

Chapter 171 of the Local Government Code – Conflicts of Interest

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest. TEX. LOC. GOV'T CODE §§ 171.001-.010. It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public. *Id.* §171.004(a).

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper, stating the nature and extent of the interest. *Id.* §171.004(b). In addition, a public official is required to abstain from further participation in the matter. *Id.* However, a public official that is required to file an affidavit is not required to abstain from participating in the matter if a majority of the members of the governing body have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter. *Id.* §171.004(c).

Local Public Official

A "local public official" is defined as "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any...municipality ... or other local governmental entity who exercises responsibilities beyond those that are advisory in nature." *Id.* §171.001(1). This term includes a member of a planning and zoning commission. Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

Substantial Interest

A public official has a substantial interest in a business entity if the official:

- (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; or
- (3) receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.

TEX. LOC. GOV'T CODE §171.002(a).

A person has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more. *Id.* §171.002(b).

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property. *Id.* §171.002(c). As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. TEX. GOV'T CODE §§ 573.023-.024; Tex. Att'y Gen. Op. No. DM-267 (1993), at 2; Tex. Att'y Gen. LO-95-080, at 3. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income. *See* Tex. Att'y Gen. Op. No. JC-0063 (1999).

Business Entity

A business entity is defined as “a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.” TEX. LOC. GOV’T CODE § 171.001(2). A nonprofit corporation is also considered a business entity. Tex. Att’y Gen. Op. No. JM-424 (1986) at 2. The term also includes a business entity that represents an entity or person with an interest in a matter before the city council. Tex. Att’y Gen. Op. No. DM-309 (1994), at 2. A city and other public entities, such as a state university or school district, are not a business entity. Tex. Att’y Gen. Op. Nos. DM-267 (1993), at 2, JM-852 (1988), at 2.

Further Participation

The limit on “further participation” does not preclude the interested public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations. Tex. Att’y Gen. Op. No. GA-0334 (2005), at 6. As such, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations. *Id.*

Special Economic Effect

The question of whether a vote or decision has a “special economic effect” on a business entity or on the value of real property is generally a question of fact. Tex. Att’y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att’y Gen. LO-98-052. However, a vote or decision will, as a matter of law, have a “special economic effect” if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest. Tex. Att’y Gen. Op. No. GA-0136 (2004), at 3. Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property. Tex. Att’y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.-Dallas 1991, writ denied)).

Reasonably Foreseeable

Whether it is “reasonably foreseeable” that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific. Tex. Att’y Gen. LO-96-049. In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was “reasonably foreseeable.” *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied), Tex. Att’y Gen. Op. No. GA-0796 (2010), at 6.

Budget Adoption

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately. TEX. LOC. GOV’T CODE § 171.005. The affected member may not generally participate in consideration of that item. *Id.*

Depositories

A city may select a bank as its depository even if one or more of the members of the governing body is an officer or director of the bank or owns or has a beneficial interest, individually or collectively, in ten percent or less of the outstanding capital stock of the bank, so long as two conditions are met. *Id.* §131.903(a)(2). First, a majority of the members of the governing body must vote to select the bank as a depository. *Id.* §131.903(a)(2)(A). Second, the interested

member must abstain from voting or taking part in the proceedings. *Id.* §131.903(a)(2)(B). The attorney general has concluded that this provision regarding conflicts of interests in the selection of depositories is an exception to Chapter 171. Tex. Att’y Gen. LO-97-093.

Public Official Acting Individually

The attorney general has concluded that when the law contemplates an individual public official perform a specific duty, Chapter 171’s disclosure and abstention requirements may not apply. Tex. Att’y Gen. Op. Nos. GA-0784 (2010), GA-0510 (2007). The attorney general recognizes that the term “local public official” as defined in Chapter 171 could be an individual official or an official who is a member of a governing body. Tex. Att’y Gen. Op. No. GA-0784 (2010), at 4. And while an official acting individually does not “vote,” arguably such an official may make a “decision.” *Id.* Thus, when the law imposes on a single, specific official a duty and the official has a conflict under Chapter 171, the attorney general has concluded that the legislature could not have intended for the disclosure and abstention requirements to apply. *Id.* (concluding that section 171.004’s disclosure and abstention requirements did not apply to a sheriff’s statutory bail bond and forfeiture duties).

Enforcement

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a “substantial interest.” TEX. LOC. GOV’T CODE §171.006. A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.

Updated November 2017