



Gifts to Public School Trustees and Employees

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We all enjoy receiving gifts and perks, but for the trustees and employees of public schools, accepting gifts in relation to their public service may bear 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 public schools.

Trustees and public school employees are *public servants*. A *public servant* is “a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties: an officer, employee, or agent of government.”¹ Consequently, all individuals serving on behalf of public school districts—including trustees, employees, and agents—are *public servants* subject to restrictions on accepting gifts.²

That means trustees and employees need to think twice before accepting perks and benefits that are offered as a result of work on behalf of the school district. For example, can a trustee accept a meal from a long-time school district service provider while out of town at a regional training event? Is it proper for a business manager to join a potential vendor on a hunting trip? Can the superintendent receive an appreciation gift from the PTA upon retirement? 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 school district employees need to ask:

Can I accept the gift?

If so, do I have to report the gift?

Accepting Gifts and Bribery

What is a *Gift*?

A gift, or *benefit* as it is called in the Texas Penal Code, is 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.”³ Advisory opinions from the Texas Ethics Commission help further define *benefit*.⁴

¹ Tex. Penal Code § 1.07(a)(41)(A).

² See TASB Policies BBFA(LEGAL) and (LOCAL) (for trustees) and DBD(LEGAL) and (LOCAL) (for employees).

³ Tex. Penal Code § 36.01(3).

⁴ The Texas Ethics Commissioner administers and enforces laws related to campaign finance and personal

Items of minimal value are not benefits if they are not solicited or offered in exchange for official action. These items may include:

- Commemorative trinkets such as caps, t-shirts, mugs, flowers, key rings, and similar items of minimal value⁵
- A plaque⁶
- A magazine subscription available at no cost to the general public⁷
- A cup of coffee⁸

On the other hand, most anything with a greater dollar value will be considered a benefit, including:

- Commemorative items with an ascertainable dollar value⁹
- Recreational activities¹⁰
- Food and beverage¹¹
- Travel expenses¹²
- Event tickets¹³

A benefit is essentially anything to which a price can be assigned.¹⁴

financial statements. The Commission may also deliver advisory opinions regarding Texas Penal Code chapter 36 on bribery, gifts, and honoraria. Tex. Gov't Code § 571.061.

⁵ Op. Tex. Ethics Comm'n Nos. 61 (1992), 118 (1993).

⁶ Op. Tex. Ethics Comm'n No. 36 (1992).

⁷ Op. Tex. Ethics Comm'n No. 120 (1993).

⁸ Op. Tex. Ethics Comm'n No. 118 (1993).

⁹ See, e.g., Op. Tex. Ethics Comm'n No. 97 (1992) (engraved clock valued at \$50).

¹⁰ See, e.g., Op. Tex. Ethics Comm'n No. 4 (1992) (free family passes to recreational facilities); Op. Tex. Ethics Comm'n No. 12 (1992) (hunting trip, including lodging and food); Op. Tex. Ethics Comm'n No. 75 (1992) (use of golf and tennis facilities).

¹¹ See, e.g., Op. Tex. Ethics Comm'n No. 64 (1992) (food and beverages at a reception); Op. Tex. Ethics Comm'n No. 94 (1992) (banquet); Op. Tex. Ethics Comm'n No. 118 (1993) (food and beverage from vendor).

¹² See, e.g., Op. Tex. Ethics Comm'n No. 75 (1992) (parking); Op. Tex. Ethics Comm'n No. 80 (1992) (airline tickets); Op. Tex. Ethics Comm'n No. 94 (1992) (hotel expenses); Op. Tex. Ethics Comm'n No. 118 (1993) (ride from airport).

¹³ See, e.g., Op. Tex. Ethics Comm'n No. 69 (1992) (tickets to intercollegiate athletic events, as well as other tickets with a face value such as concerts, plays, and lectures); Op. Tex. Ethics Comm'n No. 71 (1992) (free participation in charitable golf tournament, luncheon, and post-tournament reception).

