2010 TEXAS CONFLICT OF INTEREST LAWS MADE EASY

Answers to the most frequently asked questions about the Texas Conflict of Interest Laws

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Texas Conflict of Interest Laws Made Easy

Every time a local public official participates in contracting with his or her governmental entity or owns real property that may be affected by that entity's actions, the official must consider whether his or her discussion, decision or vote on an item will violate either Texas conflict of interest laws or local conflict of interest provisions. Public officials need to be aware of the applicable standards for determining when such a conflict of interest may exist and how such conflicts must be handled. The following questions and answers provide a lay person's explanation of the general conflict of interest laws that apply to Texas local officials. This handbook is to provide general guidance on the issues raised in this area. While the Municipal Affairs and County Affairs sections of the Office of the Attorney General are available to answer questions about this article from city and county officials, local officials should consult with their legal counsel regarding the application of the law to the facts of each particular situation. This document may give guidance to officials of other public entities as well.

1. What conflict of interest laws apply to local public officials in Texas?

The general conflict of interest law for Texas city and county officials, as well as officials of other Texas political subdivisions, is found in chapter 171 of the Texas Local Government Code.[1] Chapter 171 establishes the standard for determining when a local official has a conflict of interest that would affect her ability to discuss, decide or vote on a particular item.[2] Chapter 171 conflict of interest provisions apply to all local public officials.[3] Within a governmental unit, "local public officials" are defined to include:

1) elected officials such as the members of the city council or county commissioners (whether paid or unpaid); and

2) appointed officials (paid or unpaid) who exercise responsibilities that are more than advisory in nature.[4]

It should be noted that other state and federal laws, as well as local provisions in the case of cities, may be applicable to officials in a particular situation. Whether a law is applicable depends on the activity that the official is undertaking. Officials should work with local legal counsel to determine whether their activities are subject to any such provisions. However, the general conflict of interest provision for officials remains chapter 171 of the Local Government Code.

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1 TEX. LOC. GOV'T CODE ANN. §§ 171.001 – .010 (Vernon 2008).
2 *Id*. § 171.002.
3 *Id*. § 171.001(1).
4 *Id.*

2. Do conflict of interest laws apply to persons appointed to local boards and commissions (*e.g.*, planning and zoning commission members)?

Chapter 171 conflict of interest laws apply to persons appointed to local boards and commissions if the board or commission exercises powers that are more than advisory in nature.[5] For example, members of a city's planning and zoning commission would be subject to chapter 171 conflict of interest provisions. Accordingly, the ability of such officials to discuss or vote on an item would be limited by these laws if the official has what is considered a conflict of interest on the issue.

3. Do conflict of interest laws apply to members of purely advisory committees that are established by the local entity?

No, chapter 171 conflict of interest provisions apply to an officer who exercises responsibilities beyond those that are advisory in nature.[6] Whether an officer exercises such responsibilities depends upon the authority vested in him or her by law and not necessarily the title of a committee to which he or she belongs.

A city may by ordinance, or city charter if it is a home rule city, adopt other provisions defining and prohibiting conflicts of interest.[7]

4. What types of issues are covered by Texas conflict of interest laws?

Texas conflict of interest statutes do not address every conceivable conflict that may arise for a local official. In fact, chapter 171 conflict laws are generally financial in nature and only cover two types of conflicts of interest:

1) Business Entity conflicts: Conflicts due to a local official's substantial financial interest in a "business entity" that has an issue before his or her governmental unit;[8] or

2) Real Property conflicts: Conflicts due to a local official's substantial financial interest in "real property" that would be affected by his or her governmental unit's action.[9]

If an item is being considered by a local official that does not involve a business entity or real property, then chapter 171 conflict of interest laws would not be applicable.[10]

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5 *Id*.
6 *Id.*
7 *Id*. § 171.007.
8 *Id*. § 171.002(a).
9 *Id.* § 171.002(b).
10 Another restriction that rarely arises is in section 171.003, which prohibits an official from acting as a surety for businesses doing business with the governmental entity and as a surety on bonds involving public officials.

