

Legal Q&A

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Q: What is Chapter 176 of the Local Government Code?

A: Chapter 176 is a relatively new ethics law that was enacted by H.B. 914 in 2005. It requires certain local government officials to disclose employment and business relationships with vendors who conduct business with local government entities. After the law was implemented, city officials and others realized that the law created several unintended consequences. Consequently, the bill's author sought an opinion from the Texas attorney general to clarify many provisions of Chapter 176. In response, the attorney general's office released Opinion Number GA-0446, which concluded that the legislative changes to the law were necessary. In response, the legislature passed H.B. 1491 during the 2007 regular legislative session. The bill became effective on May 25, 2007.

Q: What local government entities are subject to this law?

A: The requirements of the bill apply to most political subdivisions, including a city. TEX. LOCAL GOV'T CODE §176.001(3). The bill also applies to a local government corporation, board, commission, district, or authority whose members are appointed by a mayor or the city council. *Id.*

Q: What local government officers are subject to this law?

A: A city councilmember, director, superintendent, administrator, president, or any other person who is designated as the executive officer of the local government entity is considered a local government officer ("officer"). *Id.* §176.001(4). A city may also extend the requirements of the statute to an employee of the city who has the authority to approve contracts on behalf of the city. *Id.* §175.005(a).

Q: When is an officer required to file a "conflicts disclosure statement"?

A: An officer is required to file a conflicts disclosure statement ("statement") if a vendor enters into a contract with the city or if the city is considering entering into a contract with the vendor, and the officer or officer's family member has an employment or other business relationship with the vendor that results in the officer or officer's family member receiving taxable income that is more than \$2,500 in the preceding twelve months. *Id.* §176.003(a)(2)(A). An officer who receives investment income, regardless of amount, is not required to file a disclosure statement. *Id.* Investment income includes dividends, capital gains, or interest income gained from a personal or business checking or savings account or other similar account, a personal or business investment, or a personal or business loan. *Id.* §176.001(2-b).

An officer is also required to file a statement if the officer or officer's family member accepts one or more gifts from a vendor that has an aggregate value of more than \$250 in the preceding twelve months. *Id.* §176.003(a)(2)(B). An officer is not required to file a statement in relation to a gift, regardless of amount, that is accepted by an officer or officer's family member if the gift is given by a family member of the person accepting the gift, is a political contribution, or is food, lodging, transportation, or entertainment accepted as a guest. *Id.* §176.003 (a-1).

(Note: An officer is required to file a statement no later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of facts that require a filing of the statement. *Id.* §176.003(b).)

Q: How does Chapter 176 define a “vendor”?

A: A vendor is any person who enters or seeks to enter into a contract with a city. *Id.* §176.002(a). The term also includes an agent of a vendor. *Id.*

Q: How does Chapter 176 define a “family member”?

A: A family member is defined as a person related to another person within the first degree of consanguinity (blood) or affinity (marriage). *Id.* §176.001(2). An officer's family member would include the officer's spouse, father, mother, son, daughter, father-in-law, mother-in-law, son-in-law, daughter in law, or step child. *Id.*

Q: To what types of contracts does the law apply?

A: The law applies to any written contract for the sale or purchase of real property, goods, or services. *Id.* §176.001(1-d). A contract for services would include one for skilled or unskilled labor, as well as for professional services. *Id.* §176.001(6).

Q: When is a vendor required to file a “conflicts of interest questionnaire”?

A: A vendor is required to file a conflict of interest questionnaire (“questionnaire”) if the vendor has a business relationship with the city and has: (1) an employment or other business relationship with an officer or an officer's family member that results in the officer receiving taxable income that is more than \$2,500 in the preceding twelve months; or (2) has given an officer or an officer's family member one or more gifts totaling more than \$250 in the preceding twelve months. *Id.* §176.006(a).

A vendor is required to file a questionnaire not later than the seventh business day after the latter of the following: (1) the date the vendor begins discussions or negotiations to enter into a contract with the city or submits an application or response to a bid proposal; or (2) the date the vendor becomes aware of a relationship or gives a gift to an officer or officer's family member. *Id.* §176.006(a-1).

Q: With whom should the statements and/or disclosures be filed?

A: The statements and disclosures must be filed with the records administrator of the city. *Id.* §176.003(b). A records administrator includes a city secretary, a person responsible for maintaining city records, or a person who is designated by the city to maintain the statements and disclosures filed under this bill. *Id.* §176.001(5).

A city that maintains a Web site is required to post statements and disclosures that are required to be filed under the bill. *Id.* §176.009(a). However, a city that does not have a Web site is not required to create or maintain one. *Id.*

(Note: A city does not have a duty to ensure that a vendor that is required to file a questionnaire does so. *Id.* §176.008.)

Q: What happens if a statement is not filed?

A: An officer or vendor who knowingly fails to file a statement or a disclosure when required to do so commits a Class C misdemeanor. *Id.* §§176.003(c); 176.006(f). A Class C misdemeanor is punishable by a fine of up to \$500. It is an exception to prosecution if an officer/vendor files a statement/questionnaire not later than the seventh day after the date the person receives notice from the city of the alleged violation. *Id.* §§176.003(d); 176.006(g).

(Note: The validity of a contract between a city and a vendor is not affected solely because an officer or vendor fails to file a statement or disclosure. *Id.* §176.008(i).)

Q: Where can an officer or vendor obtain the necessary forms?

A: The Texas Ethics Commission is charged with creating statements and disclosure forms and has adopted new forms that conform to the new bill. The forms can be found at www.ethics.state.tx.us or by contacting the TML Legal Department at 512-231-7400 or legal@tml.org.