

**Penal Code Offenses  
Targeting Public  
Servants**

“Public servant” means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed his or her duties:

1. An officer, employee, or agent of government; or
2. A candidate for nomination or election to public office.

*Penal Code 1.07(a)(41)*

Bribery

A person commits an offense if the person intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

1. Any benefit as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant;
2. Any benefit as consideration for the recipient’s decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;
3. Any benefit as consideration for a violation of a duty imposed by law on a public servant;
4. Any benefit that is a political contribution as defined by Election Code Title 15 or that is an expenditure made and reported 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.

*Penal Code 36.02(a)*

“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)*

Illegal Gifts

A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if the public servant 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. *Penal Code 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under Penal Code 36.08 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*

Penal Code 36.08 does not apply to:

1. 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 the public servant gives legitimate consideration in a capacity other than as a public servant;
2. 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;
3. A benefit to a public servant required to file a statement under Government Code Chapter 572 or a report under Election Code Title 15 that is derived from a function in honor or appreciation of the recipient if:
  - a. The benefit and the source of any benefit in excess of \$50 is reported in the statement; and
  - b. 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;
4. A political contribution as defined by Election Code Title 15;
5. An item with a value of less than \$50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;
6. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;
7. 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;
8. Complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered to a public servant who is a first responder; and through a program or clinic that is operated by a local bar association or the State Bar of Texas and approved

by the head of the agency employing the public servant, if the public servant is employed by an agency; or

9. 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 36.07(b), .10(a)–(b)*

Honoraria and  
Expenses

A public servant commits an 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. This restriction does not prohibit a public servant from accepting transportation and lodging expenses 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, or from accepting meals in connection with such an event. *Penal Code 36.07(a)–(b)*

Abuse of Office

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, the public servant intentionally or knowingly violates a law relating to the public servant's office or misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment. *Penal Code 39.02(a)*

"Law relating to a public servant's office" 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:

1. An agreement under which the public servant holds the property;
2. An oath of office of a public servant;
3. 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
4. A limited purpose for which the property is delivered or received.

*Penal Code 39.01(2)*

Misuse of Official  
Information

A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office and that has not been made public, the person:

1. Acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
2. Speculates or aids another to speculate on the basis of the information; or
3. As a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, the public servant discloses or uses information for a nongovernmental purpose that the public servant has access to by means of his office or employment and has not been made public.

"Information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Government Code Chapter 552.

*Penal Code 39.06(a)–(b), (d)*

Official Oppression

A public servant acting under color of his office or employment commits an offense if the public servant:

1. Intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;
2. Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or
3. Intentionally subjects another to sexual harassment.

For purposes of this section, a public servant acts under color of the public servant's office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

*Penal Code 39.03(a)–(c)*

### **Nepotism**

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The individual is related to the public official within the third degree by consanguinity or within the second degree by affinity; or
2. The public official holds the appointment or confirmation authority as a member of a local board and the individual is related to another member of the board within the third degree by consanguinity or within the second degree by affinity.

Gov't Code 573.002, .041; Atty. Gen. Op. JC-184 (2000) [See DBE]

The nepotism law governs the hiring of an individual, whether the individual is hired as an employee or an independent contractor.  
*Atty. Gen. Op. DM-76 (1992)*

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible.  
*Gov't Code 573.083*

A board member who has delegated to a college president final authority for personnel selection remains subject to the nepotism provisions.  
*Atty. Gen. Op. GA-415 (2006)*

### Definitions

#### *"Public Official"*

"Public official" means:

1. An officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state; or
2. An officer or member of a board of this state or of a district, county, municipality, college district, or other political subdivision of this state.

*Gov't Code 573.001(3)*

#### *"Consanguinity"*

Two individuals are related to each other by consanguinity if:

1. One is a descendant of the other; or
2. They share a common ancestor.

An adopted child is considered to be a child of the adoptive parent for this purpose.

*Gov't Code 573.022*

*“Affinity”*

Two individuals are related to each other by affinity if:

1. They are married to each other; or
2. The spouse of one of the individuals is related by consanguinity to the other individual.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

*Gov’t Code 573.024(a)–(b)*

**Former Board  
Member Employment**

A public junior college may not employ or contract with an individual who was a member of the board of trustees of the junior college before the first anniversary of the date the individual ceased to be a member of the board of trustees. *Education Code 130.089*

**Incompatibility of  
Office**

One person may not occupy two legally incompatible offices. Offices are legally incompatible when the faithful and independent exercise of one would necessarily interfere with the faithful and independent exercise of the other. A person may not serve in one branch of government while exercising any powers properly attached to either of the other branches of government. *Tex. Const. Art. II, Sec. 1; Turner v. Trinity Indep. Sch. Dist., 700 S.W.2d 1 (Tex. App.–Houston (14th Dist.) 1983); Atty. Gen. Op. GA-786 (2010)*

**Restrictions on  
Public Servants—  
Federal Law**

Bribery—General

The term “public official” means a person acting for or on behalf of the United States, or any department, agency, or branch thereof, in any official function, under or by authority of any such department, agency, or branch of government.

The term “person who has been selected to be a public official” means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed.

*18 U.S.C. 201(a)(1)–(2); Dixon v. U.S., 465 U.S. 482, 499 (1984) (holding that employees of a private organization that administered federal housing grants for city were “public officials” because they had some degree of official responsibility for carrying out a federal program or policy); U.S. v. Franco, 632 F.3d 880 (5th Cir. 2011)*

A public official or person selected to be a public official commits an offense if the public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

1. Being influenced in the performance of any official act;

2. Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
3. Being induced to do or omit to do any act in violation of the official duty of such official or person.

*18 U.S.C. 201(b)(2)*

Bribery—Federal  
Programs

The term “agent” means a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative.

The term “government agency” means a subdivision of the executive, legislative, judicial, or other branch of government, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established, and subject to control, by a government or governments for the execution of a governmental or intergovernmental program.

If an organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of federal assistance, an agent of an organization, or of a state or local government, commits an offense if the agent:

1. Embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that:
  - a. Is valued at \$5,000 or more, and
  - b. Is owned by, or is under the care, custody, or control of the organization, government, or agency; or
2. Corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of the district involving anything of value of \$5,000 or more.

This provision does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

*18 U.S.C. 666*