

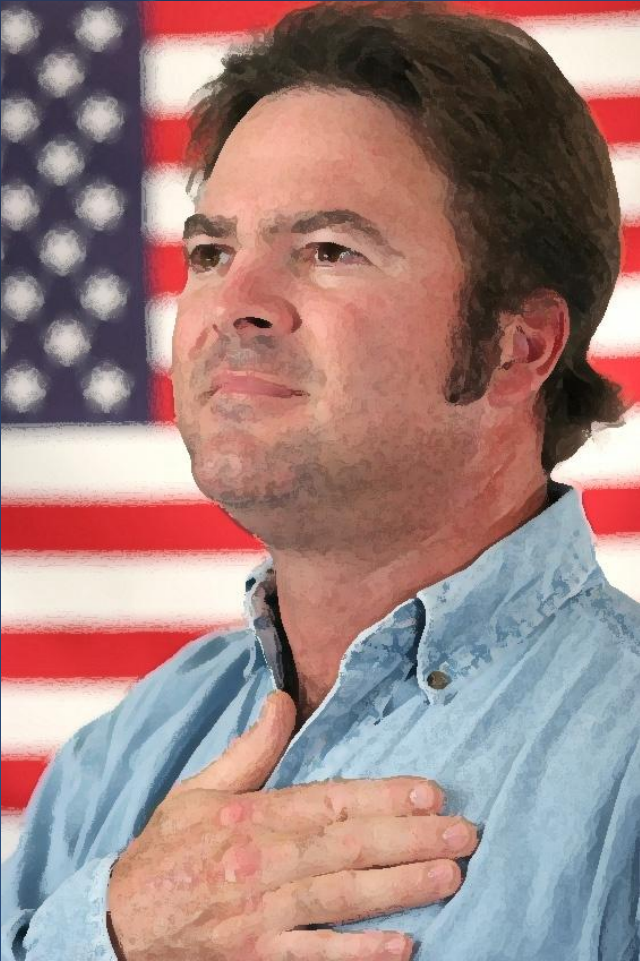
# **City of McKinney Boards and Commissions Training**

**City of McKinney  
October 16, 2012**

**Presented By:  
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# Overview of Topics



1. **Open Meetings Act**
2. **Conflicts of Interest Statute**
3. **Disclosure of Certain Relationships**
4. **Nepotism Statute**
5. **Other Ethical Considerations**

# **Open Meetings Act**

**Chapter 551 of the  
Texas Government Code**

# 1. When Does the Open Meetings Act Generally Apply?

- **A quorum is present and discusses public business.**
- **Applies to city councils, city boards and commissions and Type A/B Corporation (formerly Section 4A or 4B corporations).**
- **Does not apply to purely social gatherings, attendance of public officials at conferences or training, ceremonial events, or press conferences.**



## 2. What constitutes a “quorum”?

- “Quorum” means “a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.” Texas Government Code § 551.001(6).
- In addition, a quorum must be present to convene a meeting.
- City Council – 4 members of City Council. Section 23 of Home-Rule Charter.

## 2. What constitutes a “quorum”? (cont’d)

- Planning and Zoning Commission – 4 of the 7 members. Section 157 of Home-Rule Charter.
- Zoning Board of Adjustment – 5 members required to hear all cases. Section 161 of Home-Rule Charter.
- MEDC – 4 of the 7 member board. Chapter 504 of Texas Local Government Code.
- MCDC – 4 of the 7 member board. Chapter 505 of Texas Local Government Code.

# 3. What constitutes a meeting?

- Section 551.001(4) – definition of “meeting”
  - 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; or

# 3. What constitutes a meeting? (cont'd)

- a gathering:
  - conducted by the governmental body or for which the governmental body is responsible;
  - a quorum of members is present;
  - called by the governmental body; and
  - members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about public business or public policy over which the governmental body has supervision or control.



# 3. What constitutes a meeting? (cont'd)

- The term does not include the gathering of a quorum of a governmental body at
  - a social function unrelated to the public business that is conducted by the body,
  - the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference,
  - if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference.
- The term includes a session of a governmental body.

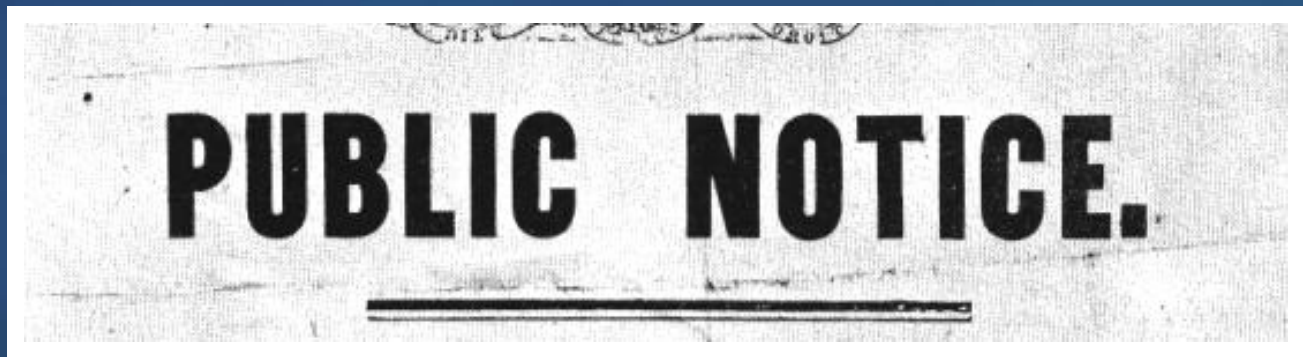
# 4. Where can a meeting be held?

