

December 30, 2005

Privileged and Confidential
Attorney-Client Communication

Mr. Robert Damron
Cleburne Independent School District
505 N. Ridgeway
Suite 100
Cleburne, TX 76033

Re: Information related to "Conflicts Disclosure Statement" under new law (HB 914 - Texas Local Government Code Chapter 176)

Dear Mr. Damron:

The Texas Legislature, during its regular session in 2005, passed HB 914, which may require some school district board members and superintendents to file a new "conflicts disclosure statement." The filing requirements of the new law (which is located at Texas Local Government Code Chapter 176) become effective on January 1, 2006. The purpose of this letter is to provide general information to you regarding the requirements of this new law to help your board members and superintendent determine whether any of you must file the conflict disclosure statement. A copy of the disclosure statement, which was recently adopted by the Texas Ethics Commission, is attached to this letter. **Please provide a copy of this letter and the attached form to each board member for their information.**

It is important to note at the outset that this new law does not replace, but rather supplements other existing laws that regulate conflicts of interests (such as Local Government Code Chapter 171, dealing with a government official's substantial interests in a business entity) and the receipt of gifts (such as Penal Code Sections 36.08 – 36.10, which restrict the receipt of gifts to certain conditions and amounts). Although the new disclosure requirements may overlap with these existing statutes, they are not identical. As such, it is important to consider not only the new requirements discussed in this letter, but also the requirements of existing law.

Who might have to file a conflict disclosure statement?

The new disclosure requirements apply to "local government officers" of "local government entities." These terms are defined to include members of the governing body (school board) and the

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superintendent of a public school district, along with comparable officials of other local government entities. The law also authorizes, but does not require local government entities to require other employees to comply with the new disclosure requirements. However, until a school district affirmatively adopts a policy subjecting other employees to the new law, the new disclosure requirements will initially apply only to school board members and superintendents.

What conditions require the filing of the conflict disclosure statement?

A board member or superintendent may be required to file the new disclosure statement if he or she (or a spouse, child, or parent) has (1) an employment or business relationship with a vendor or potential vendor of the district ("**relationship disclosure**") or (2) received certain gifts from a vendor or potential vendor of the district ("**gift disclosure**").

The "relationship disclosure" is triggered if a board member or superintendent (or a spouse, child, or parent) has **any** employment or business relationship with a person (including an individual or company) who contracts with or is seeking to contract for the sale or purchase of property, goods, or services with the school district. Although the terms "employment relationship" and "business relationship" are not specifically defined under the new law, the statute does require that **such relationships must be disclosed if they result in the receipt of any taxable income by the board member or superintendent (or a spouse, child, or parent)**. For example, if a board member or superintendent's child is employed by and receives any income from a contractor of a school district, that board member or superintendent must disclose that relationship. Another example of a relationship that should be disclosed would include a joint consulting business between a board member or superintendent and a contractor of the district, if the board member receives **any** income from the business.

It is important to note that these new disclosure requirements may be broader than the restrictions under existing conflicts of interest law. Current law (Texas Local Government Code Chapter 171) requires an official to disclose and abstain from voting on a matter if the official (or a spouse, child, or parent) has a "substantial interest in a business entity," which is defined as, for example, having more than a 10 percent ownership interest in a company or receiving funds from a company that exceed 10 percent of the person's gross income in the previous year. Under the new law, employment or business relationships must be disclosed if the board member or superintendent (or a spouse, child or parent) receives **any** taxable income from a current or prospective contractor.

The "gift disclosure" is triggered if a board member or superintendent (or a spouse, child, or parent) has received one or more gifts from a person (including an individual or company) who contracts with or is seeking to contract for the sale or purchase of property, goods, or services with the school district, if (1) the gifts have an aggregate value of more than \$250 and (2) they have been received in a twelve-month period preceding the date the board member or superintendent becomes aware that the person has contracted with the district or that the district is considering contracting with the person.

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Although the term "gift" is not specifically defined in the new law, it is important to note that **the term does not include** food, lodging, transportation, or entertainment **accepted as a guest**. The term "guest" is also not defined in the new law. However, interpretations by the Texas Attorney General of Texas Penal Code Sections 36.08 through 36.10, which also regulate the receipt of gifts by government officials, have defined "guest" to require that the giver of the gift actually accompany the recipient to the event, meal or entertainment activity. As such, we recommend that a superintendent or board member disclose gifts in excess of \$250 (such as sports or entertainment tickets) if they were not accompanied as a guest by the giver of the gift.