5. What is the definition of a "business entity" for purposes of the conflict of interest laws?

For purposes of Texas conflict of interest laws, a "business entity" means:

> sole proprietorships, partnerships, firms, corporations, holding companies, joint-stock companies, receiverships, trusts, and any other entity recognized by law as a business entity.[11]

Governmental entities such as cities or school districts are not considered business entities.[12] Accordingly, if the issue before a city council involves a governmental entity, an official's relationship with that entity would not subject that official to conflict of interest laws. However, an economic development corporation is a business entity, so an official with a substantial interest in the corporation would have to comply with chapter 171.[13]

6. What is considered a "substantial interest" in a business entity (such that it would amount to a potential conflict of interest)?

There are four ways that a person could be deemed to have a "substantial interest" in a business entity that would raise a potential conflict of interest. A person has a substantial interest in a business entity if the person has a(n):

1) Stock interest: If the official owns 10 percent or more of the total voting stock or shares of the business entity;[14]

2) Other ownership interest: If the official owns either 10 percent or more, or $15,000 or more, of the fair market value of the business entity;[15]

3) Income interest: If the official received more than 10 percent of his or her gross income for the previous year from the business entity;[16]

4) Close family member with any of the above interests: If a close relative of the local official has any of the above types of interest in a business entity. A local official is considered to have the same interest in a business entity that his or her close relatives have in that business entity. In this context, close relatives of an official would include persons who are related to the official within the first degree by consanguinity (blood) or affinity (marriage).[17] Such relatives would include an official's father, father-in-law, mother, mother-in-law, daughter, daughter-in-law, son, son-in-law and the spouse of the official.

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[11] TEX. LOC. GOV'T CODE ANN. § 171.001(2) (Vernon 2008).
[12] Op. Tex. Att'y Gen. Nos. DM-267 (1993); GA-31 (2003).
[13] Op. Tex. Att'y Gen. No. JC-547 (2002).
[14] TEX. LOC. GOV'T CODE ANN. § 171.002(a)(1) (Vernon 2008).
[15] *Id.*
[16] *Id.* § 171.002(a)(2).
[17] *Id.* § 171.002(c).

7. Is the fact that a local official is employed by a business entity sufficient to create a potential conflict?

Being employed by a business entity will prevent a local official from discussing or voting on his or her governmental unit's contract involving that business, provided more than 10 percent of the official's previous year's income came from his or her employment with that business.

8. What is the test for conflict of interest regarding a business entity?

State law provides a two-part test for ascertaining whether a local official has a conflict of interest regarding a business entity that would prevent the official from participating in a vote or discussion on that item.[18] To determine whether a conflict exists that would prevent that official's participation, one should follow the following two-step analysis:

> Step one (substantial interest analysis): First, the official must determine if he or she received more than 10 percent of his gross income in the previous year from that business entity or if he or she owns 10 percent or more of the voting stock or shares of the business entity or has some other substantial ownership interest in the business entity.[19] (See Question 6, part 2, above.) If the official has such an interest or a close relative of the official has such an interest,[20] the official must consider the second part of the test for determining if a conflict of interest exists.
>
> Step two (special economic effect analysis): The official must determine whether the action that the local entity is considering would have a special economic effect on the business entity that is distinguishable from its general effect on the public.[21]

If it is determined that the official has a substantial interest in the business entity and it is likely that the action would have a special economic effect on the business entity that is distinguishable from its effect on the general public,[22] a conflict of interest would exist. If a conflict of interest exists, the official is prevented from discussing or voting on an issue involving that business entity.[23]

9. May an indirect benefit from a contract with a business constitute a possible conflict of interest?

In certain situations, an indirect benefit that a local official may receive regarding a business entity may be sufficient to constitute a conflict of interest. For example, the Dallas Court of Appeals concluded that the definition of "substantial interest" did not distinguish between funds received directly from a business entity and funds received indirectly. Whether a particular interest was a "substantial interest" was a question of fact.[24]

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18 *Id*. § 171.004.
19 *Id*. § 171.002(a)(2).
20 *Id*. § 171.002(c).
21 *Id*. § 171.004(a)(1).
22 *Id*.
23 *Id*. § 171.004(a).
24 *Dallas County Flood Control Dist. No. 1 v. Cross*, 773 S.W.2d 49, 55 (Tex. App.—Dallas 1989, no writ).

