SUBSTANTIAL INTEREST AFFIDAVIT AND ABSTENTION

If a local public official or a person related to a local public official in the first degree by either affinity or consanguinity has a substantial interest in a business entity or in real property, the local public official, before a vote or decision on any matter involving the business entity or the real property, shall file an affidavit with an official Board recordkeeper stating the nature and extent of the interest and shall abstain from further participation in the matter if:

1. In the case of a substantial interest in a business entity, the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

2. In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

Local Gov't Code 171.004

CONTRACTS PERMITTED

The Board may contract with a business entity in which a Trustee has a substantial interest if the Trustee follows the disclosure and abstention procedure set out above. *Atty. Gen. Op. JM-424 (1986)*

DEFINITIONS

SUBSTANTIAL INTEREST

A person has a substantial interest in a business entity if any of the following is the case:

1. The person owns at least:

   a. Ten percent of the voting stock or shares of the business entity, or

   b. Either ten percent or $15,000 of the fair market value of the business entity.

2. Funds received by the person from the business entity exceed ten percent of the person's gross income for the previous year.

A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more.

The local public official is considered to have a substantial interest if a person related in the first degree by either affinity or consanguinity to the local public official, as determined under Government Code Chapter 573, Subchapter B [see DBE], has a substantial interest as defined above.

Local Gov't Code 171.002

LOCAL PUBLIC OFFICIAL

"Local public official" shall mean a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), central appraisal district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature. *Local Gov't Code 171.001(1)*

BUSINESS ENTITY

"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. *Local Gov't Code 171.001(2)*

MAJORITY CONFLICT

If a Trustee is required to file and does file an affidavit, that Trustee shall not be required to abstain from further participation in the matter or matters requiring such an affidavit if a majority of the trustees are likewise required to file and do file affidavits of similar interests on the same official action. *Local Gov't Code 171.004*

SEPARATE VOTE ON BUDGET

The Board shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a Trustee has a substantial interest. The affected Trustee shall not participate in that separate vote, but may vote on a final budget if he or she filed the affidavit and the matter in which he or she is concerned has been resolved. *Local Gov't Code 171.005*

VIOLATIONS

Except as provided above, the local public official shall not knowingly:

1. Participate in a vote or decision on a matter involving a business entity or real property in which the local public official has a substantial interest if it is reasonably foreseeable that an action on the matter will have a special economic effect on the business entity or value of the property that is distinguishable from the effect on the public.

2. Act as surety for a business entity that has a contract, work, or business with the District.

3. Act as surety on any official bond required of an officer of the District.

Local Gov't Code 171.003

If a Trustee has a substantial interest in a bank with which the District is considering entering into a loan or other transaction besides a depository contract, then the Trustee must comply with the affidavit and abstention requirements. *Atty. Gen. Op. JM-1082 (1989); Local Gov't Code 171.004*

VOIDABLE ACTIONS

The finding by a court of a violation of Local Government Code Chapter 171 does not render an action of the Board voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed without the vote of the person who violated the chapter. *Local Gov't Code 171.006*

CONFLICTS DISCLOSURE STATEMENT

A local government officer shall file the required conflicts disclosure statement, as adopted by the Texas Ethics Commission, with respect to an applicable vendor if the vendor enters into a contract with the District or the District is considering entering into a contract with the vendor; and the vendor:

1. 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 a contract has been executed or the District is considering entering into a contract with the person; or

2. 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 $250 in the 12-month period preceding the date the officer becomes aware that such a contract has been executed or the District is considering entering into a contract with the vendor.

A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

1. Given by a family member of the person accepting the gift;

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

3. Food, lodging, transportation, or entertainment accepted as a guest.

A local government officer shall file the conflicts disclosure statement with the records administrator of the District not later than 5:00 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

VIOLATIONS

A local government officer commits a Class C misdemeanor if the officer knowingly violates this law. It is an exception to the application of the penalty that the local government officer filed the required conflicts disclosure statement not later than the seventh

business day after receiving notice from the District of the alleged violation.

