

## LOCAL OFFICIAL/VENDOR CONFLICT OF INTEREST REPORTING

(December 7, 2015)

Among the bills passed by the 84th Legislature was House Bill 23 by Rep. Sarah Davis (R-Houston) which revised the statute relating to the reporting of conflicts of interest between vendors and local government officials.

This statute has been in the law for several years (Chapter 176, Government Code) and has required disclosure of gifts and business relationships between vendors and officials. However, before Rep. Davis' bill, the statute excluded gifts of entertainment, travel, lodging, and food and applied to a more narrow universe of officials. HB 23 made several changes in the law, such as

- lowering the threshold for reporting from \$250 to \$100.;
- putting gifts of travel, lodging, and entertainment under the reporting requirements (although food continues to be excluded);
- including water district officials in the definition of local government official.

The law as it is after September 1 requires a vendor (a person who enters or seeks to enter into a contract with a local government entity) to file a conflict of interest questionnaire if the vendor has a "business relationship" with a local governmental entity AND one or more of the following:

- (1) an employment or other business relationship with a local government officer of the entity;
- (2) *has given a local government officer of a local governmental entity or family member of the officer, one or more gifts (including lodging, transportation or entertainment but excluding food) totaling \$100 or more in the calendar year preceding the date that the entity and vendor execute a contract or the date the entity is considering entering into a contract with the vendor; or*
- (3) a family relationship with a local government officer.

The term "business relationship" is defined in statute as a connection between two or more parties based on commercial activity of one of the parties.<sup>1</sup> This language begs the question of whether the act of seeking or performing a contract is a connection based on commercial activity. Does pursuing a contract from a governmental entity mean that the vendor has a business relationship with the members of the governing board that vote on the contract, such that filing a conflict of interest form is required for gifts? It is probably be safe to assume at this point that it does. In that case, the vendor and the officer would have to file a conflict disclosure form if the vendor has provided entertainment, lodging, or transportation with a value of more than \$100 in the preceding year.

In addition, HB 23 requires that local government officials – as well as vendors – report gifts and employment relationships with vendors.

The Texas Ethics Commission has adopted new forms for both local government officers and vendors as required by HB 23. The form for vendors is attached and can be found on the Ethics Commission's website at <https://www.ethics.state.tx.us/forms/CIQ.pdf>.

Note: The form does not require an explicit listing of gifts. It merely requires a statement that gifts exceeding the threshold have been given. However, the form that must be filed by the official does require listing gifts (eg, entertainment) provided by the vendor.

Firms are advised to make sure you have internal mechanisms for tracking entertainment, travel, and lodging expenditures on local government officials and be prepared to file the appropriate form during a procurement. Also, be prepared that if you do provide entertainment, your name may show up on an official's report.

It should be noted that there is some flexibility in the enforcement of the statute. Generally, it is based on a "knowing" violation. A vendor is required to file an updated questionnaire within seven business days of becoming aware of an event that would make an existing questionnaire incomplete or inaccurate. Furthermore, a vendor commits an offense if the vendor is required to file a questionnaire and knowingly fails to file within seven business days or becoming aware of an event that would require filing or updating a filing.

An offense is a Class C misdemeanor for contracts of less than \$1 million, a Class B misdemeanor if the contract amount is greater than \$1 million but less than \$5 million, and a Class A misdemeanor if the contract amount is greater than \$5 million.

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<sup>i</sup>The term "business relationship" does not include a connection based on (1) transactions that are subject to rate for fee regulation by certain entities, (2) transactions conducted at a price and subject to terms available to the public, or (3) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by and reporting to that agency.

## QUESTIONS

### **When is the requirement triggered?**

If a local government entity is entering into a contract or is considering entering into a contract with a vendor. Another section requires filing within seven days of beginning discussions or negotiations to enter into a contract or submitting an application, response to requests for proposals or bids, correspondence, or another writing related to a potential contract.

Arguably, if there is no contract under consideration, the requirement would not apply. However, if a potential contract comes out, a vendor would have to report gifts for the preceding 12-month period.

### **What local government officials are covered?**

- (1) The member of a governing board of a school district, municipality, county, charter school, junior college district, water district, or local government corporation board, commission or authority whose members are appointed by a county or city.
- (2) A director, superintendent, president, or other person appointed as executive officer of a local government entity.
- (3) An agent who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

The records administrator is required to maintain a list of all officers and to provide the list to vendors that inquire.

### **Where is the form?**

The form is promulgated by the Texas Ethics Commission and is available on the Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us) .

### **Who is the form filed with?**

The designation records administrator of the local government entity.

### **What must be reported?**

The mere fact that a vendor provided lodging, transportation, or entertainment (eg., tickets to games, events). Food is excluded and does not trigger reporting. The specifics or the amount of the gift is not required to be reported. However, the official does have to provide the date of and and description of the gifts.

There is also an exception for benefits offered on account of kinship or personal, professional, or business relationship independent of the official status of the official.

### **What is the bottom line?**

The Legislature wants any significant entertainment of or gifts to officials by a vendor to be disclosed, other than meals. So one easy solution is to avoid entertainment outside of meals.

You should also make sure that local officials are aware of the implications of this law. If you offer or are asked for tickets to an event with a value over \$100, make sure the official knows that he or she (as well as you) will have to report it.

# CONFLICT OF INTEREST QUESTIONNAIRE

# FORM CIQ

## For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

### OFFICE USE ONLY

Date Received

**1** Name of vendor who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
Name of Officer

**4** Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5** Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

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(2) the vendor:

(A) has an employment or other business relationship with the local government officer 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

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.