¹⁴ *Smith v. State*, 959 S.W.2d 1, 20-21 (Tex. App.—Waco 1997, pet. ref'd) (upholding university official's conviction for bribery for soliciting travel expenses for his spouse to join him on a trip to visit a potential vendor).

Bribery

A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.¹⁵ A violation of this provision is a second degree felony.¹⁶ The bribery statute prohibits offering or accepting a *benefit* in consideration for an official act. The statute does not include a threshold dollar amount; theoretically, any item with a monetary value could be offered or accepted as a potential bribe.¹⁷

A benefit does not constitute a bribe if it is neither offered nor accepted as consideration for an official act.¹⁸ Nevertheless, in its publication *Texas Ethics, Gift & Honorarium Laws Made Easy*, the Office of the Texas Attorney General points out that even an unsolicited gift that does not actually influence a public servant's official decision could still be considered a bribe. The attorney general advises declining anything with a monetary value.¹⁹

Gift to a Public Servant by a Person Subject to His Jurisdiction

Subject to the exceptions detailed below, a public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other financial transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.²⁰

In addition, a public servant with judicial or administrative authority commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.²¹

A violation of this provision is a Class A misdemeanor.²²

The Texas Penal Code includes a number of safe harbors that do not constitute impermissible gifts to public servants. These exceptions include:

¹⁵ Tex. Penal Code § 36.02(a)(1).

¹⁶ Tex. Penal Code § 36.02(e).

¹⁷ Compare Tex. Penal Code § 36.02 (prohibiting bribery with no exceptions) with Tex. Penal Code § 36.10(a)(6) (prohibiting gifts to public servants with exception for gifts valued under \$50).

¹⁸ Op. Tex. Ethics Comm'n No. 60 (1992).

¹⁹ Office of the Texas Attorney General, *Texas Ethics, Gift & Honorarium Laws Made Easy* (2012).

²⁰ Tex. Penal Code § 36.08(d).

²¹ Tex. Penal Code § 36.08(e).

²² Tex. Penal Code § 36.08(h).

- **Receipt of required fees:** A fee prescribed by law to be received by the public servant is not an improper gift when it is paid.²³

Example: a taxpayer pays delinquent taxes to the school district's tax assessor-collector.

- **Payment for reason unrelated to school business:** A benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant is not an improper gift.²⁴

Example: a school principal receives payment for hay grown on the principal's land.

- **Gift based on independent relationship:** A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship is not improper if it is based on a relationship that is independent of the public servant's role with the school district.²⁵

Example: a trustee receives the gift of a barbeque grill from his brother-in-law, even if the brother-in-law is a district vendor.

- **Political contributions:** A political contribution governed by Title 15 of the Texas Election Code is not improper, so long as it is not offered as a bribe.²⁶

Example: a parent donates \$50 to the board president's re-election campaign.

- **Items less than \$50:** An item with a value of less than \$50, excluding cash or a negotiable instrument, is not prohibited by this section.²⁷

Example: a school district vendor hands out free computer mouse pads as part of its display at the TASA/TASB Convention. However, a gift certificate, prepaid debit card, or gift card is considered *cash* and therefore cannot be covered by this exception.²⁸

- **Use of district property:** An item issued by the district that allows the use of property or facilities owned, leased, or operated by the district is not an improper gift.²⁹

Example: the district issues laptop computers to the trustees for use during their term of office.

- **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.³⁰

²³ Tex. Penal Code § 36.10(a)(1).

²⁴ Tex. Penal Code § 36.10(a)(1). Tex. Att'y Gen. Op. No. GA-87 (2003) (citing Op. Tex. Ethics Comm'n No. 416 (1999)).

²⁵ Tex. Penal Code § 36.10(a)(2). Op. Tex. Ethics Comm'n No. 90 (1992).

²⁶ Tex. Penal Code §§ 36.02(d), .10(a)(4); Tex. Elec. Code § 251.001(5).

²⁷ Tex. Penal Code § 36.10(a)(6).