With whom must the conflict disclosure statement be filed?

The attached form must be filed with the "records administrator" of the school district, which the new law defines as the superintendent "or other person responsible for maintaining the records" of the district. Your district, by local policy or practice, may designate a particular individual as the person responsible for maintaining official records of the district, or you may have several people who maintain records depending on the nature of the records. As such, the form should be filed with the person most appropriate to maintain this type of record under your local policy or practice, or with the superintendent's office if no such policy or practice has been established. The form is **not** to be filed with the Texas Ethics Commission, or any entity other than the school district.

When must the conflict disclosure statement be filed?

The form must be filed not later than 5 p.m. on the seventh business day after the board member or superintendent becomes aware of the facts that require the filing of the statement. As such, each board member or superintendent should take time to determine whether he or she (or a spouse, child or parent) has any relationship with or has received any gifts from a person as described above. If the board member or superintendent determines that the relationship or gift disclosure requirement applies, the attached form should be completed and filed with the school district within seven business days.

Other requirements for the school district

The new law also requires vendors or prospective vendors of a school district to file a "conflicts of interest questionnaire" with the school district, under certain circumstances. Although the requirements that apply to vendors are not addressed in this letter, the school district is responsible for receiving and maintaining any "conflicts of interest questionnaires" that are filed with the district. The same person designated as the "records administrator" as described above, should maintain the questionnaires filed by vendors.

The new law also requires that all disclosure forms filed with the district (whether by vendors or by the district's officers) be made available on the district's internet website, if such a website is maintained.

Finally, the district must also maintain a list of "local government officers" of the entity, as defined by the new law. For school districts, this list will consist of the names of the superintendent and school



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board members, and the list must be made available to the public or to any vendor/contractor who may also be required to file their own conflict of interest questionnaire.

We hope this letter provides you with some general guidance regarding the new conflict of interest requirements. As is the case with most new laws, we expect that many questions will arise regarding its application to particular circumstances. If your district needs any further guidance with specific issues or circumstances that may arise, please feel free to call Philip Fraissinet at (713) 221-1431 or any of the other attorneys in our Public Law Section.

As always, we greatly appreciate the opportunity to provide legal counsel to your district.

Very truly yours,


Bracewell & Giuliani LLP

Enclosure

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the back.)

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

2 Office Held

3 Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code

4 Description of the nature and extent of employment or business relationship with person named in item 3

5 List gifts if aggregate value of the gifts received from person named in item 3 exceed \$250

Date Gift Received _____ Description of Gift _____ ☐ Did Not Accept Gift

Date Gift Received _____ Description of Gift _____ ☐ Did Not Accept Gift

Date Gift Received _____ Description of Gift _____ ☐ Did Not Accept Gift

(attach additional forms as necessary)

6 AFFIDAVIT

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to a family member (as defined by Section 176.001(2), Local Government Code) of a government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(b), Local Government Code.

Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day
of _____, 20 _____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

Section 176.003 of the Local Government Code requires certain local government officers to file this form. A "local government officer" is defined as a member of a governing body of a local government entity or a director, superintendent, administrator, president, or other person designated as the executive officer of the local government entity. This form is required to be filed with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of this statement.

A local government officer commits an offense if the officer knowingly violates Section 176.003, Local Government Code. An offense under this section is a Class C misdemeanor.

Please refer to chapter 176 of the Local Government Code for detailed information regarding the requirement to file this form.

INSTRUCTIONS FOR COMPLETING THIS FORM

The following numbers correspond to the numbered boxes on the other side.

- 1. Name of Local Government Officer.** Enter the name of local government officer filing this statement.
- 2. Office Held.** Enter the name of the office held by the local government officer filing this statement.
- 3. Name of person described by Sections 176.002(a) and 176.003(a), Local Government Code.** Enter the name of the person described by Section 176.002, Local Government Code with whom the officer has an employment or other business relationship as described by Section 176.003(a), Local Government Code.
- 4. Description of the nature and extent of employment or business relationship with person named in item 3.** Describe the nature and extent of the relationship of the employment or other business relationship with the person in item 3 as described by Section 176.003(a), Local Government Code.
- 5. List gifts if aggregate value of the gifts received from person named in number 3 exceed \$250.** List gifts received during the 12-month period (described by Section 176.003(a)(2)(B), Local Government Code) by the local government officer or family member of the officer from the person named in number 3 that in the aggregate exceed \$250 in value.
- 6. Affidavit.** Signature of local government officer.