- A meeting must be held in a location accessible to the general public.
  - See, Op. Tex. Att’y Gen. No. JC-0487 (2002) (Board of Regents for University of Texas System could not hold a meeting in Mexico).
- Type A and Type B corporations must conduct their meetings within the City limits pursuant to the Development Corporation Act.
  - Sections 504.054 and 505.055 of Texas Local Government Code.

## 5. Where and how long must an agenda be posted?

“The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for *at least 72 hours before the scheduled time of the meeting. . . .*”

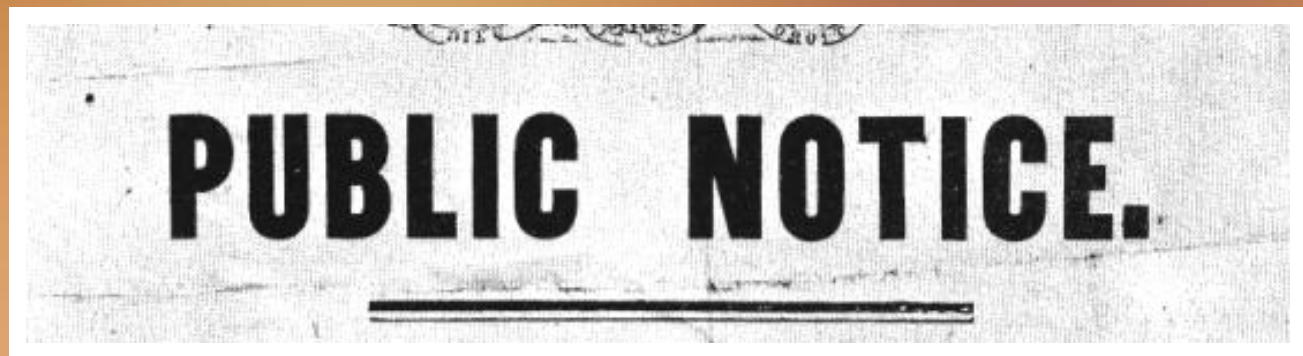
--Section 551.043



## 6. Where must an agenda be posted?

“A municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall.”

--Section 551.050



## 7. Must an agenda be posted on the City's website?

- Section 551.056 of Texas Government Code
- Applies to the City or economic development corporation that maintains an Internet website or for which an Internet website is maintained.
- In addition to posting at City Hall must also currently post notice of a meeting on the Internet website.

## 7. Must an agenda be posted on the City's website? (cont'd)

- In addition, City and Type A and Type B economic development corporations in a city with a population of 48,000 or more must post the agenda for the meeting on the Internet website.
- There is a good faith exception if the failure to post on the Internet “is due to a technical problem beyond the control of the governmental body or economic development corporation.”

## 8. How specific must the wording be for an agenda item?

You must give written notice of the date, hour, place, and subject of each meeting held by your governmental body.

The courts have ruled that the more important a particular issue is to the community, the more specific the posted notice must be.

Avoid generic descriptions of topics.



## 9. Is an agenda posting indicating “Public Comment” adequate notice?

The Attorney General has concluded “public comment” provides sufficient notice under the Open Meetings Act of the subject matter of “public comment” sessions where the general public addresses governmental body about its concerns.

- Texas Attorney General Opinion JC-169 (2000)



# 10. Is an agenda posting indicating “City Manager’s report” adequate notice?

- No. In Texas Attorney General Opinion GA-0668 (2008) the Attorney General concluded the following agenda postings were inadequate as a matter of law:
  - City Manager’s Report
  - Mayor’s Update
  - Council and Other Reports
- “The general and generic nature of the notice does not sufficiently notify a reader, as a member of the interested public, of the subjects of the update and reports to be discussed at any particular meeting.”

# 11. Can a city council comment on or receive a report about items of community interest without the item being placed on the agenda?

- Section 551.0415 to the Texas Gov't Code – concerning items of community interest which no action will be taken
- A quorum of City Council may receive from city staff or another council member a report about items of “community interest” during a meeting without posting the item, provided no action is taken.



# 11. Can a city council comment on or receive a report about items of community interest without the item being placed on the agenda? (cont'd)

- “Community Interest” items include:
  - Expression of thanks, congratulations, or condolence;
  - Information regarding holiday schedules;
  - An honorary or salutary recognition of a public official, public employee or other citizen, excluding a discussion regarding the change in the status of a person’s public office or public employment
  - Reminder of upcoming event sponsored by the city;



# 11. Can a city council comment on or receive a report about items of community interest without the item being placed on the agenda? (cont'd)

- “Community Interest” items include (cont'd):
  - Information regarding a social, ceremonial, or community event organized or sponsored by another entity, that was attended or scheduled to be attended by a member of city council, or an official or employee of the city; and
  - Announcements involving an imminent threat to public health and safety of people in the city that has arisen after the posting of the agenda.



