

Dual Office Holding, Incompatibility, and Conflicts of Interest

Bill Longley

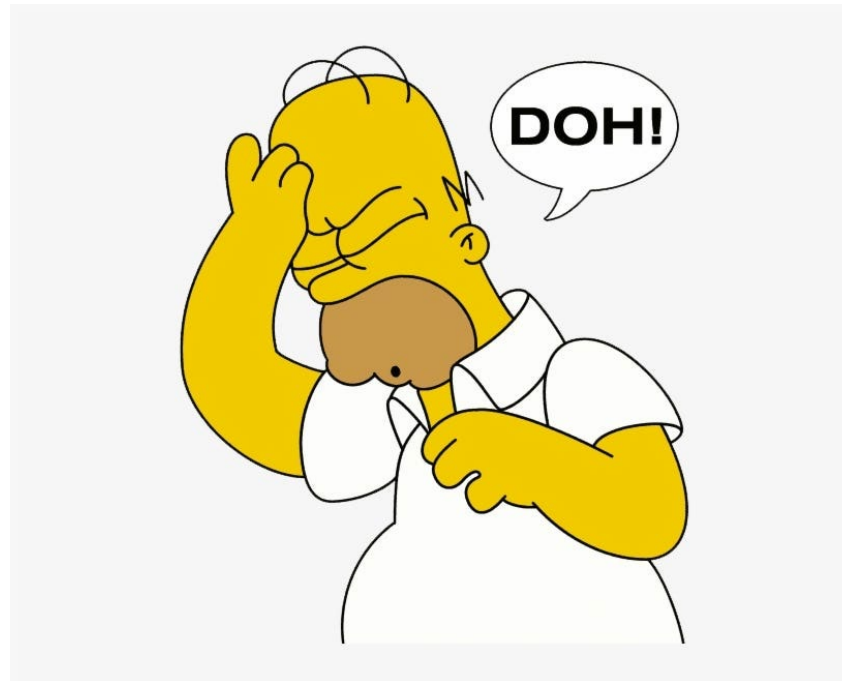
Election Law Seminar for Cities,
Schools, and Other Political
Subdivisions

November 30, 2023



Dual Office Holding

Dual
Office
Holding



Dual Office Holding

Texas Constitution Art. XVI, Section 40

- “No person shall hold or exercise at the same time, more than once civil office of emolument...”
- What is “civil office of emolument”?
 - A paid public office
 - Pay or anything of value in exchange for service
 - Does not include reimbursement for actual expenses

Distinction Between “Public Office” and “Public Employment”

Public Office is determined by:

1. The officeholder’s authority to exercise governmental power for the benefit of the public, AND
2. Officeholder’s independence from the control of other governmental bodies or officials

Aldine Independent School District v. Standley, 280 S.W.2d 578 (Tex. 1955)

Exceptions to Dual Office Holding

- Justice of the Peace
- County Commissioner
- Notary Public
- Officers and directors of soil and water conservation districts

Treatment of State Employees

- State employees may serve on local governing bodies, BUT may not receive compensation for serving
- Same is true for school district employees, except that school teachers, retired school teachers, and retired school administrators may receive compensation for service on local governing body

Incompatibility

- ▶ Prohibition against a person holding certain public offices at the same time because of a practical conflicts of interest that might arise.
- ▶ Three types of Incompatibility
 - Self Appointment
 - Self Employment
 - Conflicting Loyalties

Incompatibility

Incompatibility: Self Appointment

Prevents a governing body from appointing one of its own members to a public office.

Ehlinger v. Clark, 8 S.W.2d 666 (Tex. 1928)

Incompatibility: Self Employment

A member of a governing body may not simultaneously serve as an employee of his/her entity.

Tex. Att'y Gen. LO-97-34



Incompatibility

Incompatibility: Conflicting Loyalties

Prevents a person from holding two public offices when the interest of the two entities may conflict and when voting on behalf of one public entity would possibly compromise the interest of the other public entity.

Thomas v. Abernathy County Line Indep. Sch. Dist., 290 S.W. 152 (Tex. Comm'n App. 1927, judgment adopted)



Consequences for Violating the Dual Office Holding or Incompatibility

There are no criminal penalties for holding two conflicting public offices or for other types of prohibited dual office holding. Such a violation would have to be challenged through a civil action in a district court.

Qualification for an acceptance of a second office generally operates as an automatic resignation from the first office.

Conflict of Interest

Part 1

Local Government Code
Chapter 171



What is Conflict of Interest in Local Government Code Chapter 171?

Prohibits *local public officials* from participating in a matter in which the local public official has a ***substantial interest*** in a business entity or real property

and

the action on the matter will have a special economic effect on the business entity or on the value of the property that is distinguishable from the effect on the public.

Who is Considered a Local Public Official?

Local Gov. Code § 171.001(1)

Local Public Officials include:

- Elected Officials, and
- Appointed Officials,

Whether paid or unpaid, who exercise responsibilities that are more than advisory in nature.

Two Types of Conflict of Interest

1. Substantial Interest in a Business Entity
 - Owns 10 percent or more of the voting stock or shares of the business entity;
 - Owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
 - Receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year
2. Substantial Interest in Real Property
 - Equitable or legal ownership interest with a fair market value of \$2,500 or more

What does a Local Public Official do if They Have a Conflict of Interest?

Local Gov. Code § 171.004(a) & (b)

1. File an Affidavit stating the nature and extent of the official's interest with the governmental body's record keeper;
2. Abstain from discussion or other proceedings regarding the item; and
3. Abstain from voting on the item.

Consequences for Violating Conflict of Interest Law

Local Gov. Code § 171.003

- 1. Civil**
- 2. Criminal**
- 3. Possible Removal from Office**

Conflict of Interest Part 2

**Local Government Code
Chapter 176**



What is Conflict of Interest in in Local Government Code Chapter 176?

Requires a vendor or a local government officer of a local governmental entity to disclose certain business relationships.

Forms of Disclosure

- For local government officer – Conflicts Disclosure Statement
- For vendor – Conflicts Questionnaire

Conflict of Interest: Local Gov. Code Chapter 176

When is the “Conflict Disclosure Statement” Required to be Filed?

Local Gov. Code § 176.003(b)

No later than 5:00 p.m. on the seventh business day after the date in which the officer becomes aware of facts that require a filing of the statement.



Conflict of Interest: Local Gov. Code Chapter 176

Consequences of Not Filing “Conflict Disclosure Statement”?

Local Gov. Code § 176.013

- ▶ An officer commits an offense if:
 - ▶ Required to file a statement; AND
 - ▶ Knowingly fails to file the statement when the officer becomes aware of the facts that requires the filing of the statement.
- ▶ **Exception to prosecution** if officer files a statement or questionnaire not later than the seventh day after the date the person receives notice from the local governmental entity of the alleged violation.
- ▶ Local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply.

Questions?

- Cities can contact TML:
 - (512) 231-7400
 - legalinfo@tml.org
- Secretary of State's Elections Division
- [Dual Office Holding and Incompatibility Made Easy](#)