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Trinity Valley Community College
107501

ETHICS:
CONFLICT OF INTEREST

BBFA
(LEGAL)

DEFINITIONS

For purposes of this policy, the following definitions shall apply:

LOCAL PUBLIC
OFFICIAL - LOCAL
GOVERNMENT CODE

1. "Local public official" shall mean a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature. *Local Gov't Code 171.001(1)*

PUBLIC SERVANT -
PENAL CODE

2. "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:
 - a. An officer, employee, or agent of government; or
 - b. A candidate for nomination or election to public office.

Penal Code 1.07(41)(A),(E)

PUBLIC SERVANT -
GOVERNMENT CODE

3. "Public servant" shall mean a person who is elected, appointed, employed, or designated, even if not yet qualified for or having assumed the duties of office, as:
 - a. A candidate for nomination or election to public office, or
 - b. An officer of government.

Gov't Code 553.001

**PUBLIC OFFICIAL -
GOVERNMENT CODE**

4. "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.

Gov't Code 573.001(3) _____

Note: When reading the following cited material, please note the source of the materials and apply the appropriate definition, from above.

CONTRACT PERMITTED

The Board may contract with a business entity in which a Trustee has a substantial interest if the Trustee follows the disclosure and abstention procedure set out below. *Atty. Gen. Op. JM-424 (1986)*

**AFFIDAVIT AND
ABSTENTION**

If a local public official, or a person related to a local public official in the first degree by either affinity or consanguinity, has a substantial interest in a business entity or in real property, the local public official, before a vote or decision on any matter involving the business entity or the real property, shall file an affidavit with the official Board recordkeeper stating the nature and extent of the interest and shall abstain from further participation in the matter if:

1. In the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
2. In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

MAJORITY CONFLICT

If a Trustee is required to file and does file an affidavit, that Trustee shall not be required to abstain from further participation in the matter or matters requiring such an affidavit if a majority of the Trustees are likewise required to file and do file affidavits of similar interests on the same official action.

Local Gov't Code 171.004

**SEPARATE VOTE ON
BUDGET**

The Board shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a Trustee has a substantial interest. The affected Trustee shall not participate in that separate vote, but may vote on a final budget if he filed the affidavit and the matter in which he is concerned has been resolved. *Local Gov't Code 171.005*

PROHIBITED ACTS

Except as provided above, the local public official shall not knowingly:

1. Participate in a vote or decision on a matter involving a business entity or real property in which the local public official has a substantial interest if it is reasonably foreseeable that an action on the matter will have a special economic effect on the business entity or value of the property that is distinguishable from the effect on the public.
2. Act as surety for a business entity that has a contract, work, or business with the College District.
3. Act as surety on any official bond required of an officer of the College District.

Local Gov't Code 171.003

VIOLATIONS

The finding by a court of a violation of Local Government Code Chapter 171 does not render an action of the Board voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed without the vote of the person who violated the chapter. *Local Gov't Code 171.006*

DEFINITIONS

BUSINESS ENTITY

"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law. *Local Gov't Code 171.001(2)*

SUBSTANTIAL INTEREST

A person has a substantial interest in a business entity if any of the following is the case:

1. The person owns at least:
 - a. Ten percent of the voting stock or shares of the business entity, or
 - b. Either ten percent or \$15,000 of the fair market value of the business entity.
2. Funds received by the person from the business entity exceed ten percent of the person's gross income for the previous year.

A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

The local public official is considered to have a substantial interest if a person related in the first degree by either affinity or consanguinity to the local public official, as determined under Government Code Chapter 573, Subchapter B [see DBE], has a substantial interest, as defined above.

Local Gov't Code 171.002

OTHER CONFLICT

Proscribed activities are covered by, but are not limited to, the following:

BRIBERY

1. A public servant shall not intentionally or knowingly offer, confer, agree to confer, solicit, accept, or agree to accept a benefit:
 - a. As consideration for the public servant's decision, opinion, recommendation, vote, or other exercise of official 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

"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), Subd. 3; 36.02

ABUSE OF OFFICE

2. 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 College District property, services, personnel, or any other thing of value, belonging to the College District, that has come into his 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)

BANK RELATIONS

3. A Trustee who is a stockholder, officer, director, or employee of a bank that has bid to become a depository for the College District shall not vote on the awarding of a depository contract to said bank. *Education Code 45.204*

If a Trustee has a substantial interest in a bank with which the College District is considering entering into a loan or other transaction besides a depository contract, then the Trustee must comply with the affidavit and abstention requirements. *Atty. Gen. Op. JM-1082 (1989); Local Gov't Code 171.004*

INCOMPATIBILITY OF OFFICE

4. 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 ISD, 290 S.W. 15 (Tex. Comm. App. 1927); Turner v. Trinity ISD, 700 S.W.2d 1 (Tex. Ct. App., 1983); Atty. Gen. Op. JM-634 (1987)*

GIFTS

5. 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 College District, unless a statutory exception applies. *Penal Code 36.08(d), 36.10*

NEPOTISM

6. Except as provided by this policy, 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 [see below]; 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. *Gov't Code 573.002, 573.041; Atty. Gen. Op. JC-0184 (2000)*

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 Trustee 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)*

A Trustee may remain the relevant public official for nepotism purposes concerning some employment decisions, such as

renewal. *Atty. Gen. Op. GA-177 (2004)*

FORMER TRUSTEE
EMPLOYMENT

7. A Trustee of a College District may not accept employment with that College District until the first anniversary of the date the Trustee's membership on the Board ends. *Education Code 11.063*

HONORARIA AND
EXPENSES

8. 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*

DISCLOSURE OF
INTEREST IN PROPERTY

If a public servant has a legal or equitable interest in any real or personal property that is to be acquired with public funds, and has actual notice of the acquisition or intended acquisition of the property, the public servant shall file an affidavit as follows:

1. The affidavit shall be filed with the county clerk(s) of the county or counties in which the property is located and of the county in which the public servant resides within ten days before the date on which the property is to be acquired by purchase or condemnation.
2. The affidavit must:
 - a. State the name of the public servant and the public office title or job designation held or sought.
 - b. Fully describe the property.
 - c. Fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest and the date the interest was acquired.
 - d. Include a verification of the truth of the information in the affidavit. [See BBFA(EXHIBIT)]
 - e. Include an acknowledgment of the same type required for recording a deed in the deed records of a county.

Gov't Code 553.002, 553.003

A public servant who fails to file the affidavit when required is presumed to have the intent to commit an offense. An offense under this section is a Class A misdemeanor. *Gov't Code 553.003*

Note: See also CAB for requirements when federal funds are involved.

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