

**Restrictions on  
Public Servants —  
Penal Code**

“Public servant” shall mean 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)*

Prohibited activities include, but are not limited to, the following:

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), .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 1.07(41)(A), (E), 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 he or she 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 his or her 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 he or she 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 Office

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 office or misuse District property, services, personnel, or any other thing of value, belonging to the District, that has come into his or her custody by virtue of his or her office or employment. *Penal Code 39.02(a)*

“Law relating to the 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:

- 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)*

**Nepotism**

5. Except as provided by law, a public official may not appoint a person to a position that is to be directly or indirectly compensated from public funds or fees of office if:
- a. The person is related to the public official by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree; or
  - b. The public official holds the appointment or confirmation authority as a member of a local board and the person is related to another member of the board by blood or marriage within a prohibited degree.

*Govt Code 573.002, .041; Atty. Gen. Op. JC-184 (2000) [See DBE]*

Definition of Public  
Official

“Public official” shall mean:

- a. An officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state; or
- b. 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.

*Govt 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. *Govt Code 573.083*

*Counties with  
Population  
35,000 or More*

In a district located wholly in, or whose largest part is located in, a county with a population of 35,000 or more, if, under the District’s employment policy [see DC], the Board delegates to the Superintendent the final authority to select District personnel:

- a. The Superintendent is a public official for the purposes of the nepotism prohibitions only with respect to a decision made under that delegation of authority; and
- b. 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 the 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*

In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000:

- a. A member of a board that has delegated to the Superintendent final authority for personnel selection is not subject to the nepotism provisions to the extent of such delegation. *Atty. Gen. Op. GA-123 (2003)*

- b. Nevertheless, a Board member may remain the relevant public official for nepotism purposes concerning some employment decisions, such as renewal. *Atty. Gen. Op. GA-177 (2004)*
- Former Board Member Employment** 6. A Board member of the District may not accept employment with the District until the first anniversary of the date the Board member's membership on the Board ends. *Education Code 11.063*
- Incompatibility of Office** 7. 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. *Texas Constitution, Art. II, Sec. 1; State v. Martin, 51 S.W.2d 815 (Tex. Civ. App. 1932); 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)*
- Depository Conflict** 8. A Board member who is a stockholder, officer, director, or employee of a bank that has bid or submitted a proposal to become a depository for the District shall not vote on the awarding of a depository contract to said bank. *Education Code 45.204(b)*
- Instructional Materials Violations—Commissions** 9. A Board member commits a class B misdemeanor offense if the Board member receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the Board member is associated. *Education Code 31.152(a)*
- Instructional Materials Violations—Conflict** 10. A Board member commits a class B misdemeanor offense if the Board member accepts a gift, favor, or service that:
- a. Is given to the Board member or the Board member's school;
  - b. Might reasonably tend to influence the Board member in the selection of instructional materials or technological equipment; and
  - c. 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(b)–(d)*

**Instructional  
Materials  
Violations—  
Purchase and  
Distribution**

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

**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 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); 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 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

The term “agent” means a person authorized to act on behalf of another person or a government. In the case of a government, the term 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 the 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 any thing 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*