

Newly Elected Officials Workshop 2012

Ethical Issues and Traps for the Unwary



ROSS FISCHER
DENTON, NAVARRO, ROCHA & BERNAL, P.C.
AUSTIN, TEXAS

Who is covered?



- “Local public official”
 - Member of a governing body, or
 - Another elected or appointed officer
 - Paid or unpaid
 - **Who exercises responsibilities beyond those that are advisory in nature**

Substantial Interest in a Business



- **A person has a substantial interest in a business if he or she:**
 - Owns 10% or more of the voting stock or shares in the business; or
 - Owns either 10% or more than \$15,000 of the Fair Market Value of the business; or
 - Received more than 10% of the person's gross income for the previous year from the business.

Substantial Interest



- 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.
- A local public official is considered to have a substantial interest in a business or real property if a person related within the 1st degree of blood or marriage has such a substantial interest.

Ethical Obligation



- If a local public official has a conflict of interest under Chapter 171, he or she must:
 - **File** – before a vote or decision on any matter involving the business entity or the real property – an affidavit stating the nature and extent of the interest and shall **abstain from further participation** if:
 - ✦ The action would have a special economic benefit on the business that is distinguishable from the effect on the public; or
 - ✦ It is reasonably foreseeable that the action will have a special economic benefit on the value of the property, distinguishable from its effect on the public.

Penalty



- It is a Class A Misdemeanor to:
- Fail to disclose & abstain
- Act as a surety for a business that contract with the governmental entity
- Act as surety on any official bond required of an officer of the governmental entity
- What is the one scenario when it is okay to vote?

Effect on Vote



- A finding *by a court* of a violation of Chapter 171 does not render an action voidable unless the vote of the conflicted officer was necessary to pass the measure.
- A separate vote shall be taken on budget items where a conflict of interest exists. An officer may vote on the final budget if he or she abstained from the separate vote AND the matter has been resolved.

Service on Non-Profit



- It is permissible for an official to serve as a member of a non-profit board of directors if the official receives no compensation from the non-profit corporation.
- Be sure to check your local charter or ordinance for local regulations on non-profit board service.

Ch. 176 – Disclosure of Relationships



- **Who is covered?**

- Member of governing body and relatives within 1st degree of blood or marriage
- Person designated as executive officer of local governmental entity
- Any employee to whom these rules have been extended by local rules

“Business Relationship” = connection between 2 or more parties based on commercial activity of one of the parties.

Chapter 176



- **Local Official must file Conflicts Disclosure if:**
 - Vendor contracts or seeks to contract with local entity; and
 - Official or family member has employment/business relationship with vendor that has resulted in:
 - ✦ More than \$2,500 in taxable income in preceding 12 months, or
 - ✦ Gifts with aggregate value Of \$250 in preceding 12 months
 - Does not apply to:
 - ✦ Investment Income
 - ✦ Inter-family gifts
 - ✦ Political contributions
 - ✦ Food, lodging, transportation, entertainment *accepted as a guest*

Chapter 176



- **Local Officer must file Conflict Disclosure with local records administrator by 5 p.m. of the 7th business day after becoming aware of facts that warrant disclosure.**
- **Knowing failure to file Conflict Disclosure form is a Class C Misdemeanor.**
- **Corresponding filing obligation for vendors – Conflict of Interests Questionnaire (CIQ)**

Chapter 176



- **Local records administrator must maintain a list of local officers, and make list available to any vendor required to file a conflict questionnaire.**
- **Conflict of Interest Statement (CIS) and Conflict of Interest Questionnaire (CIQ) forms are public documents, and must be retained by records administrator and made available to the public.**