²⁸ Op. Tex. Ethics Comm'n No. 541 (2017) (citing *Hardy v. State*, 102 S.W.3d 123 (Tex. 2003)).

²⁹ Tex. Penal Code § 36.10(a)(7).

³⁰ Tex. Penal Code § 36.10(b). Op. Tex. Ethics Comm'n No. 69 (1992).

Example: a law firm that represents the district invites the board members and the superintendent to dinner while the officials are attending the TASA/TASB Convention. A partner of the firm dines with the group and pays the bill.

Donation of Unsolicited Gift

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting may donate the benefit to the district or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.³¹ This exception applies only to a benefit that would be improper under Texas Penal Code section 36.08 (Gift to Public Servant), not to a benefit offered as a bribe or honorarium.

Acceptance of Honorarium

“An honorarium . . . is sometimes defined as a payment or reward, usually in recognition of services on which custom or propriety forbids any fixed business price to be set. It may be a free gift or gratuitous payment, as distinguished from hire or compensation for services Thus, the word is commonly used to embrace both the concept of gift and of compensation.”³²

A public servant commits an offense if the public servant 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 the public servant’s official position or duties. This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event. An offense under this section is a Class A misdemeanor.³³

Rebate or Gift for Textbook Selection

A trustee or school district employee commits an offense if he receives a commission or rebate on instructional materials for use in the district. In addition, a trustee or school employee commits an offense if he accepts a gift, favor, or service that is given to the school, might reasonably tend to influence the person’s selection of instructional materials, and could not be purchased with state instructional materials funds. Gift, favor, or service does not include staff development or instructional materials.³⁴

³¹ Tex. Penal Code § 36.08(i).

³² Tex. Att’y Gen. Op. No. H-551(1975), at 4 (citations omitted).

³³ Tex. Penal Code § 36.07.

³⁴ Tex. Educ. Code § 31.152. See TASB Policy EFA(LEGAL).

Officeholder Contributions

A school board member is an *officeholder* for purposes of campaign finance laws.³⁵ An *officeholder contribution* is a contribution to an officeholder that is offered with the intent that it be used to defray expenses incurred by the officeholder in performing the duties of the office that are not reimbursable with public money.³⁶ A *contribution* is a direct or indirect transfer of money, goods, services, or anything of value.³⁷

School board members serve without compensation but may be reimbursed for expenses related to their service.³⁸ As a result, there are few examples of the types of officeholder contributions that might be made to school board members. Possible examples could include:

- Accepting donated funds to generate a newsletter to constituents³⁹
- Accepting donated funds for the defense of a legal action related to the exercise of official duties⁴⁰
- Accepting the loan of a computer and printer from a private company⁴¹

Whether any particular expense would be reimbursable with public funds involves a case-by-case analysis. In expending public funds, a school district must: (1) ensure that the predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain control over the funds to ensure that the public purpose is accomplished and to protect the public's investment; and (3) ensure that the political subdivision receives a return benefit.⁴² Generally speaking, school district funds may be used to pay only expenses that are "necessary in the conduct of public schools" as determined by the board of trustees.⁴³

Officeholder contributions are not illegal, but they are political contributions subject to similar accounting and reporting laws as campaign contributions.⁴⁴ To avoid officeholder contributions, trustees should avoid accepting contributions or benefits that are related to their exercise of

³⁵ Tex. Elec. Code § 251.002.

³⁶ Tex. Elec. Code § 251.001(4).

³⁷ Tex. Elec. Code § 251.001(2).

³⁸ Tex. Educ. Code § 11.061(d).

³⁹ Op. Tex. Ethics Comm'n No. 242 (1995) (requiring reporting of funds donated to city council member to defray cost of producing a newspaper for distribution to the residents of the councilmember's district).

⁴⁰ Op. Tex. Ethics Comm'n No. 276 (1995) (permitting judge who determined in good faith that legal actions were brought against the judge due to his office to use officeholder contributions to pay the cost of defense).