## 12. Can You Change the Date/Time of an Open Meeting Without Posting a Corrected Notice for 72 hours?

No.

The Texas Open Meetings Act requires literal compliance. A governmental body generally does not have authority to change the date/time of its meeting without posting the new date for at least 72 hours in advance of the meeting.



# 13. Can We Change the Location of an Open Meeting Without Posting a Corrected Notice for 72 hours?

No.

On the day of the meeting, you may be able to move to a bigger room within the same building to accommodate a large crowd. However, it is not clear whether such a change would constitute literal compliance with the Act.



# 14. Can We Continue a Meeting to the Immediate Next Day Without Reposting?

- A governmental body can recess an open meeting to the following regular business day provided the action is taken in good faith and not to circumvent the Open Meetings Act.
- § 551.0411.



# 15. What if an Unposted Issue is Raised at an Open Meeting?

You may not deliberate or make any decision about an unposted issue at the meeting. If an unposted item is raised, you have four options:

- 1) respond with a statement of specific factual information or recite the governmental body's existing policy on the issue
- 2) direct the person making the inquiry to visit with staff
- 3) offer to place the item on the agenda at a future meeting
- 4) post the matter as an emergency item if it meets the criteria





# 16. What Right Does the Public Have to Speak on a Particular Agenda Item?

- The Open Meetings Act allows the public to observe the open portion of a meeting.
- The Open Meetings Act *does not* give members of the public a right to speak on items considered at an open meeting, unless it is a public hearing.



# 17. What is the General Distinction Between a Public Hearing and an Open Meeting?

- A governmental body is generally not required by the Open Meetings Act to allow members of the public to speak on regular agenda items at an open meeting.
  - *However, during a public hearing, members of the public must be given a reasonable opportunity to speak.*
    - Examples: Hearings for the budget, annexation and zoning.

# 18. What Duty Does a Governmental Body Have to Produce Minutes of Open Meetings?

- Section 551.021: a governmental body shall prepare and keep minutes or make a recording of each open meeting of the body.
  - The minutes must:
    - (1) state the subject of each deliberation; and
    - (2) indicate each vote, order, decision, or other action taken.

# 19. How long is the city required to keep minutes or a tape of a meeting?

- Approved minutes must be maintained permanently by the city.
- A tape of a meeting for the purpose of preparing minutes must be maintained for 90 days following the approval of the minutes by the governmental body.



## 20. What are the General Subjects for which a Governmental Body may Hold an Executive Session?

- Common exceptions are:
  - personnel matters;
  - certain consultations with an attorney;
  - discussions about the value or transfer of real property; and
  - discussion of certain economic development matters.

## 21. What are the procedures to convene into an executive session?

- When authorized to convene a closed meeting the presiding officer must take the following steps:
- (1) In open session state that a closed meeting will be held and identify the exceptions of the Open Meetings Act which authorize the executive session.
- (2) In the executive session, the presiding officer states the date and time.
- (3) Discuss the executive session matter within the confines of the statutory exception. (No voting can occur in the executive session).
- (4) At the conclusion of the executive session, the presiding officer states the date and time.
- (5) Reconvene in open session. Voting on the subject matter must occur in open session.

*22. When can a governmental body hold an executive session using the exception for consultation with an attorney?*

- Section 551.071: allows a governmental body to meet with its attorney to receive legal advice about pending or contemplated litigation or about settlement offers.
  - may also meet with its attorney to receive legal advice on any matter on the agenda.

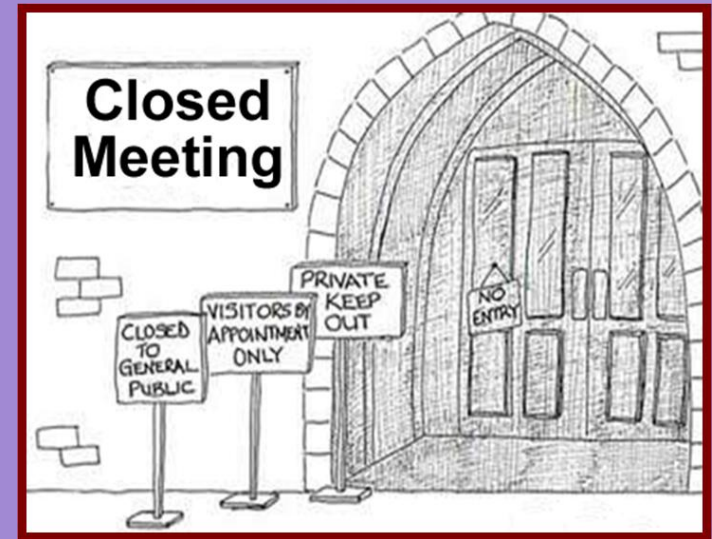
## 23. Can a City Council discuss potential business incentives and other economic development issues in executive session?

- Can hold an executive session:
  - to discuss or deliberate commercial or financial information the governmental body received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the city and with which the governmental body is conducting economic development negotiations; *or*
  - to deliberate the offer of a financial or other incentive to a business prospect described by Subdivision (1).



