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SHORT ANSWERS TO COMMON QUESTIONS

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DISCLOSURE REQUIREMENTS FOR COUNTY OFFICIALS

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The  symbol indicates sections that have been updated since the previous publication.

INTRODUCTION

Chapter 176 of the Local Government Code governs the disclosure by certain county officers of employment, business and familial relationships with vendors. Disclosure forms are prescribed by the Texas Ethics Commission and are available on the Commission's website: www.ethics.state.tx.us/.

1. Who must file a conflicts disclosure statement and who must file a conflict of interest questionnaire?

Texas Local Government Code, Chapter 176, requires certain local government officers to file conflicts disclosure statements. Additionally, certain county vendors are also required to file a conflict of interest questionnaire. ¹

2. Who are local government officers in a county?

Chapter 176 of the Local Government Code defines a local government officer as a member of the governing body or an agent of a local government who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. Therefore, under Chapter 176, a county judge, county commissioner or a county purchasing agent may be required to file conflicts disclosure statements in certain circumstances. ²

¹ Tex. Loc. Gov't. Code §176.003(a); §176.006(a)

² Tex. Loc. Gov't. Code §176.001(4)

3. Under what circumstances does a member of a commissioners court or a purchasing agent have to file a conflicts disclosure statement? ³

A member of a commissioners court or a purchasing agent must file a conflicts disclosure statement with respect to a vendor when the vendor enters into a contract with the county or the county is considering entering into a contract with the vendor; and:

- (1) the vendor has an employment or other business relationship with a member of a commissioners court or a purchasing agent 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 a contract between the county and vendor has been executed or the county is considering entering into a contract with the vendor; or
- (2) the vendor has given a member of a commissioners court or a purchasing agent or a family member a gift⁴ or gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that a contract between the county and the vendor has been executed or the county is considering entering into a contract with the vendor; or
- (3) the vendor has a family relationship with a member of a commissioners court or a purchasing agent. A family relationship is defined as a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity. ⁵

4. Are there any exceptions to the Chapter 176 filing requirements?

Yes. A member of a commissioners court or a purchasing agent is not required to file a conflicts disclosure statement for a gift received from vendors if the gift is:

- (1) a political contribution as defined by Title 15, Election Code;
- (2) food accepted as a guest; or

³ Tex. Loc. Gov't. Code §176.003

⁴ Tex. Loc. Gov't. Code §176.001(2-b) defines gift as a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

⁵ Tex. Loc. Gov't. Code §176.001(2-a). The third degree by consanguinity includes a child, parent, grandchild, sister, brother, grandparent, great-grandchild, niece, nephew, aunt, uncle, or great-grandparent. The second degree of affinity includes a spouse, mother-in-law, father-in-law, son-in-law, or daughter-in-law.

(3) the local governmental entity or vendor is an administrative agency created pursuant to the Interlocal Cooperation Act.⁶

5. Where and when does a member of a commissioners court or a purchasing agent file a conflicts disclosure statement in a county?

A member of a commissioners court or a purchasing agent must file the conflicts disclosure statement with the county clerk not later than 5 p.m. on the seventh business day after the vendor enters into a contract with the county or the county is considering entering into a contract with a vendor from whom the member of the commissioners court or a purchasing agent has received taxable income or a gift, or to whom the filer has a family relationship as set forth in Question 3.⁷

6. What information must be included in a conflicts disclosure statement? ⁸

A conflicts disclosure statement must include the following:

- (1) A description of the nature and extent of the employment or business relationship between the local government officer or family member and the vendor;
- (2) Gifts accepted by the local government officer and any family member from a vendor as set forth in Question 3;
- (3) An acknowledgement from the local government officer that the disclosure applies to each family member;
- (4) The statement covers the 12-month period described in Question 3 above; and
- (5) The signature of the local government officer acknowledging that the statement is made under oath under penalty of perjury.

7. If a member of a commissioners court files a conflicts disclosure statement as required by Chapter 176, Local Government Code, does that member of the court have to abstain from voting or participating on the matter involving the conflict?