10. What is considered a "substantial interest" in real property (such that it would amount to a potential conflict of interest)?

There are two ways that a person could be deemed to have a "substantial interest" in "real property" (such that it would amount to a potential conflict of interest).[25] A person has a substantial interest in real property if he or she has:

1) A $2,500 ownership interest in the real property: If the official has a legal or equitable interest in real property worth $2,500 or more[26] or

2) A close family member with a $2,500 ownership interest in the real property: If a close relative of the local official has a legal or equitable interest in real property worth $2,500 or more. An official is considered to have the same interest in a piece of real property that his or her close relatives have in the real property. In this context, close relatives of an official would include persons who are related to the official within the first degree by consanguinity (blood) or affinity (marriage).[27] Such relatives would include an official's father, father-in-law, mother, mother-in-law, daughter, daughter-in-law, son, son-in-law and the spouse of the official.

11. What is the test for conflict of interest regarding real property?

State law provides a two-part test for ascertaining whether a local official has a conflict of interest regarding real property that would prevent the official from participating on that item.[28] To determine whether a conflict exists that would prevent that official's participation, one should follow the following two-step analysis:

1) Substantial Interest Analysis: The official must determine if the official has a legal or equitable interest in real property worth $2,500 or more. If the official has such an interest or a close relative of the official has such an interest,[29] the official must consider the second part of the test for determining if a conflict of interest exists.

2) Special Economic Effect Analysis: The official must determine whether the action that the local unit is considering would have a special economic effect on the value of the property that is distinguishable from its general effect on the public.[30]

If it is determined that the official has a substantial interest in the real property and it is likely the action would have a special economic effect that is distinguishable from its effect on the general public,[31] a conflict of interest would exist. If a conflict of interest exists, the official is prevented from discussing or voting on an issue involving that business entity.[32]

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25 TEX. LOC. GOV'T CODE ANN. § 171.002(b)-(c) (Vernon 2008).
26 *Id.*
27 *Id*. § 171.002(c).
28 *Id*. § 171.004.
29 *Id*. § 171.002(c).
30 *Id.* § 171.004(a)(2).
31 *Id*.
32 *Id*. § 171.004(a).

The fact that an action would affect property physically close to an official's own property does not in itself establish a conflict of interest that would prevent an official from voting on that item. The official must consider whether the proposed governmental action would have a special economic effect on the value of his or her own property that is distinguishable from its effect on the general public.[33] For example, if a zoning, variance or platting request would have a special economic effect on a city official's own property or the real property of a close relative of the official, the official could not participate in the discussion or vote on that matter.

12. Might the part–time or summer job of an official's child create a conflict of interest?

If a local official's child worked at a job that constituted more than 10 percent of the child's income for the previous year, that might create a potential conflict of interest for the parent. If the child had such an interest, the parent could not vote on or discuss local governmental business that would have a special economic effect on the child's employer.[34]

13. May a local official discuss or vote on an item if the effect of the vote on the official's business or property interest is no different than its effect on the general public?

Yes, an official may discuss and vote on an item if there is no distinguishable difference between the item's effect on the local official and its effect on the general public.[35] For example, a city may be considering the adoption of a setback requirement that would apply to all residential lots. Such a requirement arguably would not impact a city official's property in a more significant manner than it would impact the property of other members of the general public. In such a situation, the official could fully participate in the discussion and vote. Of course, if the official's property would be specially enhanced by a change in the setback requirement, then it would be more likely to present a conflict of interest issue for the official.