⁴¹ Op. Tex. Ethics Comm'n No. 191 (1994) (concluding that loan of computer and printer could be an officeholder contribution if the private business made the loan with the intent to defray expenses in connection with the legislator's official duties and if the expenses would not be reimbursable with public funds; the legislator could not convert items to personal use).

⁴² Tex. Att'y Gen. Op. No. GA-76 (2003) (quoting *Tex. Mun. League v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 384 (Tex. 2002)).

⁴³ Tex. Educ. Code § 45.105(c).

⁴⁴ Tex. Elec. Code §§ 253.031, .033, .040.

public business, but that do not provide a direct benefit to the school district, as determined by the board of trustees. An example might include a trustee accepting travel expenses from a school district vendor to attend a trade show when the purpose of the trustee's trip would not be for the trustee to obtain continuing education or another purpose that would benefit the school district, but rather for the trustee to provide testimonials about the work done by the vendor in the trustee's school district.

Reporting Gifts

Occasionally, gifts to school officials from school district vendors will be legally permitted but will have to be publicly reported. Generally, this will occur when the gifts fall within exceptions to the prohibitions in the Texas Penal Code, but the dollar value of the gifts exceeds \$100.

Gifts from District Vendors (Texas Ethics Commission Form CIS)

Chapter 176 of the Texas Local Government Code (Chapter 176) includes disclosure requirements that affect school district trustees, superintendents, and school district employees or agents who exercise discretion in the planning, recommending, selecting, or contracting of a vendor, as *local government officers* (LGOs).⁴⁵ The statute requires an LGO to file a sworn disclosure statement with respect to a district vendor with whom the LGO has a reportable conflict of interest, if the vendor has entered into a contract with the district or the district is considering entering into a contract with the vendor.⁴⁶ For purposes of Chapter 176, a *contract* is a written agreement for the sale or purchase of real property, goods, or services.⁴⁷

The receipt of certain gifts from a district vendor is one way to create a reportable conflict of interest. A *gift* means a benefit offered by a person, including food, lodging, transportation and entertainment.⁴⁸ Disclosure is required if the LGO or the LGO's family member has accepted one or more gifts from the vendor that have an aggregate value of more than \$100 in the 12-month period preceding the date the LGO becomes aware of the contract or prospective contract. The statute contains exceptions, including:

- *Food* accepted as a *guest* (but *not* lodging, transportation or entertainment)
- A benefit offered on account of kinship or a personal, professional or business relationship independent of the official status of the recipient
- Political contributions⁴⁹

⁴⁵ Tex. Loc. Gov't Code § 176.001(4).

⁴⁶ See TASB Policies BBFA(LEGAL) and (LOCAL) and DBD(LEGAL) and (LOCAL).

⁴⁷ Tex. Loc. Gov't Code § 176.001(1-d).

⁴⁸ Tex. Loc. Gov't Code § 176.001(2-b).

⁴⁹ Tex. Loc. Gov't Code §§ 176.001(2-b), .003(a)(2)(B), (a-1).

For more information on which gifts are required to be disclosed under Chapter 176, see the flowchart for Chapter 176 Gift Disclosures at the end of this article.

The Texas Ethics Commission has adopted a form for the conflicts disclosure statement, called [Form CIS](#). The form should be filed with the district's *records administrator* by 5 p.m. on the seventh business day after the LGO becomes aware of the facts that require the statement.⁵⁰ The *records administrator* is the superintendent, another person responsible for maintaining the records of the school district, or the person designated by the district to maintain these conflicts disclosure forms.⁵¹ A district that maintains a website must provide access to all conflict of interest statements and questionnaires on that website.⁵²

Knowingly violating the disclosure requirement is a criminal offense that varies in degree based on the vendor contract amount: (1) a Class C misdemeanor for less than \$1 million or if there is no 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.⁵³ However, if the LGO files a conflicts disclosure statement by the seventh business day after receiving notice from the district of an alleged violation, the LGO does not violate Chapter 176.⁵⁴

Gifts from District Vendors (School FIRST Annual Financial Management Report)

