

**Restrictions Upon
“Public Servants”—
Penal Code**

“Public servant” means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties: an officer, employee, or agent of government; an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; an attorney at law or notary public when participating in the performance of a governmental function; or a person who is performing a governmental function under a claim of right although he is not legally qualified to do so. [See also BBFA and DH] *Penal Code 1.07(a)(41)*

Bribery

A person commits an offense if he 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 (lobbying expense), 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 he 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.

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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(d), (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 he 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, lodging, and meals described by Penal Code 36.07(b) [see HONORARIA AND EXPENSES, below];
8. 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; or
9. Complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning

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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. "First responder" includes a peace officer whose duties include responding rapidly to an emergency and other individuals listed at Penal Code 36.10(e).

Penal Code 36.10(a)–(b), (e)

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. Penal Code 36.07 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 Public
Employment

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly violates a law relating to the public servant's 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 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 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

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

Penal Code 39.01(2)

**Conflict Disclosure
Statement**

"Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.

Local Gov't Code 176.001(1)

"Local government officer" means an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Local Gov't Code 176.001(4)*

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

Local Government Code Chapter 176 [see BBFA] applies to a person who is a local government officer of a local governmental entity. A person is not subject to the disclosure requirements in Chapter 176 if the person is an employee or agent of a political subdivision of a state acting in the employee's or agent's official capacity.

A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under Chapter 176.

A local governmental officer commits an offense under Chapter 176 if the officer is required to file a conflicts disclosure statement under Local Government Code 176.003 and knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator 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.

It is an exception to the application of Local Government Code 176.013(a) that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the person received notice from the local governmental entity of the violation.

Local Gov't Code 176.003(a)-(a-1), .013(a), (d), (f)

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 Texas Constitution Article XVI, Section 40(a), unless otherwise specifically provided. *Tex. Const. Art. XVI, Sec. 40(a); State v. Pirtle, 887 S.W.2d 921 (Tex. Ct. Crim. App. 1994); Atty. Gen. Op. DM-212 (1993)*

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State employees or 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, cities, towns, or other local governmental districts, including college districts (other than those in which they are employed). Such state employees or other individuals may not receive a salary for serving as members of such governing bodies, except that a faculty member or retired faculty member of a public institution of higher education may receive compensation for serving as a member of a governing body of a water district created under Texas Constitution Article XVI, Section 59 Texas Constitution Article III, Section 52. *Tex. Const. Art. XVI, Sec. 40(b); Atty. Gen. Op. JM-118 (1983), JM-203 (1984)*

Intellectual Property

It is not a violation of Government Code Chapter 572 or any other statute, rule, regulation, or the common law of the State of Texas for:

1. An employee of an institution of higher education, including a college district, who conceives, creates, discovers, invents, or develops intellectual property, to own or be awarded any amount of equity interest or participation in, or, if approved by the institutional governing board, to serve as a member of the board of directors or other governing board or as an officer or an employee of, a business entity that has an agreement with the state or a political subdivision of the state relating to the research, development, licensing, or exploitation of that intellectual property; or
2. An individual, at the request and on behalf of a university system or an institution of higher education, to serve as a member of the board of directors or other governing board of a business entity that has an agreement with the state or a political subdivision of the state relating to the research, development, licensing, or exploitation of intellectual property in which the university system or institution of higher education has an ownership interest.

The employee or individual must report to the appropriate person or persons at the institution at which the person is employed or on behalf of which the person is serving the name of such business entity in which the person has an interest or for which the person serves as a director, officer, or employee. The governing board of each institution shall include in the appropriate annual report required by Education Code 51.005 the information provided to it under this section during the preceding fiscal year.

Education Code 51.912 [See CT]

- Educational Lending** In the case of an institution, including a college district, that participates in a loan program under U.S.C. Title 20, the institution will:
1. Develop a code with respect to such loans with which the institution's officers, employees, and agents shall comply, that:
 - a. Prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of the institution with respect to such loans; and
 - b. At a minimum, includes the provisions described in 20 U.S.C. 1094(e);
 2. Publish the code of conduct prominently on the institution's website; and
 3. Administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.

20 U.S.C. 1094(a)(25)

An institution of higher education's code of conduct shall include the following requirements:

1. Ban on revenue-sharing arrangements: The institution shall not enter into any revenue-sharing arrangement, as defined by 20 U.S.C. 1094(e)(1)(B), with any lender.
2. Gift ban: No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift, as defined by 20 U.S.C. 1094(e)(2)(B), from a lender, guarantor, or servicer of education loans.
3. Contracting arrangements prohibited: Except as provided by 20 U.S.C. 1094(e)(3)(B), an officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or an agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

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4. Interaction with borrowers: The institution shall not for any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency.
5. Prohibition on offers of funds for private loans: The institution shall not request or accept from any lender any offer of funds to be used for private education loans, as defined in 15 U.S.C. 1650, including funds for an opportunity pool loan, as defined by 20 U.S.C. 1094(e)(5)(B), to students in exchange for the institution providing concessions or promises regarding providing the lender with specified number of loans made, insured, or guaranteed under 20 U.S.C. Chapter 28, Subchapter IV and 42 U.S.C. Chapter 34, Subchapter I, Part C; a specified loan volume of such loans; or a preferred lender arrangement for such loans.
6. Ban on staffing assistance: Except as provided by 20 U.S.C. 1094(e)(6)(B), the institution shall not request or accept from any lender any assistance with call center staffing or financial aid office staffing.
7. Advisory board compensation: Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.

20 U.S.C. 1094(e)