## 24. Can the city discuss real property in executive session?

- A governmental body may deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with third parties. TEX. GOV'T CODE ANN. § 551.072.



## **25. Can a governmental body discuss personnel matters in executive session?**

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- Section 551.074 of the Government Code authorizes an executive session to discuss “the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;” or “to hear a complaint or charge against an officer or employee.”
  - GA-0511(2007) (school district could not admit select members of the public into an executive session to discuss school superintendent).

## 26. Who is Permitted to Attend an Executive Session?

- The Open Meetings Act does not specify who may or may not attend an executive session.
- **Texas Attorney General Opinion JC-0375 (2001):**
  - concluded the governmental body has discretion to determine who may attend executive sessions. However, the governmental body may not admit those whose attendance is contrary to the legal basis for the executive session.
- **Texas Attorney General Opinion GA-0511 (2007):**
  - citizens could not be invited into an executive session to discuss the school superintendent. Would cause the meeting to be an unauthorized closed meeting.



## 27. Can a governmental body approve items or vote in an executive session?

- Can you vote in executive session?
- No. “a final action, decision, or vote on a matter deliberated in a closed meeting . . . may only be made in an open meeting.”

– § 551.102



## 28. Is a governmental body required to record or create a certified agenda of discussions held in executive session?

Section 551.103: requires a governmental body to produce a “certified agenda” or make a tape recording of every executive session, unless the closed session is being held under the exception for consultation with an attorney. A governmental body may turn off the tape or stop taking notes during the portion of a closed meeting that involves consultations with an attorney.



## 29. What is required in a certified agenda?

- The Open Meetings Act requires the certified agenda of a closed meeting to contain the following information:
  - (1) statement of the subject matter of the deliberation;
  - (2) a record of any further action taken;
  - (3) an announcement by the presiding officer at the beginning and the end of the meeting indicating the date and time; and
  - (4) must be certified by the presiding officer that the certified agenda is a true and correct record of the proceeding.

## 30. Can a member of the governmental body or staff release a copy of a certified agenda to the public?

- **No.** A certified agenda or tape kept during an executive session may only be disclosed to a member of the public under a court order. In fact, there are criminal penalties for releasing a copy of the certified agenda to the public without a court order.
  - Section 551.146: makes the release of a certified agenda a class B misdemeanor.

# 31. How long must a city maintain a certified agenda or tape from an executive session?

- Maintain a certified agenda or tape of an executive session for two (2) years after the date of the meeting.
- If an action involving the meeting is brought within that period, the city shall preserve the certified agenda or tape while the action is pending.





# 32. Open Meetings Act Training

- Each elected or appointed public official of a governmental body shall complete a one (1) to two (2) hour training course on the Open Meetings Act within 90 days after the date the member
  - Takes the oath of office or
  - Assumes responsibilities as a member of the governmental body.
    - Tex. Gov't Code Section 551.005



# Rangra v. Brown, (5<sup>th</sup> Cir. 2009)

- **Facts:**
- City Council members in the City of Alpine, Texas, were indicted for e-mails sent concerning the selection of a city engineer.
- The Council consisted of the mayor and five (5) council members.
- Four (4) members constitute a quorum.
- Three (3) council members received an email from a fourth (4<sup>th</sup>) council member concerning the selection of the engineer.

# Rangra v. Brown, (5<sup>th</sup> Cir. 2009) (cont'd)

- Facts:
- One council member responded to two (2) other council members.
- Two (2) council members were indicted for violations of the Texas Open Meetings Act.
- District Attorney subsequently dismissed the charges without prejudice.
- Council members filed suit alleging the Open Meetings Act violates their First Amendment free speech rights, and sought declaratory and injunctive relief.

# Rangra v. Brown, (5<sup>th</sup> Cir. 2009) (cont'd)

- **Facts:**
- The council members challenge the content-based speech regulations in the criminal provisions of the Texas Open Meetings Act.
- **Conclusion:** On September 10, 2009, the U.S. 5<sup>th</sup> Circuit dismissed the case. The Fifth Circuit concluded the case was moot since none of the Plaintiffs were still serving as council members.

# Asgeirsson v. Greg Abbott, Texas Attorney General

- On December 14, 2009, the cities of Alpine, Big Lake, Pflugerville, Rockport filed suit against the Texas Attorney General over the Texas Open Meetings Act.
- Suit is filed in U.S. District Court, Western District, Pecos Division.

# Asgeirsson v. Greg Abbott, Texas Attorney General

- The suit alleged the Open Meetings Act (section 551.144) was overbroad and vague, and chilled Plaintiff's free speech rights.
- “If a city councilor ‘Tweeters’, sends a ‘Facebook’ message, sends an email, or engages in other social communication, among a quorum of the city council, a crime has occurred.” ¶ 26 of Original Complaint.

# Asgeirsson v. Greg Abbott, Texas Attorney General

- **Section 551.144 of Texas Gov't Code:**
- (a) A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:
  - (1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;
  - (2) closes or aids in closing the meeting to the public, if it is a regular meeting; or
  - (3) participates in the closed meeting, whether it is a regular, special, or called meeting.
- (b) [Penalty Range: \$100 to \$500 fine; 1 month to 6 months in county jail or both]
- (c) [Affirmative Defense: acted in reasonable reliance on a court order, written interpretation, an opinion of a court of record, the attorney general, or the attorney for the governmental body.]

