

Ethics and Local Government Reporting

ACEC Dallas Chapter
December 12, 2017
One Hour Ethics PDH



What You
Can't Do



What You
Can Do
Without
Reporting



What You
Can Do
But Must
Report

The Gray Areas

Penal Code Definitions

36.08(d)

Vendors

A **person** that a 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

Public Officials

A **public servant** who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government



Penal Code Offenses for Vendors and Public Officials

36.09(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.

36.08(d)

A **public servant** 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.



Benefit

Anything reasonably regarded as pecuniary gain or pecuniary advantage, ***including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest***

- A gift worth \$50 or more – no matter what it is:
 - Wine bottle
 - Food basket
 - Flowers
 - Books
- Cash – regardless of the amount
- Gift cards – regardless of the amount

Offense and Punishment

- **36.09(b) - Class A Misdemeanor**
 - Fine not to exceed \$4,000
 - Up to one year in jail
 - Both





Penal Code Exceptions

36.10

The prohibition on gifts to a public servant does not apply to:

- A fee prescribed by law/that public servant is lawfully entitled to
- A gift given on account of a business/personal/professional/family relationship independent of official status
- **A gift worth less than \$50 that is not cash or a negotiable instrument**
- **Political contributions (Title 15 Election Code)**
- Certain benefits given to state/legislative/executive officers
- **Transportation, lodging, meals and entertainment if they are accepted as a guest and reported if required by other law to be reported**

The Gray Areas

Good Deed or Pecuniary Benefit

- Raffles, Door Prizes, and Auctions
 - Gift Cards Donated for Fundraising Purposes
 - Secondary Recipients/Beneficiaries

Solicitations by Public Officials

- Charitable Fundraisers
- Community Events
- Employee Parties

Local Government Code 176

Conflicts of Interest

- Employment or business relationship between a vendor and local government officer or family member that results in taxable income (not interest income) that exceeds \$2500 in 12-month period
- Gift(s) given by vendor to local government officer or family member with aggregate value greater than \$100 in 12-month period
- Vendor has family relationship with local government officer

What Is A Local Governmental Entity?

- County
- Municipality
- School District
- Charter School
- Junior College District
- Chapter 49 Water District
- Other political subdivision of the state
- Local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality.

What Is A Gift?



- 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

Who Must Report Conflicts of Interest

Vendors

A person who enters or seeks to enter into a contract with a local governmental entity; includes agent; includes officer/employee of state agency acting in private capacity to enter contract; does not include state agencies other than TX Correctional Industries

Local Government Officers

- Member of governing body of local government entity
- Director, superintendent, administrator, president, other person designated as executive officer of local government entity
- Agent – including an employee - of local government entity who exercise discretion in planning, recommending, selecting, or contracting of vendor



What You Can Do, Without Triggering Reporting Requirements

- Give a non-cash, non-negotiable instrument gift to a local government officer worth less than \$50, as long as you don't exceed \$100 in gifts in a 12-month period
- Take a local government officer out for unlimited meals (food and beverage as a guest)



What You Can Do, But Must Report

- ✓ Give/accept non-cash gifts worth less than \$50 if the aggregate value exceeds \$100 in a 12-month period preceding contract/date contract is sought
- ✓ Provide/accept entertainment, lodging, transportation as a guest and food not associated with a meal (wine basket, cookie bouquet) that exceeds \$100 in the 12-month period
- ✓ Enter a contract to provide services to a city if a member of your family is a local government officer there
- ✓ Vote to award a contract to a vendor from whom you receive over \$2500 in taxable income
- ✓ Participate in the selection process for a contract that is awarded to a vendor that employs one of your family members

Content and Form of Reports

Vendor – Form CIQ

- Name of Vendor
- Name of local government officer
- Description of employment, business, family relationships with local government officer or family member of local government officer
- Describe employment/business relationship vendor has with entity that local government officer has interest in/serves as director of
- Indicate if vendor has given local government officer or a family member one or more gifts with aggregate value of \$100 or more in preceding 12 months
 - Food as a guest and political contributions need not be reported



Local Government Officer – Form CIS

- Name of local government officer
- Office held
- Name of vendor
- Description of employment/business relationship with vendor
- Description of family relationship with vendor
- Date and description of gifts given by vendor to local government officer or family member that exceed \$100 in 12-month period
- Affidavit under penalty of perjury

As a Guest or Illegal Gift?

Penal Code exception re transportation, lodging, meals & entertainment as a guest

Giving Tickets to a Spurs Game v. Taking Someone to a Spurs Game:

-  Giving tickets violates prohibition on gifts over \$50 (Penal Code)
-  Taking someone is permitted but reportable (Local Government Code 176)

Reportable v. Non-Reportable Guest Activities

- Taking someone to a meal (food as a guest) is exempt from the reporting requirements – no \$100 threshold
- Entertainment (sporting events, concerts, golf), lodging, and transportation are reportable and should be tracked

The Gray Areas

- Law does not address/specifically exempt charitable/community fundraisers
- Determining value of entertainment
- Separating food and beverage from entertainment

Examples

- Vendor sponsors charity golf tournament and invites public official to participate
- Vendor sponsors chamber dinner and concert and invites public official to attend
- Vendor gives tickets to United Way fundraising event to public official

While We're on the Subject

Political Giving and Fundraisers

- Not subject to Penal Code prohibition on gifts
- Not reportable under Chapter 176
- Gifts/donations to be raffled/auctioned/given away at political fundraisers are political contributions and should be:
 - Personal or PAC – no corporate dollars or employee reimbursement
 - Reported appropriately

Examples

- Governmental entity employee Christmas party
 - Requests vendor to contribute door prizes to be given away at the party
 - Vendor calls and asks how to report it given that he doesn't know who will win the prize.
 - ???
- ISD reporting instructions to vendors who invited LGOs to a particular function:
 - Gifts to NISD LGOs may need to be disclosed with the Texas Ethics Commission. Gifts are any good or service a District LGO would have otherwise paid for, excluding food.
 - LGOs accepting gifts totaling \$100 or more during a 12-month period, starting Jan. 1, 2017, from the same vendor must disclose each gift. LGOs should also disclose a single gift that totals \$100 or more.
 - The valuation for this activity is \$18.
 - ???

Interested Parties Disclosure

HB 1295

- Stated Intent: Show the public who benefits from contracts that are funded with public dollars; government transparency
- Result: Over 28,000 forms have been filed with the Texas Ethics Commission since January 2016

- **Contract:** between a governmental entity/state agency and business entity on date signed/date governmental entity is bound
 - Amended, extended, renewed contracts included
- **Interested Party:** a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or an intermediary
- **Intermediary:** actively participates in facilitation/negotiation of contract (broker, adviser, attorney, agent, representative)
 - Receives compensation
 - Communicates directly
 - Is not an employee

Controlling Interest

Controlling interest“ means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. Subsection (3) of this section does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

Value

Is based on the amount of consideration received or to be received by the business entity from the governmental entity or state agency under the contract

Odds And Ends

- TBPE Enforcement-
 - Failure to practice in a professional, respectful; careful and diligent manner (signing/sealing plans with errors, lack of timeliness)
 - Expired license
 - Falsifying PDH compliance

Questions
Comments
Suggestions