The School Financial Integrity Rating System of Texas, or School FIRST, requires a school district to report information and financial accountability ratings to parents and taxpayers. After receiving a final School FIRST rating from TEA, each district is required to prepare an annual financial management report and hold a public hearing. In addition to describing the district's current School FIRST rating, districts are required to make certain financial disclosures in the annual financial management report. The report must be distributed to parents and taxpayers, and the public must be provided an opportunity to comment on the report at the hearing.⁵⁵

A district's annual report to TEA must include a summary schedule for the fiscal year of the total dollar amount of gifts that had a total economic value of \$250 or more received by the district's executive officers and board members. This reporting requirement applies only to gifts received by the school district's executive officers and board members (and their immediate family as described by Texas Government Code chapter 573, subchapter B, Relationships by Consanguinity or by Affinity) from an outside entity that received payments from the school district in the prior fiscal year and to gifts from competing vendors that were not awarded

⁵⁰ Tex. Loc. Gov't Code § 176.013(a).

⁵¹ Tex. Loc. Gov't Code § 176.001(5). Designated record keepers for each district can be found in TASB Policy CPC(LOCAL).

⁵² Tex. Loc. Gov't Code § 176.009.

⁵³ Tex. Loc. Gov't § 176.013(c).

⁵⁴ Tex. Loc. Gov't Code § 176.013(f).

⁵⁵ 19 Tex. Admin. Code § 109.1001(q).

contracts in the prior fiscal year.⁵⁶ For purposes of gift disclosure, “an executive officer is defined as the superintendent, unless the board of trustees or the district administration names additional staff under this classification for local officials.”⁵⁷

The reporting requirement does not apply to reimbursement by an outside entity for travel-related expenses when the purpose of the travel was to investigate matters directly related to an executive officer’s or board member’s duties or to investigate matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education. However, this exclusion does not apply to trips for entertainment purposes or pleasure trips.⁵⁸

Real-life Examples

The following are examples drawn from real world situations faced by school district trustees and employees. In each situation, the trustee or employee must decide whether it is permissible to accept the gift, and if so, whether the gift must be reported.

Freebies from vendors: “Our board members and employees received hats and umbrellas worth less than \$50 from our insurance provider.”

Accept? Yes. Assuming the trinkets were not offered or received as a bribe, the Texas Penal Code would not prohibit accepting gifts worth less than \$50.

Report? No. No disclosure would be required unless the aggregate value of gifts received by a single school official from a single vendor exceeded \$100.

Conference expenses: “I was invited to speak about my board duties at an out-of-state conference. The organizers want to give me an honorarium, waive the conference fee, and pay for my hotel room, meals, and transportation.”

Accept the honorarium? No. Texas Penal Code section 36.07 would prohibit a trustee from accepting an honorarium for services that would not have been requested but for the trustee’s official position or duties, so the honorarium must be declined.

Accept the travel expenses? Yes. The travel expenses could be accepted without violating the Texas Penal Code; however, the travel expenses could present an officeholder contribution unless the expenses could have been reimbursed with public funds. The Texas Ethics Commission has indicated that when expenses such as conference attendance fees and related travel expenses are provided by a private

⁵⁶ 19 Tex. Admin. Code § 109.1001(q)(3)(B)(iv).

⁵⁷ Tex. Educ. Agency, [Financial Integrity Rating System of Texas](#).

⁵⁸ 19 Tex. Admin. Code § 109.1001(q)(3)(B)(iv).

entity, but otherwise would have been paid with public funds, an individual government employee required to attend the conference is not receiving an improper benefit; in fact, the governmental unit is receiving the benefit.⁵⁹

Report? Maybe. If the organizer is a vendor with a contract or prospective contract with the district, then yes. Under Texas Local Government Code chapter 176, food, lodging, transportation, and entertainment given by a vendor to an officer or family member, except for food accepted as a guest, must be reported if the \$100 limit is exceeded.⁶⁰ Also, the School FIRST rules do not contain a guest exception, but do include an exception for reimbursement of travel expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of an executive officer or board member or matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education.⁶¹

Trip as guest: “Our board is looking at several firms to represent us as bond counsel. One of the firms would like to take us on an all-expense paid trip to New York City to visit their home office.”