# Asgeirsson v. Greg Abbott, Texas Attorney General

- The lawsuit sought:
  - declaratory judgment and injunction that the criminal provisions of the Open Meetings Act may not be enforced;
  - finding that the criminal provisions of the Act violate the 1<sup>st</sup> amendment;
  - attorney fees; and
  - costs of court.



# Asgeirsson v. Greg Abbott, Texas Attorney General

- Conclusion: On March 25, 2011, the Court concluded the criminal provisions were content-neutral; did not unconstitutionally restrict speech based on identity of speaker; met intermediate scrutiny; met strict scrutiny; were not overbroad or vague.

### 33. Can less than a quorum of a board or City Council visit over the phone without violating the Open Meetings Act?



- The mere fact that two (2) members of a governmental body visit over the phone does not in itself constitute a violation of state law.
- *However*, if the members are using individual telephone conversations to poll the members on an issue or are making such telephone calls to conduct their deliberations about public business, there may be a potential criminal violation. See *Harris County Emerg. Srvs Dist. #1 v. Harris County Emerg. Corps*, 999 S.W.2d 163 (Tex. App. – Houston [14th Dist.] 1999, no pet.)

## 34. Civil and Criminal Penalties

- 551.141** : Void any action taken.
- 551.142** : Mandamus or injunctive relief.
- 551.143** : Conspiracy to circumvent the act by meeting in numbers less than a quorum - fine \$100 to \$500 and/or one month to six months confinement in the county jail.
- 551.144** : Unauthorized closed meeting - fine \$100 to \$500 and/or one month to six months confinement in the county jail.
- 551.145** : Fail to keep a certified agenda or tape recording of a closed meeting -class C misdemeanor.
- 551.146** : Release of a certified agenda or tape of a closed meeting - class B misdemeanor.

# 34. Civil and Criminal Penalties (cont'd)

- The Texas Open Meetings Act is enforced by the county and district attorney's office.
- Section 551.141 provides that “an action taken by a governmental body . . . is voidable.”
  - It is not automatically void. It is subject to judicial invalidation.

# 34. Civil and Criminal Penalties (cont'd)

- A governmental body cannot give retroactive effect to a prior action taken in violation of the Open Meetings Act. Yet, a governmental body could subsequently ratify the action in an open meeting held in compliance with the Act.
- Any ratification would be effective only from the date of the meeting at which the valid action was taken.

# **Conflicts of Interest Statute**

**Chapter 171 of the  
Texas Local Government Code**

# 1. What conflict of interest laws apply to elected Texas city officials?

- The general conflict of interest law for Texas city officials is found in Chapter 171 of the Texas Local Government Code.
- Chapter 171 establishes the standard for determining when a city official has a conflict of interest that would affect his ability to discuss or vote on a particular item.
- Chapter 171 conflict of interest provisions apply to all local public officials. Within a city, “local public officials” are defined to include:
  - 1) elected city officials such as the members of the city council (whether paid or unpaid); and
  - 2) appointed city officials (paid or unpaid) who exercise responsibilities that are more than advisory in nature.

## 2. The Texas conflict of interest statute addresses two types of conflicts:

- **Business Entity Conflicts**: conflicts due to a city official's substantial interest in a "business entity" that has an issue before the city; or
- **Real Property Conflicts**: conflicts due to a city official's substantial interest in "real property" that would be affected by a city action.
- If an item is being considered by a city official that does not involve a business entity or real property, then chapter 171 conflict of interest laws would not be applicable.



### 3. What is considered a “substantial interest” in a business entity?

- Stock Interest: official owns 10 percent or more of the total voting stock
- Other Ownership Interest: official owns 10 percent or more or \$15,000 or more of the fair market value of the business entity
- Income Interest: official received 10 percent or more of her gross income for the previous year
- Close Family Member with any of the Above Interests: If a close relative of the city official has any of the above types of interest in a business entity. Close relatives are those persons within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).

# 4. What is considered a “substantial interest” in real property?

- A person has a substantial interest in real property if he has:
  - A \$2,500 Ownership Interest in the Real Property: If the official has a \$2,500 or more legal or equitable interest in real property that would be affected by the city action.
  - A Close Family Member with a \$2,500 Ownership Interest in the Real Property: Close relatives are those persons within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).



# 5. Conflict of Interests: Relatives

*Is there a conflict of interest if a city official's close relative has a substantial interest in a business entity or in real property that is before the city council?*

Yes, a city official is considered to have the same interest in a business entity or in a piece of real property that his close relatives have in that business entity or real property. In this context, close relatives of a city council member would include persons who are related to the city official within the first degree by consanguinity (blood) or within the first degree by affinity (marriage).

