

Legal Q&A

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

A: Chapter 176 is an ethics law. Originally enacted by H.B. 914 in 2005, Chapter 176 requires local government officers to disclose certain relationships with vendors who conduct business with local government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. The attorney general's office released Opinion Number GA-0446, which concluded that legislative changes to the law were necessary. In response, the legislature passed H.B. 1491 during the 2007 regular legislative session. More recent amendments were made to Chapter 176 with the passage of H.B. 23 in the 2015 regular legislative session.

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

A: The requirements of Chapter 176 apply to most political subdivisions, including a city. TEX. LOCAL GOV'T CODE § 176.001(3). The chapter 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 "local government officer" (officer) under Chapter 176 includes: (1) a mayor or city councilmember; (2) a director, superintendent, administrator, president, or any other person who is designated as the executive officer of the local government entity; and (3) an agent (including an employee) of the local government entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Id.* §§ 176.001(1), 176.001(4).

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

A: An officer is required to file a "conflicts disclosure statement" (statement) in at least three situations.

1. An officer must file a statement if the officer or officer's family member has an employment or other business relationship with a vendor that results in the officer or officer's family member receiving taxable income of more than \$2,500 in the preceding twelve months. *Id.* § 176.003(a)(2)(A). An officer who only 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-d).

2. An officer is 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 \$100 in the preceding twelve months. *Id.* § 176.003(a)(2)(B) (a "gift" includes transportation, lodging, and entertainment, even as a guest). An officer is not required to file a statement in relation to a gift, regardless of amount, if the gift: (1) is a political contribution; (2) is food accepted as a guest; or (3) is offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. *Id.* §§ 176.001(2-b), 176.003(a-1).
3. An officer is required to file a statement if the officer has a family relationship with the vendor. *Id.* § 176.003(a)(2)(C).

There is at least one exception to the three situations set out above. A local government officer does not have to file a statement if the vendor is an administrative agency supervising the performance of an interlocal agreement. *Id.* § 176.003(a-2).

(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 the filing of a statement. *Id.* § 176.003(b).)

Q: How does Chapter 176 define a "vendor," and what does it mean to have a "family relationship" with a vendor?

A: A vendor is any person who enters or *seeks to enter into* a contract with a city. *Id.* § 176.001(7). The term includes: (1) an agent of a vendor; (2) an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract; and (3) Texas Correctional Industries (but no other state agency). *Id.*

An officer has a family relationship with a vendor if they are related within the third degree by consanguinity (blood) or second degree by affinity (marriage). *Id.* § 176.001(2-a). An officer's family relationships within the third degree by blood include the officer's: mother, father, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, great-grandfather, great-grandmother, aunt, uncle, nephew, niece, great-grandson and great-granddaughter. An officer's family relationships within the second degree by marriage include the officer's: spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepchild, sister-in-law (brother's spouse or spouse's sister), brother-in-law (sister's spouse or spouse's brother), spouse's grandmother, spouse's grandfather, spouse's granddaughter, and spouse's grandson.

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

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

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 (personal property), or services. *Id.* § 176.001(1-d), (2-c). 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 “conflicts of interest questionnaire” (questionnaire) if the vendor has a business relationship with the city and: (1) has an employment or other business relationship with an officer or an officer’s family member that results in the receipt by the officer or family member of taxable income of more than \$2,500 in the preceding twelve months; (2) has given an officer or an officer’s family member one or more gifts totaling more than \$100 in the preceding twelve months; or (3) has a family relationship with an officer. *Id.* § 176.006(a).

(Note: A vendor is required to file a questionnaire not later than the seventh business day after the later 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 employment or business relationship with an officer of officer’s family members, gives a gift to an officer or officer’s family member, or becomes aware of a family relationship with an officer. *Id.* § 176.006(a-1).)

Q: With whom should the statements and questionnaires be filed?

A: The statements and questionnaires must be filed with the records administrator of the city. *Id.* §§ 176.003(b), 176.006(a-1). 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 the chapter. *Id.* §176.001(5).

A city that maintains a website is required to post on that website statements and questionnaires that are required to be filed under the chapter. *Id.* § 176.009. However, a city that does not have a website is not required to create or maintain one. *Id.*

(Note: A records administrator must also maintain a list of local government officers and make it available to the public and any vendors that may be required to file a questionnaire. *Id.* § 176.0065(1).)

Q: What happens if a statement is not filed?

A: An officer or vendor who knowingly fails to file a statement or a questionnaire when required to do so commits either a Class A, B, or C misdemeanor, depending on the amount of the contract. *Id.* § 176.013. A Class C misdemeanor is punishable by a fine of up to \$500. A Class B misdemeanor is punishable by a fine up to \$2,000, confinement in jail for a term not to exceed 180 days, or both. A Class A Misdemeanor is punishable by a fine up to \$4,000, confinement in jail for a term not to exceed one year, or both. It is an exception to an offense if the officer or vendor file the statement or questionnaire not later than the seventh business day after receiving notice from the city of the alleged violation. *Id.* § 176.013(f)-(g).

In addition to possible criminal punishment, a city may reprimand, suspend, or terminate an employee who knowingly fails to comply with the requirements of Chapter 176. *Id.* § 176.013(d). And the city council may declare a contract void if the council determines the vendor failed to file a questionnaire. *Id.* § 176.013(e).

(Note: The validity of a contract between a city and a vendor is not affected solely because a vendor fails to file a questionnaire. *Id.* § 176.006(i).)

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

A: The Texas Ethics Commission is charged with creating statements and questionnaire forms. *Id.* §§ 176.003(e), 176.006(b). The forms can be found at www.ethics.state.tx.us or by contacting the TML Legal Department at 512-231-7400 or legalinfo@tml.org.