14. What actions must a local official take if the official has a conflict of interest under chapter 171?

If a local official has a conflict of interest under the two-part test of chapter 171, the official must take three actions:

1) <u>File an affidavit</u>: The official must file an affidavit with the local unit's official record keeper stating the nature and extent of the official's interest in the matter.[36] This affidavit must be filed before any vote or decision on the matter.[37] A sample conflict of interest affidavit is attached to the end of this handbook;

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[33] *Id*. § 171.004(a)(2).
[34] Op. Tex. Att'y Gen. No. JC-63 (1999).
[35] TEX. LOC. GOV'T CODE ANN. § 171.004 (Vernon 2008).
[36] *Id*. § 171.004(a)-(b).
[37] *Id*. § 171.004(a).

2) Abstain from discussion on the item: The official must abstain from discussions or other proceedings regarding the item;[38] and

3) Abstain from voting on the item:[39] The official must not vote on the item.

15. May a local official deliberate about an issue with which the official has a conflict of interest if the official abstains from voting on the issue?

No, a local official may not discuss an issue with which he or she has a conflict of interest even if he or she abstains from voting on the item.[40] If a conflict of interest exists, the official must file the required affidavit and both abstain from discussing the matter and abstain from voting on the item.[41]

A member of a governmental body does not participate by merely attending an executive session on the matter and remaining silent during the deliberations. However, it may be wise for the interested public officer to refrain from attending open or closed meetings that address the matter in which he or she is interested.[42]

16. May a local entity separate out an item from a budget to allow the official with the conflict to vote on the budget?

Yes, a governing body of a local unit shall take a separate vote on any budget item involving a business entity in which a local official has a substantial interest.[43] The remaining officials without a conflict may separately discuss and vote on the item involving that business entity. The official with the conflict may then vote on the final overall budget once the matter for which there was a conflict is resolved.[44] The official with the conflict must also have filed the required affidavit with the official record keeper regarding the conflict.[45]

17. What may a local entity do if a majority of the members of the governmental body have a conflict of interest regarding an item to be considered?

Chapter 171 conflict of interest laws do not prevent discussion or voting on the item if a majority of the members of a governmental body have similar conflicts of interest on the same item.[46] However, prior to any deliberations on the matter, each of the members of the governmental body with a conflict must have filed the required affidavit noting their interest in the item.[47]

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38 *Id.*
39 *Id.*
40 *Id.*
41 *Id.* § 171.004(a)-(b).
42 Op. Tex. Att'y Gen. No. GA-334 (2005).
43 TEX. LOC. GOV'T CODE ANN. § 171.005(a) (Vernon 2008).
44 *Id.* § 171.005(b).
45 *Id.* § 171.004(b).
46 *Id.* § 171.004(c).
47 *Id.*

18. May a home rule city provide further conflict of interest limitations on its city officials and employees?

Yes, a home rule city (a city with a population of 5,000 or more that has adopted a city charter) may provide further and more restrictive conflict of interest limitations on its officials and employees.[48] Such restrictions may be contained in a city ordinance, city policy or within the city charter. For example, some cities have ethics ordinances or city charter provisions that prevent their city officials from discussing or voting on items if the official has any financial interest in the item.

19. Are there state statutes that provide stricter conflict of interest restrictions for particular situations or for certain public officials or that contain additional reporting requirements?

Yes, there are certain state statutes that provide stricter conflict of interest restrictions in particular areas. For example, there are conflict of interest statutes within Chapter 312 of the Tax Code that completely prohibit a local unit's governing body from approving a tax abatement if a member of that body owns the property that is the subject of the tax abatement.[49] If a local official has some type of interest in the item before the governing body, the official will want to visit with local counsel as to whether the interest constitutes a chapter 171 conflict of interest or presents a conflict pursuant to some other state law.