**Father**

**Mother**

**Sons**

**Daughters**

**Spouse**

**Father-in-law**

**Mother-in-law**

**Son-in-law**

**Daughter-in-law**

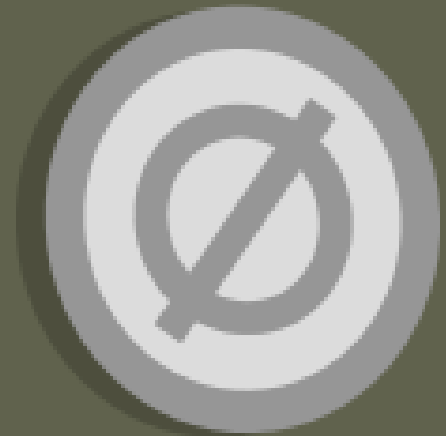
**Stepsons**

**Stepdaughters**

## 6. Have a Conflict of Interest Under Chapter 171?

If a city official has a conflict of interest he or she must take three (3) actions:

- 1) File an Affidavit
- 2) Abstain from Discussion on the Item
- 3) Abstain from Voting on the Item



## 7. May a city official deliberate about an issue for which he has a conflict of interest if he abstains from voting on the issue?

**No.** A city official may not discuss an issue for which he has a conflict of interest even if he abstains from voting on the item. If a conflict of interest exists, the city official must file the required affidavit, and both abstain from discussing the matter and abstain from voting on the item.



# Texas Local Government Code

## § 171.003. PROHIBITED ACTS; PENALTY

- (a) A local public official commits an offense if the official knowingly:
  - (1) violates Section 171.004;
  - (2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or
  - (3) acts as surety on any official bond required of an officer of the governmental entity.
- (b) An offense under this section is a Class A misdemeanor.

# **Disclosure of Certain Relationships**

**Chapter 176 of the Texas Local  
Government Code**

# Chapter 176

- **HB 914 (effective June 18, 2005) added chapter 176 to the Local Government Code.**
- **Legislator sought an Attorney General Ruling regarding the statute. This led to Attorney General Ruling GA-0446 (2006) (issued August 2, 2006).**
- **HB 1491 (effective May 25, 2007) amends various problematic provisions of the statute.**
- **Applies to City Council, City Manager, P&Z, BOA, Type A, Type B, and boards and commissions appointed by the Mayor or City Council. § 176.001(3).**





# Chapter 176

- Requires a “local governmental officer” to file a conflicts disclosure statement with respect to a third person or his agent if the third person enters into a contract with the City; or the City is considering entering into a contract with the third person; and the third person has an employment or other business relationship with the “local governmental officer” or a family member of the “local governmental officer” which
  - Results in the City official or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the applicable 12-month period; or
  - Results in the City official or family member receiving one or more gifts that have an aggregate value of more than \$250 during the applicable 12-month period. § 176.003
- Not required to file conflicts disclosure statement in relation to a gift accepted by the officer or family member if the gift is given by a family member; a political contribution; or food, lodging, transportation, or entertainment accepted as a guest. § 176.003(a-1).

# Chapter 176

- What close family members does this apply to?
- Applies to those related within the first degree by consanguinity or affinity. § 176.001(2).
  - Includes: father, mother, son, daughter, husband, wife, spouse's son, spouse's daughter, son-in-law, daughter-in-law, father-in-law, and mother-in-law

# When must the conflicts disclosure statement be filed?

- A local government officer shall file the conflicts disclosure statement with the City Secretary not later than 5 p.m. on the seventh (7<sup>th</sup>) business day after the date on which the officer becomes aware of the facts that require the filing of the statement. § 176.003(b).
- A local government officer commits an offense if the officer knowingly violates this section. An offense under this subsection is a Class C misdemeanor. § 176.003(c).
- It is an exception to the application of Subsection (c) that the person filed the required conflicts disclosure statement not later than the seventh business day after the date the person received notice from the City of the alleged violation. § 176.003(d).

# **Nepotism Statute**

**Chapter 573 of the  
Texas Government Code**

# What is Nepotism?

- Nepotism refers to the prohibition against a governmental entity hiring certain “close relatives” of a public official to paid positions.
- The nepotism statute prohibits a city official from appointing, confirming the appointment, or voting on the appointment of a “close relative” to a paid public position.
- This provision is applicable if the individual is related to the city official within a prohibited degree of consanguinity (relationship by blood) or a prohibited degree of affinity (relationship by marriage).

# What types of city officials are subject to the nepotism law?

- The nepotism statute applies to any city official who is the “final hiring authority” or is a member of the governing body that has final hiring authority.

# What relatives of a city official are covered by the nepotism limitations for relationships by “blood” (consanguinity)?