Accept? Beware! The Texas Penal Code prohibition on gifts to public servants contains an exception for food, transportation, lodging, and entertainment accepted as a guest. Arguably this generous gift falls within that exception. That said, there are good reasons to consider declining the offer. First, the travel expenses raise a concern about improper officeholder contributions if these are not expenses that would have been reimbursable with public funds. If the board concluded that going to New York was actually *necessary* in the conduct of the public schools, then the trustee’s own reasonable travel expenses may have been reimbursable. On the other hand, extras like expenses for spouses and entertainment would not be reimbursable with public funds and should be declined.

Moreover, the fact that this trip was offered while the board was in the process of selecting bond counsel presents a concern that the offer could be interpreted as bribery. If there is any suggestion that the offer of the trip could influence the board’s decision it should be declined.

Report? If accepted, almost all of these expenses should be reported. Lodging, transportation, or entertainment provided to a school official, even as a guest of a vendor, require disclosure on Form CIS if the aggregate value exceeds \$100 in the 12-month time period in Chapter 176. Food must also be reported unless food was accepted as a guest with the vendor present. In addition, the School FIRST rules require disclosure if the aggregate value equals \$250 or more during the fiscal year. This

⁵⁹ Op. Tex. Ethics Comm’n No. 118 (1993).

⁶⁰ Tex. Loc. Gov’t Code §§ 176.001(2-b), .003(a)(2)(B), (a-1). Gifts that do not have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware of a contract or prospective contract and do not have to be reported. Local government officers are also not required to file conflicts disclosure statements for food that is accepted as a guest, or for political contributions.

⁶¹ 19 Tex. Admin. Code § 109.1001(q)(3)(B)(iv).

reporting requirement does not apply to reimbursement of travel-related expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of an executive officer or board member or matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education. This exception does not apply to trips for entertainment-related purposes or pleasure trips, however.⁶² At the very least, these types of expenses should be reported.

Food as guest: “Over the last year, our school district’s architectural firm has hosted the trustees at two formal dinner parties and one reception.”

Accept? Yes. Under the Texas Penal Code, food, lodging, transportation, and entertainment accepted as a guest are permissible gifts to public servants, including school officials. Assuming the food is not offered or accepted as a bribe, and assuming the reporting requirements of the Texas Election Code are met, the board may enjoy the meals.

Report? Yes. Under Texas Local Government Code chapter 176, dining expenses accepted as a guest need not be reported, but the School FIRST rules do not contain a guest exception. Such gifts must be disclosed if they aggregate to a value of \$250 or more during the school district’s prior fiscal year.

Gift from friend or business associate: “I am a long-time friend of the district’s produce supplier. This year was my 50th birthday, and he gave me a golf club. I don’t know how much he spent on it.”

Accept? Yes. The Texas Penal Code permits public servants to accept gifts conferred on account of personal, professional, or business relationships unrelated to the public servants’ roles with the school district.

Report? Maybe. If a gift is from a vendor, and the recipient is a local government officer (LGO, i.e., superintendent, trustee, school district employee or agent who exercises discretion in the planning, recommending, selecting, or contracting of a vendor), the LGO normally should file Form CIS if the likely value of the item is over \$100. However, a gift under Chapter 176 is not a benefit offered on account of a personal, professional or business relationship independent of the LGO status. If it is clear that the gift was given based on the prior friendship, and not related to LGO status, then the gift does not have to be reported. The reporting requirements in the School FIRST annual financial management report apply only to gifts from an *outside entity*, which would be unlikely to include a personal gift from a friend unless the friend was a vendor operating as an independent contractor or sole proprietor.

⁶² 19 Tex. Admin. Code § 109.1001(q)(3)(B)(iv).

Gift from a family member: “My husband owns a company that sells computer software to the district. For our anniversary, he purchased me some jewelry valued at \$1,000.”

