!!

City Charter



Financial Interest in City Contracts

- No member of City Council or any officer* of the City of Houston, shall have any direct or indirect pecuniary interest in: (1) any contract let by the city; (2) any work done by the city; or (3) any matter wherein the rights or liabilities of the City of Houston are or may be involved. *Charter, Art. VII, Sec. 4.*

** “Officer” includes members of some city boards and commissions. Refer to definition of City officer in earlier slide.*

City Charter



Financial Interest in City Contracts (cont'd)

- If violated, “then the said contract or work, purchase or sale, shall be null and void and shall be discontinued, and new arrangements shall be entered into as in case of the incipency of the contract of work, purchase or sale.” *Charter, Art. VII, Sec. 4.*

City Charter



- In no case shall the City Council or any member of the City Council, or any other officer of the City of Houston...hold any position, office or employment who is an arrears, or due and owing to the City any sum of money for taxes or otherwise. *Charter, Art. III, Sec. 2.*

Code of Ordinances



Residence Requirement:

Section 2-316(a) of the Houston Code of Ordinances requires a person appointed to a board or commission to maintain his or her residence within the city limits, during his or her term of service:

Exception:

- the ordinance designating the composition of a board or commission specifically provides otherwise; or
- the person is a full-time salaried city employee.

A person who moves outside the city limits during his or her appointment term is automatically disqualified from continuing to serve.

Code of Ordinances



Chapter 18 – Standards of Conduct

Section 18-3 of the Houston Code of Ordinances (Standards of Conduct). It shall be unlawful for a city official to:

- Engage in conduct that creates a conflict with your official duties.
- Disclose or inappropriately use confidential information concerning the city.
- Use your official capacity for private gain.

Code of Ordinances



Chapter 18 – Standards of Conduct (cont'd)

- Use your official capacity to gain future employment opportunities.
- Represent an individual or interest in front of the body of which you are a member.
- Use the official's position to harass or discriminate against any person.

PENALTY FOR VIOLATION: CLASS C MISDEMEANOR

Campaign Season Reminders



Limitation on solicitations and contributions

Candidates for elected city office may not accept campaign contributions that are solicited by:

- a member of the ethics commission;
- a member of the planning commission;
- a member of the sports authority board appointed by the city;
- a member of the port authority board appointed by the city; or
- a member of the metropolitan transit authority board appointed by the city.

NOTE: This does NOT mean members of these boards or commissions cannot make contributions themselves.



TEST YOUR KNOWLEDGE

What is a member to do?



- I am a member of the Houston Right-of-Way Commission (“HRC”). HRC hears appeals of denials of permits for lane closures for construction projects.
- HRC is scheduled to hear the appeal of ABC Contractors.
- I happen to own stock in and receive substantial annual income from XYZ Contractors, ABC’s main competition. Is there a problem?

Test your knowledge



- I'm on the Houston Greenspace Board, and I like to help pull weeds in green spaces. I have a lot of spare time since I retired and I own lots of undeveloped land in Houston.
- As luck would have it, I have been approached by a developer who wants to purchase a portion of my property! The sale is pending and would you believe it, but the developer also needs a permit from the Houston Greenspace Board prior to moving forward with its project.
- Do I need to do anything?

The Limelight



- I no longer practice law, but I am very sought after for speaking engagements (and commentary on the nightly news). I serve on the Song and Dance Board.
- Truth is, I'm an aviation lawyer, and I am often asked to speak, for a pretty nice fee, at a national conference on aviation law—in Vail.
- Can I do it?
- What if, instead, I'm speaking at a conference on dancing?

Dilemma



- My neighbor has a matter pending before the Gripes and Grievances Board. He offered to blow the leaves out of my driveway if I think about supporting his argument at the hearing (his business's sign has been found in violation of city ordinance).
- Is his conduct ethical? Legal? What if I accept his offer? Ethical? Legal?

Basic Qualifications



- I found a great home in West University, and I'm moving in two weeks. (And get this—it's below market!)
- True or false: I can continue serving on the City of Houston Alphabet Commission?

