RESTRICTION ON PUBLIC SERVANTS — PENAL CODE

"Public servant," for purposes of the following Penal Code provisions, includes a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, even if the person has not yet qualified for office or assumed his or her duties. *Penal Code 1.07(a)(41)(A), (E)*

BRIBERY

1. A public servant shall not intentionally or knowingly offer, confer, agree to confer on another, solicit, accept, or agree to accept a benefit:

   a. As consideration for the public servant's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.

   b. As consideration for a violation of a duty imposed on the public servant by law.

   c. That is a political contribution as defined by Title 15 of the Election Code or an expenditure made and reported as a lobbying expense in accordance with Government Code, Chapter 305, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

   "Benefit" means 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.

   Penal Code 36.01(3), 36.02

ILLEGAL GIFTS

2. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the public servant knows is interested in or likely to become interested in any such transactions of the District. *Penal Code 36.08(d)*

   A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(i)*

EXCEPTIONS

"Illegal Gifts to Public Servants" does not apply to:

a. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a public servant;

b. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

c. A benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(1) The benefit and the source of any benefit in excess of $50 is reported in the statement; and

(2) The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

d. A political contribution as defined by Title 15, Election Code;

e. An item with a value of less than $50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;

f. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or

g. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

Penal Code 36.10

HONORARIA AND EXPENSES

3. A public servant commits a Class A misdemeanor offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties. However, a public servant is not prohibited from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to

the extent those services are more than merely perfunctory. *Penal Code 36.07*

ABUSE OF PUBLIC EMPLOYMENT

4. A public servant shall not, with intent to obtain a benefit or with intent to harm or defraud another, intentionally or knowingly violate a law relating to the public servant's office or employment, or misuse District property, services, personnel, or any other thing of value, that has come into his or her custody or possession by virtue of his or her office or employment. *Penal Code 39.02(a)*

   "Law relating to the public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

   "Misuse" means to deal with property contrary to:

   a. An agreement under which the public servant holds the property;

   b. A contract of employment or oath of office of a public servant;

   c. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or

   d. A limited purpose for which the property is delivered or received.

   Penal Code 39.01(2)

INSTRUCTIONAL MATERIALS VIOLATIONS — COMMISSIONS

An administrator or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated. *Education Code 31.152(a)*

INSTRUCTIONAL MATERIALS VIOLATIONS — CONFLICT

An administrator or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person's school;

2. Might reasonably tend to influence the person in the selection of instructional materials or technological equipment; and

3. Could not be lawfully purchased with state instructional material funds.

"Gift, favor, or service" does not include staff development, in-service, or teacher training; or ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

Education Code 31.152(b)–(d)

INSTRUCTIONAL MATERIALS VIOLATIONS — PURCHASE AND DISTRIBUTION

A person commits a Class C misdemeanor offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools. *Education Code 31.153*

HOLDING CIVIL OFFICE

No person shall hold or exercise at the same time more than one civil office of emolument, except for offices listed in the constitutional provision, unless otherwise specifically provided. *Tex. Const., Art. XVI, Sec. 40(a); State v. Pirtle, 887 S.W.2d 291 (Tex. Ct. Crim. App. 1994); Atty. Gen. Op. DM-212 (1993)*

Individuals who receive all or part of their compensation either directly or indirectly from funds of the state of Texas and who are not state officers shall not be barred from serving as members of the governing bodies of school districts (other than those in which they are employed), cities, towns, or other local governmental districts. Such individuals may not receive a salary for serving as members of such governing bodies. *Tex. Const., Art. XVI, Sec. 40(b); Atty. Gen. Op. DM-55 (1991)*

CONFLICT DISCLOSURE STATEMENT

The District may extend the requirements of Local Government Code 176.003 and 176.004 [see BBFA] to any employee of the District who has the authority to approve contracts on behalf of the District, including a person designated as the representative of the District for purposes of Local Government Code Chapter 271. The District shall identify each employee made subject to Sections 176.003 and 176.004 and shall provide a list of the identified employees on request to any person. The District may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with such requirements.

An employee commits a Class C misdemeanor if the employee knowingly violates the requirements. It is an exception to the application of the above penalty, however, that the employee filed the disclosure statement not later than the seventh business day after the person received notice from the District of the alleged violation.

Local Gov't Code 176.005

DEFINITION OF "CONTRACT"

"Contract" means a written agreement for the sale or purchase of real property, goods, or services. *Local Gov't Code 176.001(1-d)*

PERSONAL SERVICES PERFORMED BY SUPERINTENDENT

The Superintendent may not receive any financial benefit for personal services performed by the Superintendent for any business entity that conducts or solicits business with the District. Any financial benefit received by the Superintendent for performing personal services for any other entity, including a school district, open-enrollment charter school, regional education service center, or public or private institution of higher education, must be approved by the Board on a case-by-case basis in an open meeting. The receipt of reimbursement for a reasonable expense is not considered a financial benefit. *Education Code 11.201(e)*

Note: See also CBB for requirements when federal funds are involved.