Nepotism

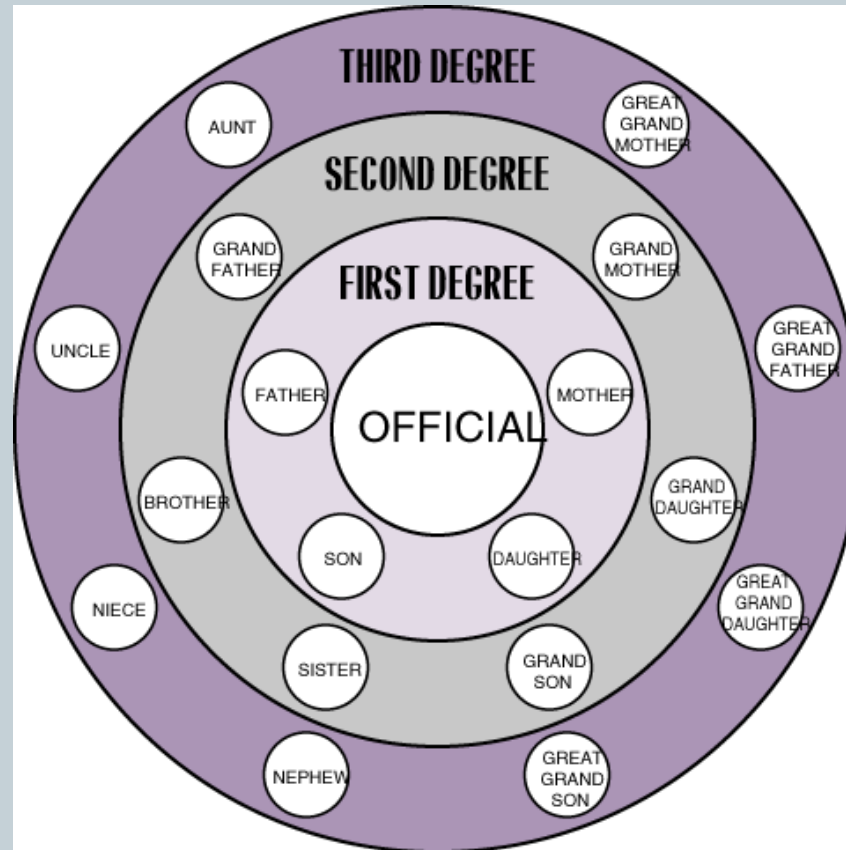


Nepotism

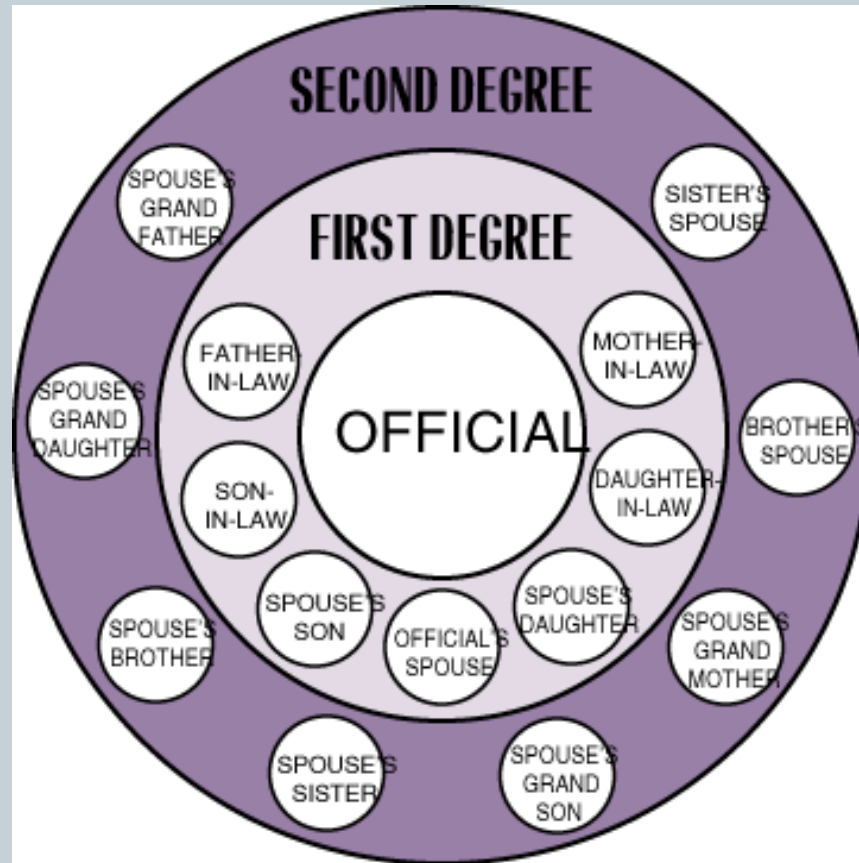


- Chapter 573, Government Code
- Applies to relationships within:
 - 3rd degree of consanguinity (blood)
 - 2nd degree of affinity (marriage)

3rd Degree of Consanguinity



2nd Degree of Affinity



Nepotism Prohibition



- **Public official can't appoint, confirm, or vote to appoint or confirm if an individual:**
 - Will be paid, directly or indirectly, from public funds; and
 - Is related to the public official within the prohibited degrees;
or
 - Is related to another member of the appointing body within the prohibited degrees.
 - Express prohibition on “trading” appointments

Nepotism



Pseudo-Exceptions

- **Tiny Town**
 - Prohibition doesn't apply in a city with less than 200 residents.
- **Continuous Employment**
 - State & local prohibitions don't apply to an employee who was employed immediately before election/appointment, and that prior employment was for at least:
 - ✦ 30 days, if new official is appointed
 - ✦ 6 months, if new official is elected at election other than general state & county officer elections (each May, odd-numbered November)
 - ✦ 1 year, if new official is elected at general election for state & county officers

Nepotism



- If relative is continuously employed prior to public official taking office:
 - Official cannot participate in subsequent matters - reappointment, status change, compensation, or dismissal – dealing with the related employee (if the action deals with the individual employee, and not a class of employees).
 - A public official cannot authorize payment with public funds of an employee known to be ineligible by reason of nepotism

Nepotism



- Removal of ineligible employee may be by constitutional removal provisions, by *quo warranto*, or automatically upon criminal nepotism conviction.
- Criminal offenses:
 - Voting to appoint in violation of nepotism statute
 - Subsequent vote on continuously serving employee
 - Knowingly paying ineligible employee with public funds

 - Misdemeanor: Fine between \$100 and \$1,000

Summary



- **Conflicts of Interest (Chapter 171)**
- **Disclosure of Business Relationships (Chapter 176)**
- **Nepotism (Government Code 573)**

Remember – Check your local Charters and Ordinances for stricter provisions!

The End



Questions?

Scenarios?

Ross Fischer, Denton, Navarro, Rocha & Bernal, P.C.

ross.fischer@rampage-aus.com

2500 W. William Cannon Drive, Suite 609, Austin, TX 78745, (512) 279-6431