



Gifts to Community College Trustees¹

We all enjoy receiving gifts and perks, but for community college trustees, accepting gifts in relation to their public service can have serious consequences. To avoid legal and ethical missteps, trustees and employees need to know how to respond when presented with gifts in the course of their work on behalf of colleges.

All individuals serving on behalf of community colleges—including trustees, employees, and agents—are public servants for purposes of the Texas Penal Code and are subject to restrictions on accepting gifts. In some instances, the Texas Penal Code or other law will prohibit a public servant from accepting a gift; in other instances, a gift will be permitted, but must be reported on a public record.

For every gift that is offered, trustees and college employees need to ask:

Can I accept the gift?

If so, do I have to report the gift?

Accepting Gifts and Bribery

1. When is a community college board member prohibited from accepting a gift?

A *benefit*, as defined in the Texas Penal Code, is “anything reasonably regarded as pecuniary gain or advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.” Tex. Penal Code § 36.01(3).

Illegal gifts: A board member commits an offense if they solicit, accept, or agree to accept any benefit from a person the board member knows is interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the board member’s discretion. Tex. Penal Code § 36.08(d).

A violation of this provision of the Texas Penal Code is a Class A misdemeanor. Tex. Penal Code § 36.08(h).

¹ An electronic version of this document is available on [TASB College eLaw](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/gifts-to-community-college-trustees.pdf) at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/gifts-to-community-college-trustees.pdf.

Bribery: A board member commits an offense if they “intentionally or knowingly offer, confer, or agree to confer on another, or solicit, accept, or agree to accept from another any benefit as consideration” for the board members decision, opinion, recommendation, vote or other exercise of discretion. Tex. Penal Code § 36.02(a). No threshold dollar amount is set on the benefit received, therefore any benefit reasonably considered to have monetary value offered or accepted in consideration for an official act could constitute bribery.

A benefit does not constitute a bribe if it is neither offered nor accepted as consideration for an official act. Op. Tex. Ethics Comm’n No. 60 (1992). Note, a benefit or gift may still be considered bribery even if it was unsolicited and did not influence the board members decision.

A violation of this provision of the Texas Penal Code is a second degree felony. Tex. Penal Code § 36.02(e).

2. What are a board members options when receiving an unsolicited benefit or gift?

A board member may donate an unsolicited and prohibited gift to a governmental entity authorized to accept the gift or to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes. Tex. Penal Code § 36.08(i).

3. What gifts are board members permitted to accept?

A board member does not commit an offense under the Texas Penal Code if the board member accepts:

- **Required fees:** A fee prescribed by law to be received by a board member is not an improper gift when it is paid.
- **Payment for reason unrelated to college business:** A benefit to which the board member is lawfully entitled or for which they give legitimate consideration in a capacity other than as a board member is not an improper gift.
- **Gift based on independent relationship:** A gift or other benefit given because of kinship or a personal, professional, or business relationship is not an improper gift if it is independent of the board member’s official status.
- **Political Contribution:** A political contribution governed by the Texas Election Code Title 15 is not an improper gift, so long as it is not offered as a bribe.
- **Items less than \$50:** An item with a value of less than \$50, excluding cash or a negotiable instrument as described by Texas Business and Commerce Code § 3.104, is not an improper gift.

- **Use of college property:** An item issued by the college that allows the use of property or facilities owned, leased or operated by the college is not an improper gift.
- **Food, lodging, transportation, or entertainment as guest:** Food, lodging, transportation or entertainment accepted as a guest will not constitute an improper gift, so long as the donor makes any reports required by law. To meet the guest exception, an event must provide an opportunity for direct contact between the host and the recipient throughout the event.
- **Complimentary Legal Services:** Receipt of complimentary legal advice or services relating to a will, power of attorney, advance directive or other estate planning document, from an approved program or clinic operated by local bar association or the State Bar of Texas, if the board member is a first responder, is not an improper gift.

Tex. Penal Code §§ 36.07(b), .10(a)-(b); Op. Tex. Ethics Comm'n No. 69 (1992).

4. **May a board member accept honorarium?**

The Texas Attorney General has defined *honorarium* as a payment or reward in recognition of services and has stated that, "the word is commonly used to embrace both the concept of a gift and of compensation." Tex. Att'y Gen. Op. No. H-551(1975), at 4 (citations omitted).

A person commits an offense if the person solicits, accepts, or agrees to accept an honorarium in consideration for a service that would not have been requested, but for a board members official position or duties. Tex. Penal Code § 36.07.

The law does not prohibit a board member from accepting transportation and lodging expenses or meals in connection with an event at which the board member provides services that are more than merely perfunctory. Tex. Penal Code § 36.07 (a)-(b).

Reporting Gifts

1. **What is a gift?**

A *gift* is defined by the Texas Local government Code as "a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest." Tex. Local Gov't Code § 176.001 (2-b). A *gift* for purposes of the Local Government Code does not include benefits offered because of kinship or a personal, professional, or business relationship independent of the recipient's official status. Tex. Local Gov't Code § 176.001 (2-b).

2. When is a board member required to publicly disclose a gift?

A gift may be legally permitted, but a board member may still be required to publicly report the gift. A board member must file a sworn conflicts disclosure statement with respect to a vendor if: (1) the vendor enters into a contract with the board or the board is considering entering into a contract with the vendor, and (2) the vendor provides certain income or gifts to the officer or first degree relatives of the officer, or a family relationship exists between the officer and the vendor's employees or agents. Tex. Local Gov't Code § 176.003(a).

A board member is not required to file a conflicts disclosure statement in relation to a gift accepted by the board member or a family member of the board member if the gift is (1) a political contribution as defined by Election Code Title 15 or (2) Food accepted as a guest, but *not* lodging, transportation, or entertainment. If the vendor is an administrative agency, a board member is not required to file a statement. Tex. Local Gov't Code §§ 176.003 (a-1)-(a-2). A board member is also *not* required to file a conflicts disclosure statement for a benefit or gift offered because of kinship or a professional, or business relationship independent of the official status of the board member.

3. When and where must a board member file a conflicts disclosure statement?

The Texas Ethics Commission has adopted a form for the conflicts disclosure statement, called [Form CIS](#). The form should be filed with the college's record administrator by 5 p.m. on the seventh business day after the board member becomes aware of the facts that require the statement. Tex. Local Gov't Code § 176.013(a).

4. Are there penalties for failing to file a conflicts disclosure statement?

Yes. Knowingly violating the disclosure requirement is a criminal offense that varies in degree based the vendor contract amount: (1) a Class C misdemeanor for less than \$1 million or if there is not contract amount for the contract; (2) a Class B misdemeanor for at least \$1 million but less than \$5 million; or (3) a Class A misdemeanor for at least \$5 million. However, if the board member files a conflicts disclosure statement by the seventh business day after receiving notice from the college of an alleged violation, the board member does not violate Chapter 176. Tex. Local Gov't Code § 176.013(a), (f).

5. What TASB Policies apply to gifts to board members?

See TASB Policies BBFA(LEGAL) and (LOCAL), and BBFB(LEGAL).

6. Where can I get more information about this topic?

If you have questions about these or other legal issues, community college representatives may contact TASB Community College Services at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics, visit TASB College eLaw online at colleges.tasb.org/elaw.

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