

A dark, narrow hallway with a door at the end and three hanging pendant lights. The hallway is dimly lit, with light coming from the door and the lights. The walls are dark and textured. The floor is a light-colored carpet.

CITY HALL OF HORRORS: DAILY ETHICAL DILEMMAS

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Fun Facts!!

- The fear of Friday the 13th is called FRIGGATRISKAIDEKAPHOBIA
 - “FRIGG” = Norse goddess for whom Friday is named
 - “TRISKADEKAI” = Latin for 13
 - “PHOBIA” = fear
- In Brazil, Friday the 13th in August is considered unluckier than any other Friday the 13th, especially as agosto (August) rhymes with desgosto (sorrow).
- The longest period that can occur without a Friday the 13th is fourteen months.

**FRIDAY THE 13TH
IS STILL BETTER THAN
MONDAY THE WHATEVER.**

First Things First...Who is the Client?

A LAWYER:

- employed or retained by an organization represents the entity
- shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization
- representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:
 - an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization
 - the violation is likely to result in substantial injury to the organization
 - the violation is related to a matter within the scope of the lawyers representation of the organization





What Happens When the Lawyer Knows About a Violation?

Except where prior disclosure to persons outside the organization is required by law or other Rules, a lawyer shall first attempt to resolve a violation by taking measures within the organization. Such procedures, actions and measures may include, but are not limited to, the following:

- asking reconsideration of the matter
- advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization
- referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law

In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.

You're Hired

A City Councilmember's sister has applied to be the HR Director

The City has a City Administrator who handles hiring

The City Administrator wants to hire the Councilmember's sister for the HR Director role

Nepotism Statute



Sec. 573.041. PROHIBITION APPLICABLE TO PUBLIC OFFICIAL. A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:



(1) the individual is related to the public official within a degree described by Section 573.002; or



(2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Section 573.002.

Can the City Administrator hire the Councilmember's sister?

Yes

No

It depends.



Outcome and Solution

C is the correct answer because it depends on where the hiring authority lies

If a city has a city administrator, but has never adopted a city manager form of government, the city administrator will generally be unable to hire close relatives of city council members. In an attorney general opinion, the attorney general's office stated the "applicability of the nepotism law depends on whether an officer may exercise control over hiring decisions."

If a city administrator did have final hiring authority through a charter provision, the nepotism laws would not prevent the hiring of the councilmember's close relatives.



IT'S FRIDAY THE 13TH?



**OH NO. I HAS TO BE EVIL
TODAY...**

Gifts for Employees

- Our employees work so hard all year.
- At the end of the year, at our Christmas party, we have a drawing and give away gifts that are purchased from funds donated by local businesses we solicit contributions from.
- We also want to give them gift cards

Can These Gifts Be Accepted?

- A. No, because public officials and employees are prohibited from accepting gifts of any kind from a person subject to his/her jurisdiction, regardless of whether it is in recognition of superior service or a token of gratitude**
- B. Yes, but only if the item that has a value of less than \$50 (excluding cash or a negotiable instrument)**
- C. Yes, because it was unsolicited**
- D. Was it a door prize at Hog Wild?**

Outcomes and Solutions

- Under Section 36.02(a) of the Penal Code, a public official or public employee commits the offense of bribery when he/she accepts, agrees to accept, or solicits any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion. To prove bribery, a prosecutor must show that the benefit offered or given to an official was offered or given as consideration for an official's decision. This is a fact question that would have to be addressed on a case-by-case basis.
- A “benefit” is anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest (such as a relative or business partner). Tex. Penal Code § 36.01(3). In other words, a benefit would include anything that is offered that a reasonable person would consider having some monetary value.

Outcomes and Solutions Cont.

- Even if a benefit was offered or accepted after the exercise of official discretion, it may still be considered bribery of a public official or employee. According to section 36.02(c) of the Penal Code, the fact that a benefit was not offered or accepted until after the exercise of some official discretion is not a defense to bribery.
- Accepting, agreeing to accept, or soliciting any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of official discretion is a second degree felony, punishable by two to twenty years of imprisonment and a fine of up to \$10,000. Tex. Penal Code §§ 36.02(e), 12.33.
- The acceptance by a public official or employee of a gift offered by a person under the official or employee's jurisdiction is a Class A misdemeanor punishable by a fine of up to \$4,000 and/or jail time of up to one year. Tex. Penal Code §§ 36.08(h), 12.21.

In the family

- The Mayor's son-in law is an engineer at a local, mid-size engineering firm
- The City Council is voting on whether to hire the firm for a construction project



Can the City award the contract to Top Construction?

Yes, the City can contract with the firm but only if the Mayor abstains from voting on the contract

Yes, the City can contract with the firm if the Mayor files a disclosure statement

A and B are correct

No, the City cannot contract with the firm



Outcome and Solution

- A and B are correct, the City can hire the firm for the project
- A business is not a “individual” under the nepotism statute
- However, if the son-in-law were running a one-man operation, the City could be prohibited from hiring the business
- The Mayor does not necessarily have a conflict but the optics are not great; abstention recommended
- A disclosure statement is required under Gov’t Code Ch. 176



Nepotism only applies to paid positions

- Also note that the nepotism law only applies to paid positions
- A City Councilmember could appoint her spouse to be on an EDC board, because the EDC board is not paid (but this is still a bad idea)

Invites to Events for Appointed and Elected Officials

A vendor who does business with the City has offered a councilmember tickets in the vendor's suite for an upcoming event.