Local Gov't Code 176.003–.004

DEFINITIONS

LOCAL GOVERNMENT OFFICER

"Local government officer" means a member of the governing body of the District; a director, Superintendent, administrator, President, or other person designated as the executive officer of the District; an 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 Chapter 271, and with respect to whom the District has, in accordance with Local Government Code 176.005, extended the requirements of Local Government Code 176.003 and 176.004. *Local Gov't Code 176.001(4)*

FAMILY MEMBER

"Family member" shall mean a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code, except that the term does not include a person who is considered to be related to another person by affinity only as described by Government Code 573.024(b). *Local Gov't Code 176.001(2)*

RECORDS ADMINISTRATOR

"Records administrator" means the director, Superintendent, or other person responsible for maintaining the records of the District or another person designated by the District to maintain statements and questionnaires filed under Local Government Code 176 and perform related functions. *Local Gov't Code 176.001(5)* [See CPC]

INVESTMENT INCOME

"Investment income" means dividends, capital gains, or interest income generated from:

1. A personal or business:
   a. Checking or savings account,
   b. Share draft or share account, or
   c. Other similar account;
2. A personal or business investment; or
3. A personal or business loan.

Local Gov't Code 176.001(2-b)

INTERNET POSTING REQUIREMENT

A district that maintains an Internet Web site shall provide access on the District's Internet Web site to the conflicts disclosure statements and questionnaires required to be filed with the records administrator. *Local Gov't Code 176.009*

AFFIDAVIT DISCLOSING INTEREST IN PROPERTY

If a public servant has a legal or equitable interest in any property that is to be acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant shall file an affidavit as follows:

1. The affidavit shall be filed with the county clerk(s) of the county or counties in which the property is located and of the county in which the public servant resides within ten days before the date on which the property is to be acquired by purchase or condemnation.

2. The affidavit must:

   a. State the name of the public servant and the public office title or job designation held or sought.

   b. Fully describe the property.

   c. Fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest and the date the interest was acquired.

   d. Include a verification of the truth of the information in the affidavit. [See BBFA(EXHIBIT)]

   e. Include an acknowledgment of the same type required for recording a deed in the deed records of a county.

Gov't Code 553.002, 553.003

VIOLATIONS

A public servant who fails to file the affidavit when required is presumed to have the intent to commit an offense. An offense under this section is a Class A misdemeanor. *Gov't Code 553.003*

DEFINITION OF PUBLIC SERVANT—GOVERNMENT CODE

"Public servant" shall mean a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as:

1. A candidate for nomination or election to public office, or

2. An officer of government.

Gov't Code 553.001

ANNUAL FINANCIAL MANAGEMENT REPORT

The District's annual financial management report shall include summary reports of reimbursement received by each Board member, reports of certain gifts from school vendors, and reports of Board member business transactions with the District. [See CFA]
Education Code 39.083; 19 TAC 109.1005

TRUSTEE FINANCIAL STATEMENT

The Board by resolution adopted by majority vote may require each member of the Board to file the financial statement required

of state officers under Subchapter B, Chapter 572, Government Code, with the Board and the Texas Ethics Commission.

Not later than the 15th day after the date the Board adopts this resolution, the Board shall deliver a certified copy of the resolution to the Texas Ethics Commission. A resolution applies beginning on January 1 of the second year following the year in which the resolution is adopted. A member of a board that has adopted a resolution is not required to include, in a financial disclosure statement, financial activity occurring before January 1 of the year following the year in which the resolution is adopted.

The Commissioner by order shall require the members of the Board to file the financial statement required of state officers under Subchapter B, Chapter 572, Government Code, in the same manner as the members of a board that have adopted a resolution if the Commissioner determines that:

1. A Board member has failed to comply with filing and recusal requirements applicable to the member under Chapter 171, Local Government Code;

2. District financial accounting practices are not adequate to safeguard state and District funds; or

3. The District has not met a standard set by the Commissioner in the financial accountability rating system.

The Commissioner may require the filing of financial statements covering not more than three fiscal years and beginning on January 1 of the second year following the date of the Commissioner's order. A member of a board subject to an order issued by the Commissioner is not required to include, in a financial disclosure statement, financial activity occurring before January 1 of the year following the year in which the order is issued. The Commissioner may renew the requirement if the Commissioner determines that a condition described above continues to exist.

VIOLATIONS

A Trustee serving in a school district that has adopted a resolution or that is subject to an order issued by the Commissioner commits an offense if the Trustee fails to file the statement required by the resolution or order. An offense under this section is a Class B misdemeanor.

Education Code 11.064

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