Chapter 176 of the Local Government Code requires members of the governing body and executive officers of local government entities to file a conflicts disclosure statement relating to a person that the governmental entity has contracted with or is considering contracting with if the local officer or his or her family members have certain business relationships with that person if certain thresholds apply.[50] It also requires a person who contracts or seeks to contract with the local governmental entity to file a completed questionnaire disclosing the person's affiliations and business relationships with each member of the governing body and executive officer of the entity. [51] The disclosure forms are prepared by the Texas Ethics Commission, available at www.ethics.state.tx.us/whatsnew/conflict_forms.htm, and these must be filed by the entity's records administrator and posted on the Internet.[52]

20. Are there special conflict of interest provisions that apply to the selection of a local depository?

Yes, there are special conflict of interest provisions that apply to the selection of a local depository. Prior to 1967, local entities were prohibited from using a bank as a depository if a member of the governing body was an officer, director or shareholder of the bank.[53] However, this prohibition has been substantially diminished under current law.[54] Local units can now contract with a depository

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48 *Id*. § 171.007(b); Op. Tex. Att'y Gen. No. GA-68 (2003).

49 TEX. TAX CODE ANN. § 312.204(d) (Vernon Supp. 2008).

50 TEX. LOC. GOV'T CODE ANN. § 176.003 (Vernon 2008). *See also* Op. Tex. Att'y Gen. No. GA-446 (2006).

51 TEX. LOC. GOV'T CODE ANN. § 176.006.

52 *Id.* §§ 176.004, 176.009.

53 Op. Tex. Att'y Gen. Nos. V-640 (1948); WW-957 (1960).

54 TEX. GOV'T CODE ANN. § 404.0211 (state agencies) (Vernon 2005); TEX. LOC. GOV'T CODE ANN. § 131.903 (other political subdivisions) (Vernon 2008).

even if a local official or employee with the duty to select the depository is also an officer, director or shareholder of the bank, unless the official or employee, either individually or collectively, owns more than 10 percent of the bank's stock.[55] In such a situation, the entity is required to have the interested official or employee follow all of the procedures required for a chapter 171 conflict of interest. These procedures would include filing an affidavit, abstaining from deliberations and abstaining from the vote regarding the depository.[56] If a majority of the remaining members of the governing body vote to select the bank as a depository, it may serve as the local entity's depository.

A home rule city may adopt stricter conflict of interest provisions that would be applicable to the selection of a city depository. For example, a city ordinance or city charter provision may prohibit the selection of a city depository if a city official or employee has any financial interest in the bank. When a city chooses its depository, its local legal counsel will want to review Local Government Code Section 131.903 for its general provisions and exceptions, as well as any local provisions that may be applicable.

21. Are there special conflict of interest laws that apply to judges?

Chapter 171 of the Local Government Code does not contain special conflict of interest laws that apply to judges. However, judges are subject to the Code of Judicial Conduct.[57] In basic terms, these rules require that judges avoid actions that would suggest even the appearance of impropriety.[58] They also prohibit judges from having any financial interest in any aspect of a case that they handle as judges. Furthermore, Article V, Section 11 of the Texas Constitution prohibits a judge from presiding over any case where he or she may have either a direct personal or pecuniary interest. Additionally, a judge may not preside over any case where he or she is related to either party by affinity or consanguinity.[59] For further information on the conflict of interest provisions that apply to judges, contact the State Commission on Judicial Conduct. The staff of the Commission can be reached at (512) 463-5533 or (877) 228-5750. If the judge is a lawyer, the judge would also be subject to the canons of ethics applicable to lawyers as described in the following question.

22. Are there special conflict of interest laws that apply to lawyers (*e.g.*, city attorneys)?

Lawyers are subject to a special canons of ethics, the Texas Disciplinary Rules of Professional Conduct, as a part of their state licensing as attorneys.[60] In basic terms, these rules require that attorneys advise their clients of any potential conflict of interest that the lawyer may have in his representation of a client. The lawyer must also avoid any action that would compromise the interests of his client.[61] For further information on the conflict of interest provisions that apply to lawyers, contact the State Bar of Texas. The staff of the State Bar can be reached at (512) 427-1463 or (800) 204-2222.