Can the Official Accept the Tickets?

- A. Yes, but only if it is for the Texas Longhorns because there won't be \$50.00 worth of entertainment that day
- B. No, this would be the acceptance of a gift that would violate the bribery statute
- C. Yes, but only if the vendor is in the presence of the official for the entirety of the event
- D. Yes, but only if the vendor has a familial, personal, business, or professional relationship that is independent of the official or employee's status or work



Outcomes and Solutions



A public official or employee may lawfully accept food, lodging, transportation, or entertainment as a guest – meaning that the recipient must be in the presence of the donor. Tex. Penal Code § 36.10(b); Tex. Ethics Comm’n Op. Nos. 261 (1995), 118 (1993)



If the public official or employee is required by state law to report such a gift, it must be done in accordance with the law for the exception to apply



Section 36.10 of the Penal Code lists some exceptions to gifts to public official or employees subject to his/her jurisdiction, including a gift given by a person with whom the official or employee has a familial, personal, business, or professional relationship that is independent of the official or employee’s status or work

Dual office holding

- A City Councilmember wants to run for a Board of Trustee position.



DOES THE CITY COUNCILMEMBER HAVE TO RESIGN IF ELECTED TO THE CITY COUNCIL?

- A. Yes, because the Texas Constitution prohibits dual office holding
- B. Yes, because the positions are incompatible
- C. Only if the two entities have interlocal agreements
- D. No



Outcome and Solution

D is technically correct

First question: are these public offices?

If no, no dual office holding problem

If yes, are they incompatible?

Individual Meetings Between Developers and Council Members



Developer is planning to apply for rezoning and possibly for additional entitlements for a project.



These items will all eventually require city council approval.



Developer is scheduling meetings with individual councilmembers to gauge their level of support for the project.



Developer is covering all of the essential elements of the project in these meetings.



Do these meetings violate any law?

Do We Have a Violation?

- A. Yes, we have a violation of the Texas Open Meetings Act
- B. No, because the Developer met with each member individually
- C. Maybe, if each meeting is a communication among a series of communications on an issue that the body will act upon
- D. No, if everyone signed a non-disclosure agreement
- E. Is it a Buc-ees? Then no. Them Beaver Nuggets are the bomb.





Outcome and Solution

A member of a governmental body commits an offense if the member:

- (1) knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and
- (2) knew at the time the member engaged in the communication that the series of communications:
 - (A) involved or would involve a quorum; and
 - (B) would constitute a deliberation once a quorum of members engaged in the series of communications.

Possible Solutions: Appoint a standing committee of less than a quorum, designated for such meetings, or just don't do it other than at a public meeting.

The Joys of Ownership

- Official is in a partnership that owns property in the vicinity of a possible development that will be coming forward for zoning amendment as well as possible economic incentives.
- Some people believe the official has a conflict of interest and must abstain while the developer does not believe the official has a conflict of interest and is thus required to participate.

What Constitutes a Conflict?



The person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity



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



If a local public official has a substantial interest in a business entity or in real property, the official shall 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 in the matter if...

What Constitutes a Conflict?

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

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

Does the Official Abstain and File an Affidavit?

- A. Yes, but only if the official owns more than 10% of the partnership
- B. Yes, but only if his interest in the property near the development is valued at more than \$15,000.00
- C. Yes, but only if the property he owns an interest in is within the notification area for the zoning case for the development
- D. No, because you can't prove it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of his property, distinguishable from its effect on the public



Outcomes and Solutions



The correct answer is I have no idea because I can't advise the official on a matter that would be a personal conflict of interest



But seriously, the answer lies within each of those possible answers because those are the factors that should be considered by the official and discussed with their personal legal counsel



Failure to abstain and file an affidavit if you should do so is a Class A misdemeanor and might make the item voidable if approved and the official cast the deciding vote



Employees Accepting Cash Gifts

- An employee of the city's public works department solicits and accepts cash "donations" each holiday season from residents and divides up the donations among the department employees as a bonus for their work throughout the year.

Is This an Acceptable Practice?

- A. No, this is a violation of the bribery statute
- B. Yes, as long as the amount of each donation is less than \$50.00
- C. No, silly, it is still a violation because the \$50.00 value excludes cash or other negotiable instruments
- D. No, just no

Outcomes and Solutions

- Stop breaking the law. Pretty much that's it.
 - The acceptance by a public official or employee of a gift offered by a person under the official or employee's jurisdiction is a Class A misdemeanor punishable by a fine of up to \$4,000 and/or jail time of up to one year. Tex. Penal Code §§ 36.08(h), 12.21
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SAVE THE DATE!!!



September 12, 2025



Schertz Civic Center