No. Chapter 176 does not contain an abstention provision. However, Chapter 171, Local Government Code, requires a member of the commissioners court to abstain from voting or participating on a matter involving a business entity or real property in which the official has a substantial interest. ⁹

⁶ Tex. Loc. Gov't. Code §176.003(a-1); §176.003(a-2)

⁷ Tex. Loc. Gov't. Code §176.003(b)

⁸ Tex. Loc. Gov't. Code §176.003(e)

⁹Tex. Loc. Gov't. Code §171.004

Generally, an officer is considered to have a “substantial interest” under Chapter 171, if the person:

- (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;
- (3) receives funds from the business entity that exceed 10 percent of the person’s gross income for the preceding year; or
- (4) has an equitable or legal ownership interest with a fair market value of \$2,500 or more in real property.¹⁰

Please consult with your county or district attorney regarding the affidavit requirements and criminal penalties set forth in Chapter 171.

8. Under what circumstances do vendors have to file a conflict of interest questionnaire?

A vendor must file a completed conflict of interest questionnaire if the vendor has a business relationship with a county and has an employment or business relationship with a member of the commissioners court or a purchasing agent or the officer’s family member, has given a gift with a value in excess of \$100 to a member of commissioners court or purchasing agent or to their family member, or has a family relationship with the local government officer as set forth above in Question 3.¹¹

9. Where and when do vendors file a conflict of interest questionnaire?¹²

A vendor must file a conflict of interest questionnaire in the county clerk’s office not later than the seventh business day after the later of the date the vendor:

- (1) begins discussions or negotiations to enter into a contract with the county, or submits to the county an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the county; or
- (2) after the date the vendor becomes aware of an employment relationship or other business relationship with a member of the commissioners court or a purchasing agent or the officer’s family member;
- (3) the vendor has given one or more gifts as set forth in Question 3; or

¹⁰ Tex. Loc. Gov’t. Code §171.002

¹¹ Tex. Loc. Gov’t. Code §176.006

¹² Tex. Loc. Gov’t. Code §176.006(a-1)

(4) becomes aware of a family relationship as set forth in Question 3.

10. What information must be included in a conflict of interest questionnaire for vendors? ¹³

A vendor conflict of interest questionnaire must contain:

- (1) Describe each employment or business relationship the vendor has with each member of commissioners court or purchasing agent or family member;¹⁴
- (2) Identify each employment or business relationship that results in a member of commissioners court of a purchasing agent receiving taxable income, other than investment income, from the vendor;
- (3) Identify each employment or business relationship between a member of commissioners court or purchasing agent and a vendor that results in the local government officer paying taxable income, other than investment income, to the vendor. This does not include money received from the county; and
- (4) Describe each employment or business relationship in which a member of commissioners court or a purchasing agent serves as an officer or director of the vendor corporation; or holds an ownership interest of one percent or more.

11. Does a member of the commissioners court, purchasing agent or vendor commit a criminal offense for failing to timely file a conflicts disclosure statement or conflict of interest questionnaire? ¹⁵

Yes. If a member of the commissioners court, purchasing agent or vendor knowingly fails to file the required conflicts disclosure statement or conflict of interest questionnaire with the county clerk later than 5 p.m. on the seventh business day after the date the officer or vendor becomes aware of the facts that require filing the statement or questionnaire, the officer or vendor commits the following offenses:

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

¹³ Tex. Loc. Gov't. Code §176.006(c)

¹⁴ Tex. Loc. Gov't. Code §176.001(2) Defines a family member as a person related to another person within the first degree by consanguinity (child or parent) or affinity (spouse, mother-in-law, father-in-law, son-in-law, or daughter-in-law).

¹⁵ Tex. Loc. Gov't. Code §176.013

12. If the vendor fails to file the required conflict of interest questionnaire, is the contract between the vendor and the county automatically void?

No. However, the county commissioners court may, at its discretion, declare a contract void if the commissioners court determines that the vendor failed to file the required questionnaire. ¹⁶

13. Does the public have access to the statements and questionnaires?

Yes. A county clerk must maintain and make available to the public, a list of members of commissioners courts, purchasing agents and vendors who may be required to file a conflicts disclosure statement or conflict of interest questionnaire. The clerk must also maintain the statements and questionnaires that are filed with the clerk in accordance with the county's record retention schedule.¹⁷

A county that maintains an Internet website must provide access to the statements and questionnaires on the website. ¹⁸

¹⁶ Tex. Loc. Gov't. Code §176.013(e)

¹⁷ Tex. Loc. Gov't. Code §176.0065

¹⁸ Tex. Loc. Gov't. Code §176.009