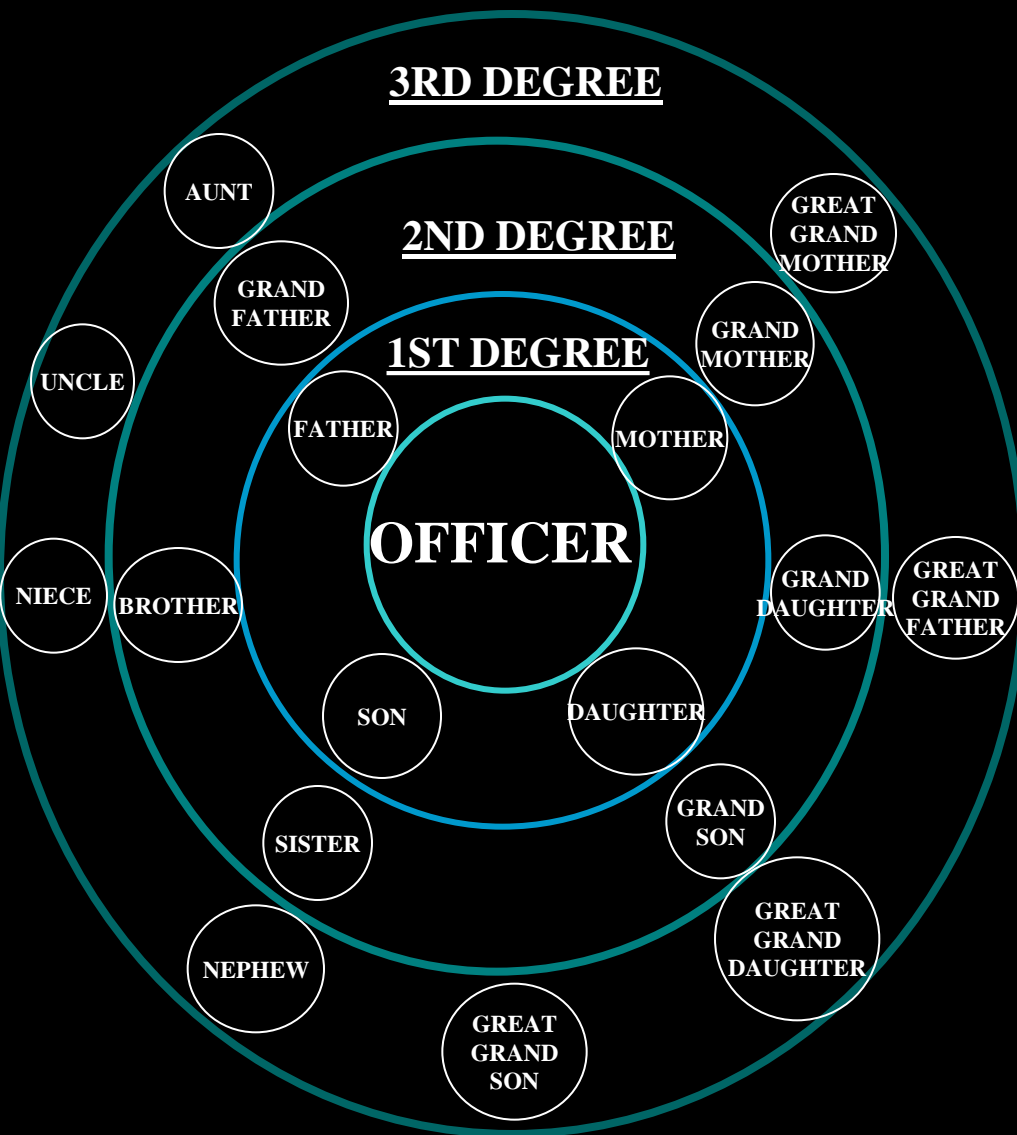
- A city official may not vote on the appointment of an individual who is related to a city official within the first, second, or third degree by consanguinity (relationships by “blood”).
- 1st degree - mother, father, sons, and daughters.
- 2nd degree - brothers, sisters, grandmothers, grandfathers, grandsons, and granddaughters.
- 3rd degree - great grandfathers, great grandmothers, aunts, uncles, nephews, nieces, great grandsons, and great granddaughters.

# What relatives of a city official are covered by the nepotism limitations for relationships by marriage (affinity)?

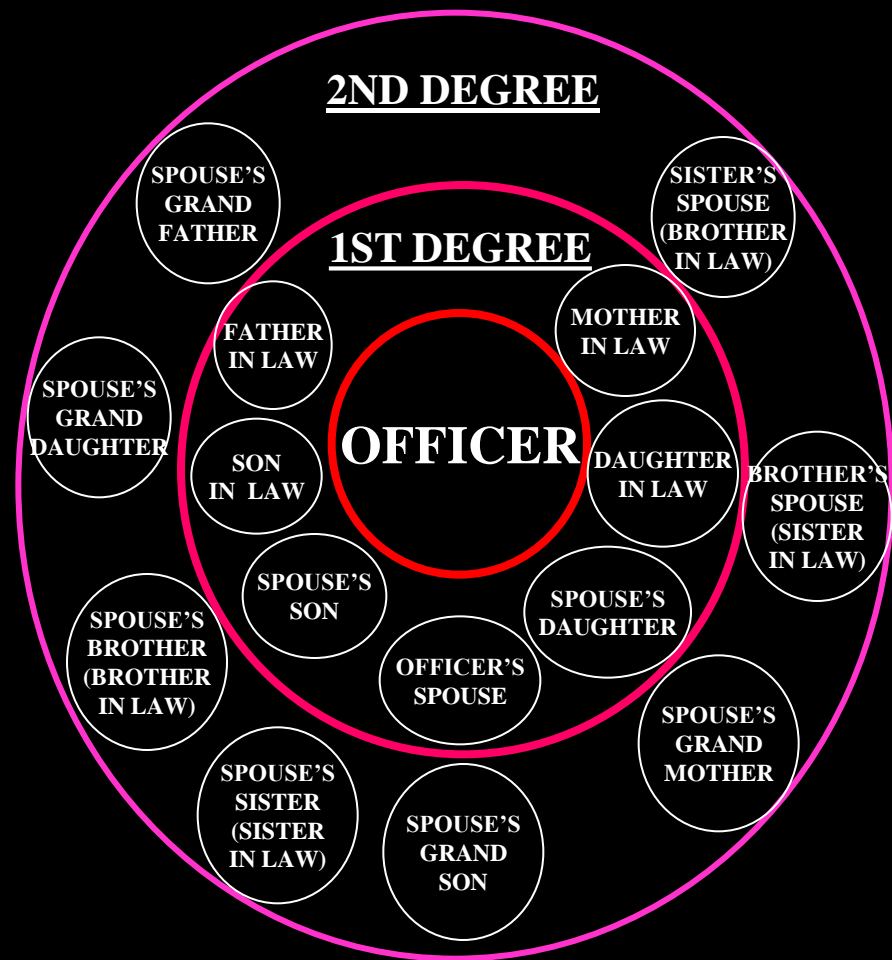
- A city official is prohibited from voting on the appointment of an individual who is related to the official within the first or second degree by marriage (affinity).
- First degree by affinity - public official's husband, wife, father-in-law, mother-in-law, sons-in-law, daughters-in-law, step son, and step daughter.
- Second degree by affinity - official's sisters-in-law, brothers-in-law, spouse's grandmothers, spouse's grandfathers, spouse's granddaughters, spouse's grandsons, spouse's brothers (brothers-in-law), and spouse's sisters (sisters-in-law).