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55 TEX. LOC. GOV'T CODE ANN § 131.903(a)(2) (Vernon 2008).

56 *Id*. § 171.004.

57 TEX. CODE JUD. CONDUCT, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. B (Vernon 2008).

58 TEX. CODE JUD. CONDUCT, Canon 2.

59 TEX. CONST. art. V § 11; *City of Oak Cliff v. State*, 79 S.W. 1068, 1069 (Tex. 1904); Op. Tex. Att'y Gen. No. DM-109 (1992).

60 TEX. DISCIPLINARY R. PROF'L CONDUCT 1.01 - 9.01, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtitle. G app. A (Vernon 2005 & Supp. 2009).

61 TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06 - 1.09.

23. If an official's vote on a contract violates the conflict of interest laws, is the contract illegal and void?

Not automatically and not necessarily. It is important to note that the term "void" is not the same thing as the term "voidable." The law says that an action taken in violation of the conflict of interest laws is voidable, meaning that it could be declared void by a court but that the action is not void automatically. If a court finds that an official's vote or other action on a matter violated the conflict of interest laws, the violation would not render the ultimate action or contract voidable unless it would not have passed without the vote of the official who violated the conflict of interest law.[62]

24. Must a local official be removed from office if the official violates the conflict of interest laws?

State law does not provide for an automatic removal of a local official from office due to an alleged or proven violation of a conflict of interest law.[63] However, if such a violation is proven, it may be used as the basis for a removal of a member of a governing body for misconduct under state law or other statutory or city charter criteria that allow a local official to be removed for cause.[64]

25. May a person be charged with a crime if the official violates the conflict of interest laws?

Yes, Chapter 171 of the Local Government Code provides four situations in which a public official may be prosecuted for his or her actions or inaction regarding a conflict of interest.[65] Specifically, a local official can be prosecuted for:

1) Failure to File an Affidavit Noting a Conflict: Failing to file an affidavit with the official record keeper noting the official's substantial interest in an item if such a filing is required by Local Government Code Section 171.004;[66]

2) Participating in Discussions Regarding an Item for Which There is a Conflict: Discussing or otherwise participating on an item if such participation is prohibited under Local Government Code Section 171.004 due to a conflict of interest on that item;[67]

3) Serving as a Surety for Certain Businesses: Acting as a surety for any business entity that has work, business or a contract of any amount with the local entity;[68] or

4) Serving as a Surety for Local Official Bonds: Acting as a surety on any official bond that is required for an official of a governmental body of the local entity.[69]

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62 TEX. LOC. GOV'T CODE ANN. § 171.006 (Vernon 2008); Op. Tex. Att'y Gen. No. JC-155 at 3 (1999).
63 TEX. LOC. GOV'T CODE ANN § 171.003 (Vernon 2008).
64 *Id*. §§ 21.025, 22.077.
65 *Id.* § 171.003.
66 *Id*. § 171.003(a)(1).
67 *Id.*
68 *Id*. § 171.003(a)(2).

Violation of any of the above four items can be prosecuted as a class A misdemeanor[70] and is punishable by a fine not to exceed $4,000 and/or up to one year in jail.[71] Whether to prosecute an alleged violation of the conflict of interest laws is subject to the prosecutorial discretion of the local district attorney or prosecuting criminal county attorney. The attorney general does not have original jurisdiction to prosecute violations of conflict of interest laws by public officials.

26. Does the conflict of interest law apply to directors of an economic development corporation?

Chapter 171 of the Local Government Code does not apply to the directors of an economic development corporation created under the Development Corporation Act of 1979 because such corporations are not considered to be governmental entities.[72] However, state laws governing corporations may have their own provisions governing certain conflicts. For instance, the Texas Non-Profit Act prohibits loans being made by the corporation to its director.[73] "If a loan is made to a director, the directors who vote for making the loan and any officers participating in making the loan, 'shall be jointly and severally liable to the corporation for the amount of such loan until repayment thereof.'"[74] A corporation's board members should also check the corporate bylaws for any discussion of board conflicts.