Accept? Yes. Under the Texas Penal Code, gifts to public officials that might otherwise be illegal are permitted if the gifts are given in the context of a personal or family relationship.

Report? No. The requirements for filing Form CIS are not triggered when family members who are vendors give gifts to local government officers. The reporting requirements in the School FIRST annual financial management report apply only to gifts from an *outside entity*, which would not include a personal gift from the LGO’s husband.

Benefits from service to another organization: “I am on my local school board, and I also serve on the board of a nonprofit organization that provides services to school districts, including my own. The nonprofit organization pays my expenses to travel to its meetings and occasionally provides other benefits such as appreciation gifts.”

Accept? Yes. A payment by a private organization, such as a private association of school officials, is not violating Texas Penal Code sections 36.07 on honoraria or 36.08 on gifts to public servants by compensating its members for services to the private association, assuming the officers of the private organization are selected based on their skills and abilities and not based on their public service at a particular district.⁶³

Report? It depends. Under some circumstances, an LGO will have an obligation to report on FORM CIS benefits provided by an outside organization to one of its board members who is also an LGO with a public school district that has a contract or prospective contract with the entity. Benefits given based on a separate professional or business relationship, and not related to LGO status, do not have to be reported, however. The School FIRST rules do not contain a guest exception; such gifts must be disclosed if they aggregate to a value of \$250 or more during the school district’s prior fiscal year. This reporting requirement does not apply to reimbursement of travel-related expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of an executive officer or board member or matters related to attendance at education-related conferences and seminars with the primary purpose of providing continuing education.⁶⁴

Charitable contributions: “A local vendor wants to make a sizeable contribution to our local education foundation. The vendor has also offered to make a charitable contribution to my favorite local charity in my name.”

⁶³ Tex. Att’y Gen. Op. No. GA-354 (2005).

⁶⁴ 19 Tex. Admin. Code § 109.1001(q)(3)(B)(iv).

Accept the foundation donation? Yes, but be cautious. The bribery statute prohibits a gift not only to a public servant, but also to any *person* in whose welfare the beneficiary has a direct and substantial interest. *Person* includes legal entities, like charitable organizations, as well as natural persons.⁶⁵ The gift cannot be offered or accepted in exchange for an official act.

Accept the charitable donation? Yes. A contribution to a charitable organization in the name of the public servant is not a benefit if the public servant exercises no control over the contribution and is simply an honoree in connection with the contribution.⁶⁶ Again, the gift cannot be offered or accepted in exchange for an official act.

Report? No. The public official did not receive a benefit.

Political contributions: “Several local vendors made political contributions to my reelection campaign this year.”

Accept? Yes. The Texas Penal Code exempts political contributions from its prohibition on gifts.

Report? Not under Chapter 176, because political contributions are not considered gifts, and are exempted from the disclosure requirements, even if the contributions are made by district vendors. Moreover, the reporting requirements in the School FIRST annual financial management report apply only to gifts from *outside entities*, not individual people. The contribution will need to be reported as a political contribution under the Texas Election Code, however.

Appreciation gifts to the superintendent: “The PTA wants to present the Superintendent with a new rod and reel in appreciation for all of his hard work this year.”

Accept? Arguably not. The Texas Penal Code prevents a public servant from accepting cash in any amount or gifts valued over \$50 from people under the jurisdiction of the public servant. Unless the superintendent feels confident that the gift fits under another exception to the gift prohibition, like a gift based on an independent personal relationship, the superintendent should consider declining or donating the gift. The one exceptional circumstance might be upon the retirement or resignation of the superintendent; arguably at that time the gift is no longer from people under the exiting superintendent’s jurisdiction.

⁶⁵ Op. Tex. Ethics Comm’n No. 69 (1992) (person includes state college or university); Op. Tex. Ethics Comm’n No. 75 (1992) (person includes city).

⁶⁶ Op. Tex. Ethics Comm’n No. 150 (1993).

Report: Probably not. Under Chapter 176, vendor means a person who enters or seeks to enter into a contract with the school district. If the PTA is not a vendor under that definition, the disclosure rules will not apply. Also, if the rod and reel is not accepted, the gift arguably has not been given so as to require disclosure.

