

Guide to Texas  
Ethics and  
Disclosure Law  
(Local Gov't  
Code Chapters  
171, 176)

**Questions? Give us a ring!**



# Agenda



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Introduction

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Chapter 171, Local Government Code: Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments

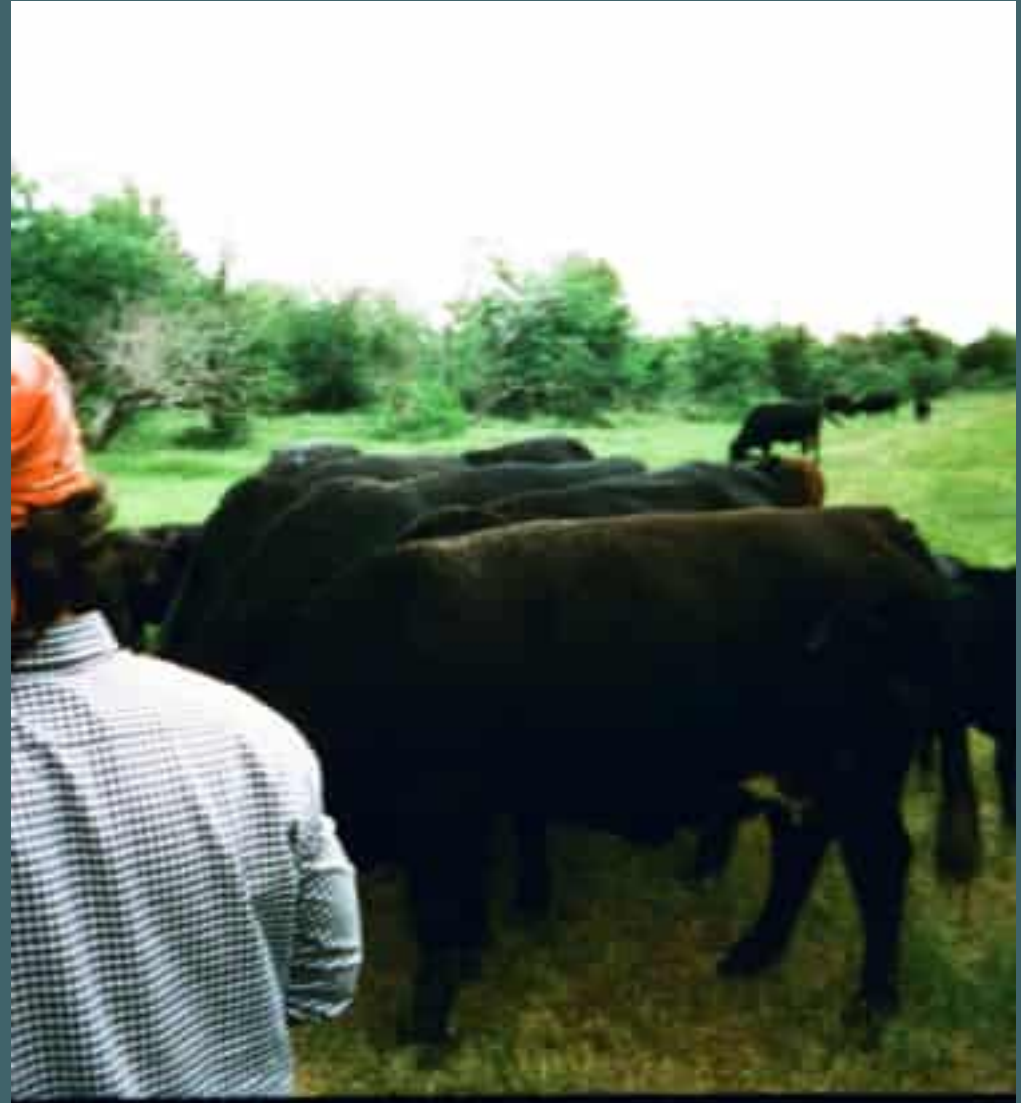
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Chapter 176, Local Government Code: Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information

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Final tips & takeaways

# Chapter 171



# What is a conflict of interest under LGC 171.004?

- You have a conflict of interest if:
  - you or a family member has a **substantial interest** in a business entity or real property subject to action by the commissioners court; and
  - the action would have a **special economic effect** distinguishable from the general effect on the public.

# What is a substantial interest in a business entity?

Local Government Code Section 171.002 test for “substantial interest” in a business entity or real property:

Own 10% or more voting stock or shares

Own 10% or more or \$15,000 or more of fair market value

Receive funds exceeding 10% of annual gross income

Equitable or legal ownership equal to \$2,500 in real property

Same standard applies for relatives of the first degree

# What is the interplay between Chapter 171, common law conflict of interest, and other law?

Section 171.007: Chapter 171 preempts the common law of conflict of interest as it applies to local public officials.

Chapter 171 supersedes Section 81.002, LGC, which requires county judges and commissioners to swear in writing they will not directly or indirectly be interested in a contract with the county. Op. Tex. Att'y Gen. No. GA-671 (2008).

# What is required once a conflict is identified?

Section 171.004: If you have a conflict of interest, under Section 171.004, you must:

- file an affidavit with the county clerk that describes the nature and extent of the conflict

- abstain from any discussion

- abstain from any action



If I have a  
conflict, what  
do I do at the  
commissioners  
court meeting  
when the item  
comes up?