# Consanguinity Kinship Chart (Relationship by Blood)



# Affinity Kinship Chart (Relationship by Marriage)



**Can other members of a governing body vote to hire a person who is a close relative of a city official if the city official with the nepotism conflict abstains from deliberating and/or voting?**

- No.
- Other members of the governing body may not vote to hire a person who is a close relative of a city official.
- This is different from the conflicts of interest statute.

# Breaking the Nepotism Law?

- A crime.
- Misdemeanor punishable by a fine not less than \$100 or more than \$1,000.



# Other Ethical Considerations

# Gift Statute

- The Texas Penal Code prohibits the receipt of gifts.
- Section 36.08(d) of the Texas Penal Code provides, in part:
- “A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.”
- Section 36.08(h) of the Texas Penal Code provides “An offense under this section is a Class A misdemeanor.”

# Gift Statute

- Texas Penal Code § 36.09. OFFERING GIFT TO PUBLIC SERVANT.
  - (a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.
  - (b) An offense under this section is a Class A misdemeanor.

# Gift Statute - Exception

- Texas Penal Code § 36.10(a)(6). NON-APPLICABLE.
- (a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:
  - (6) an item with a value of less than \$50, . . .;

# Misuse of City Equipment, Personnel or Property

- Texas Penal Code § 39.02 Abuse of Official Capacity:
- (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:
  - (1) violates a law relating to the public servant's office or employment; or
  - (2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.
- (b) An offense under Subsection (a)(1) is a **Class A misdemeanor**.



# Misuse of City Equipment, Personnel or Property (cont'd)

- **(c) An offense under Subsection (a)(2) is:**
  - (1) a Class C misdemeanor if the value of the use of the thing misused is less than \$20;
  - (2) a Class B misdemeanor if the value of the use of the thing misused is \$20 or more but less than \$500 ;
  - (3) a Class A misdemeanor if the value of the use of the thing misused is \$500 or more but less than \$1,500;
  - (4) a state jail felony if the value of the use of the thing misused is \$1,500 or more but less than \$20,000;
  - (5) a felony of the third degree if the value of the use of the thing misused is \$20,000 or more but less than \$100,000;
  - (6) a felony of the second degree if the value of the use of the thing misused is \$100,000 or more but less than \$200,000; or
  - (7) a felony of the first degree if the value of the use of the thing misused is \$200,000 or more.

# Political Advertising

- **Section 251.001(16) of the Texas Election Code provides,**
- “Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:
  - (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
  - (B) appears:
    - (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
    - (ii) on an Internet website.

# Political Advertising

- **Texas Election Code § 255.003. UNLAWFUL USE OF PUBLIC FUNDS FOR POLITICAL ADVERTISING.**
  - (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.
  - (b) This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.
  - (c) A person who violates this section commits an offense. An offense under this section is a **Class A misdemeanor**.

# Political Advertising

- **Exception to the statute:**
- **Texas Election Code § 255.003(b).**
  - “This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.”

# Use of Email for Political Advertising Prohibited

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- § 255.0031. UNLAWFUL USE OF INTERNAL MAIL SYSTEM FOR POLITICAL ADVERTISING.
- (a) An officer or employee of a state agency or political subdivision may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising.
- (b) Subsection (a) does not apply to: (1) the use of an internal mail system to distribute political advertising that is delivered to the premises of a state agency or political subdivision through the United States Postal Service; or (2) the use of an internal mail system by a state agency or municipality to distribute political advertising that is the subject of or related to an investigation, hearing, or other official proceeding of the agency or municipality.
- (c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor. . . .

# **City of McKinney Boards and Commissions Training**

**October 16, 2012**

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