Appreciation gifts to board members: “The school district is organizing gifts for the members of the board of trustees to thank them during school board recognition month. The staff has arranged for the trustees to receive plaques, student artwork, and gift cards to a local restaurant. The gifts will be presented at an appreciation dinner hosted by the district.”

Accept? The plaques and the artwork are probably fine, but the gift cards are problematic. The Texas Penal Code prevents a public servant from accepting cash in any amount and gifts valued over \$50 from people under the jurisdiction of the public servant. While they may have significant sentimental value, plaques and student art would typically be considered items of *de minimis* financial value. The Texas Penal Code would not prevent the district from providing or board members from accepting these gifts.

The gift cards raise numerous concerns, however. First, if the gift cards were purchased with school district funds, the gift cards may be considered an unconstitutional gift of public funds.⁶⁷ Even if the gift cards were donated by local businesses, accepting the gift cards could violate the Texas Penal Code. Gift cards are considered cash equivalents, and consequently they should not be accepted at any value if the donors are subject to the jurisdiction of the board. In addition, board members cannot accept payment in the form of an honorarium for their board service. Finally, Texas Education Code section 11.061(d) prohibits school board members from receiving compensation for their service.

For the reasons discussed throughout, hosting an appreciation dinner for school board members using public funds would not violate the Texas Penal Code and may be considered a valid use of public funds. Providing gift cards for private use by the board members would not.

Report: No. No rule or statute would require board members to report appreciation meals or *de minimis* gifts from the school district, such as student art, school district shirts, or plaques. Whether these small gestures are an appropriate use of public funds is a local decision to be determined as part of the budget process. Concern about the use of school funds is alleviated when the cost of these small items is provided by supportive local businesses, PTAs, booster clubs, or local education foundations.

⁶⁷ Tex. Const. art. III, §§ 52, 53.

Appreciation gifts to teachers: “The parents of the students in a teacher’s class have donated money to buy the teacher an expensive gift at the end of the year.”

Accept? Yes! Texas Penal Code section 36.08(d) prohibits gifts to public servants who exercise discretion in connection with financial transactions. For this reason, as explained above, school district officials like board members and superintendents should be cautious about accepting gifts. Teachers, however, may accept appreciation gifts—even valuable ones—as long as the gift is not a bribe. Tex. Penal Code § 36.02. Be aware, however, that University Interscholastic League coaches and sponsors for high school activities can be suspended if they accept more than \$500 in total value of gifts per year from any source (other than the district) in recognition for coaching.⁶⁸ Remember, also that these provisions cover gifts from private sources, like parents, not from the school district. Gifts from the school district are subject to other considerations in light of the state constitution’s prohibition on gifts of public funds.⁶⁹

Report? Probably not. Unless the teacher is an LGO for purposes of Texas Local Government Code chapter 176, no report is required.

Door prizes: “I put my business card in the dish at a school board conference, and I won a 50” flat screen LCD TV!”

Accept? Arguably not. When the Texas Ethics Commission was asked about door prizes and prizes won through games of skill at events attended in a public servant’s official capacity, the Commission indicated that the prizes would have to be declined or donated unless they fit within an exception to the prohibition on gifts.⁷⁰ It is hard to imagine how a flat screen TV would fall within any of the exceptions.

Report? Probably not. Under Chapter 176, if the prize is not accepted, the gift arguably has not been given to a local government officer so as to require disclosure. Also, if the prize was not provided by a vendor, there would not be a Chapter 176 disclosure requirement.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-essource/governance/documents/gifts_to_public_sch_trustees_and_employees.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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⁶⁸ Univ. Interscholastic League 2019-2020 Constitution & Contest Rules: [Subchapter O, Awards](#), § 481.

⁶⁹ Tex. Const. art. III, §§ 52, 53.

⁷⁰ Op. Tex. Ethics Comm’n No. 100 (1992).

Chapter 176 Gift Disclosures