You do not need to leave the dais, especially if this will impact the quorum.

If a majority of the commissioners court has conflicts and files affidavits, the law allows participation and vote.

# If I have a conflict, may I vote on the budget?

Section 171.005: The commissioners court shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a judge or commissioner has a substantial interest.

Except for the situation in which the entire court has declared a conflict, the impacted commissioner or judge may not participate in the separate vote, but may vote on the final budget if the commissioner has complied with Chapter 171 notice provisions and the matter in which the commissioner/judge is concerned has been resolved

What is the impact  
on an approved  
item if a conflicted  
member improperly  
took part or voted  
on it?

Section 171.006: Action is not voidable unless it would not have been approved without the vote of the person with the conflict.

May I serve  
on a board of  
a private non-  
profit  
corporation?

Section 171.009: Lawful for local public official to serve as member of board of private, non-profit corporation when official receives no compensation or remuneration from the non-profit corporation or other non-profit entity.

# Does Chapter 171 impact private law practice?

Section 171.010: A county judge or commissioner has a substantial interest in a business entity of the official has entered a court appearance or signed pleadings in a matter related to that business entity

If a county judge or commissioner has a substantial business interest in this manner, they must comply with Chapter 171.

A county judge may not enter a court appearance or sign pleadings as an attorney in any matter before the court over which the judge presides or any court over which the judge's court exercises appellate jurisdiction.

Upon compliance with Chapter 171, a county judge or county commissioner may practice law in the county where the judge or commissioner serves.

# Penalties for violating Chapter 171

A knowing violation is:

- Class A misdemeanor
- Fine: up to \$4,000
- Jail: up to a year
- Both fine and jail.
- Official misconduct (automatic removal from office)

# Chapter 176



# When is a county officer required to file a conflicts disclosure statement under Chapter 176?

- A county officer is required to electronically file a conflicts disclosure statement with the county clerk if they are members of the commissioners court or any third party, who exercised discretion in the planning, recommending, selecting, or contracting of a vendor if the officer has an employment or other business relationship with a vendor and received taxable income that:
  - exceeds \$2,500 during the 12-month period preceding the date
    - the officer becomes aware of the contract or
    - the county considers entering into a contract with the vendor.



# What is a “local governmental officer?”

Section 176.001(4): Local governmental officer includes members of the governing body (the commissioners court);

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

A director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity.

# When is a county officer required to file a conflicts disclosure statement under Chapter 176, con't

The official must also file a conflicts disclosure statement if he or she has received one or more gifts with an aggregate value of more than \$100 in the same 12-month period preceding the date that the officer:

- becomes aware that a contract between the vendor and the county has been executed,
- the county is considering entering into a contract with the vendor, or
- the vendor has a family relationship with the officer.

# What family relationship requires county officer to file a conflicts disclosure statement?

- Section 176.001(2-a) defines “family relationship” as a relationship between the third degree by consanguinity or the second degree by affinity.



# What is a gift under Chapter 176?

Section 176.001(2-b): Gift means 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.

Section 176.003(a-1): Local government officer not required to file statement for gift if it is a political contribution as defined under Title 15, Elec. Code or food accepted as a guest.

# When must the statement be filed and with whom?

Section 176.003(b): The conflicts disclosure statement must be filed with the records administrator (the county clerk) 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 filing the statement.

Where do you  
get the  
conflicts  
disclosure  
form?

Texas Ethics Commission  
County Clerk

# Are conflicts disclosure statements public?

Yes. Section 176.0065: The county clerk maintains the statements and vendor questionnaires that are required to be filed under Chapter 176 in accordance with the county's record retention schedule.

Section 176.009: The statements and vendor questionnaires must be posted on the county website.

Section 176.012: Chapter 176 does not require disclosure of information excepted from disclosure under the Texas Public Information Act.

# What are vendors required to file?

Section 176.006: Vendor must file a completed conflict of interest questionnaire if the vendor has a business relationship with the county and

- Has employment or other business relationship with a local governmental officer of the county or a family member of that officer;
- Has given a local governmental officer of the county or a family member of that officer a gift within the amount required to be reported under 176.003; or
- Has a family relationship with a local government officer of the county.



# What is the penalty for non-compliance?

Section 176.013: A class C misdemeanor if contract is less than \$1 million or there is no contract amount

A class B misdemeanor if contract amount is at least \$1 million but less than \$5 million

A class A misdemeanor if contract amount is at least \$5 million.

# Exceptions?

Section 176.013(f): It is an exception to the offense if the local governmental officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation.

What is the  
impact on a  
county contract  
if vendor fails to  
file  
questionnaire?

Section 176.013(e): The commissioners court may, at its discretion, declare a contract void if it determines that a vendor failed to file a conflict of interest questionnaire required by Section 176.006.

# Final tips & takeaways



- Must not do business with yourself, your family, or an entity you are involved with, and you must follow the law exactly.
- When in doubt, talk to your county attorney.

Two-part test for conflicts of interest:

- Substantial interest analysis
- Special economic effect analysis
- Vendor relationships will require filing conflict statement when certain income thresholds are passed
- Familial relationships will also trigger conflicts

**Questions? Give us a ring!**



Thank  
you

