

**Prohibited Activities
by Public Servants—
State Law**

“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)(A), (E)

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, any benefit:

1. As consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant or voter;
2. As consideration for a violation of a duty imposed by law on a public servant; or
3. That is a political contribution as defined by Election Code Title 15 or an expenditure made and reported in accordance with Government Code Chapter 305 (regarding registration of lobbyists), 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), .02

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 the public servant’s discretion. *Penal Code 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under the provision above 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(d), (i)*

Exceptions

Illegal Gifts 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; or
7. 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

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 person's official position or duties. This provision does not prohibit a public servant 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 Official
Capacity

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, intentionally or knowingly violates a law relating to the office or employment, 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 by virtue of the person's office or employment.
Penal Code 39.02(a)

"Law relating to a 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:

1. An agreement under which the public servant holds the property;
2. A contract of employment or 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)

Official Oppression

A public servant acting under color of the public servant's office or employment commits an offense if the public servant intentionally subjects another to sexual harassment.

A public servant acts under color of the public servant's office or employment if the person 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)(3), (b), (c)

**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 or employment 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:

1. The person has access to by means of the person's office or employment; and
2. 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 (the Public Information Act).

Penal Code 39.06(a), (b), (d)

Nepotism

Except as provided by law, 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 (blood) or within the second degree by affinity (marriage); 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 a prohibited degree.

Gov't Code 573.002, .041 [See DBE]

"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, school district, or other political subdivision of this state.

Gov't Code 573.001(3)

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

*Counties with
Population
35,000 or More*

If, under the district's employment policy [see DC], the board delegates to a superintendent the final authority to select district personnel:

1. The superintendent is a public official for the purposes of the nepotism prohibitions of Government Code Chapter 573 only with respect to a decision made under that delegation of authority; and
2. Each member of the board remains subject to the nepotism prohibitions with respect to all district employees.

For purposes of this provision, a person hired by a district before September 1, 2007, is considered to have been in continuous employment [see DBE] and is not prohibited from continuing employment with the district subject to the abstention requirements.

Education Code 11.1513(f), (h)

*Counties with
Population Less
Than 35,000*

The provisions at Counties with Population 35,000 or More do not apply to a district that is located:

1. Wholly in a county with a population of less than 35,000; or
2. In more than one county, if the county in which the largest portion of district territory is located has a population of less than 35,000.

Education Code 11.1513(g)

A member of a board that has delegated to the superintendent final authority for personnel selection is not a public official with appointment authority for purposes of the nepotism prohibitions of Government Code 573.041. *Atty. Gen. Op. GA-123 (2003)*

With respect to renewed contracts, however, board members may be the relevant public officials for nepotism purposes. *Atty. Gen. Op. GA-177 (2004)*

**Former Board
Member Employment**

A trustee of a district may not accept employment with the district until the first anniversary of the date the trustee's membership on the board ends. *Education Code 11.063*

**Incompatibility of
Office**

The common law rule of incompatibility prohibits one person from holding two offices if the duties are in conflict or if one is subordinate to the other. Offices are legally incompatible when the faithful and independent exercise of one would necessarily interfere with the faithful and independent exercise of the other. *Thomas v. Abernathy County Line Indep. Sch. Dist.*, 290 S.W. 152 (Tex. Comm. App. 1927); *Turner v. Trinity Indep. Sch. Dist.*, 700 S.W.2d 1 (Tex. Ct. App. 1983); *Atty. Gen. Op. JM-634 (1987), MW-450 (1982)*

**Instructional
Materials Violations**

Rebates

A trustee commits an offense if the trustee receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the trustee is associated.

Gifts

A trustee commits an offense if the trustee accepts a gift, favor, or service that:

1. Is given to the person or the person's school;
2. Might reasonably tend to influence a trustee in the selection of instructional material or technological equipment; and
3. Could not be lawfully purchased with state instructional materials 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

Free Materials

A person commits an 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*

**Prohibited Activities
by Public Servants—
Federal Law**

Bribery—General

"Public official" includes 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 includes 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); Dixson v. U.S.*, 465 U.S. 482, 499 (1984) ("*To be a public official under section 201(a), an individual*

must possess 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 commits an offense if the 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

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

“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 a district 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 the district 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 district; 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