27. Do the conflict of interest laws apply to board members of a municipal utility district?

Yes, Chapter 171 of the Local Government Code does apply to members of a municipal utility district (MUD).[75] MUD board members may not participate in a vote on a matter involving a business entity or real property if they have substantial interests in the matter and it is reasonably foreseeable that action on the matter would confer an economic benefit on the business entity or real property.[76] Chapter 171 also imputes to a MUD board member the substantial interests of certain near relatives in a business entity or real property. [77]

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69 *Id*. § 171.00(a)(3).
70 *Id*. § 171.003(b).
71 TEX. PEN. CODE ANN. § 12.21 (Vernon 2008).
72 Op. Tex. Att'y Gen. No. JC-338 (2001).
73 TEX. BUS. ORGS. CODE ANN. § 22.225(a) (Vernon Supp. 2008).
74 *Id*. § 22.225(b); Op. Tex. Att'y Gen. No. JC-338 (2001).
75 Op. Tex. Att'y Gen. No. JC-184 (2000).
76 *Id.*
77 *Id.*

28. Do the conflict of interest laws apply to members of a local governing body who have a direct, personal matter pending before the governing body?

Chapter 171 of the Local Government Code does not apply to direct, personal matters of a member of a local governing body. It only applies to public officials that have a substantial financial interest in a business entity or real property. However, public policy in Texas bars public officials from casting a deciding vote in a matter concerning an issue in which the official has a direct, personal interest.[78] For example, a member of a governing body would be disqualified from voting on a resolution to pay his or her legal fees, or the legal fees of another member indicted on charges for Open Meetings Act violations.[79]

[78] Op. Tex. Att'y Gen. No. JC-294 (2000); *Hager v. State ex rel. TeVault*, 446 S.W.2d 43, 49 (Tex. Civ. App.—Beaumont 1969, writ ref'd n.r.e.).

[79] Op. Tex. Att'y Gen. No. JC-294 (2000).

SAMPLE AFFIDAVIT

THE STATE OF TEXAS

COUNTY OF _____

I, _____ , as a member of the
(Name)

_____ , make this affidavit
(governing body, board, commission)

and hereby under oath state the following:

I have a substantial interest in a business entity or real property that may receive a special economic effect by a vote or decision of the _____ and the
(governing body, board, commission)

economic effect on my business entity or real property is distinguishable from its effect on the general public. What constitutes a "substantial interest," "business entity," "real property" and a "special economic effect" are terms defined in chapter 171 of the Texas Local Government Code.

I affirm that the business entity or real property referred to above is:

The nature of my substantial interest in this business entity or real property is:

- ☐ an ownership interest of 10 percent or more of the voting stock or shares of the business entity;
- ☐ an ownership interest of 10 percent or $15,000 or more of the fair market value of the business entity;
- ☐ funds received from the business entity exceed 10 percent of _____ (my, his, her) gross income for the previous year;
- ☐ real property is involved and _____ (I, he, she) have/has an equitable or legal ownership with a fair market value of at least $2500;
- ☐ a person who is related to me within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the involved real property or business

entity. I have also checked which of the above types of interests my relative has in the item.

Upon the filing of this affidavit with the official record keeper for the local governmental entity, I affirm that I shall abstain from any discussion, vote, or decision involving this business entity or real property and from any further participation in this matter whatsoever.

Signed this the _____ day of _____ , 20____.

_____

Signature of public official

_____

Title

BEFORE ME, the undersigned authority, this day personally appeared

_____ and by oath swore that the facts herein above stated
(Name of affiant)

are true and correct to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this the _____ day of _____ , 20___.

_____

Notary Public in and for the State of Texas

My commission expires: _____