

ETHICAL ISSUES  
AND TRAPS FOR  
THE UNWARY

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executive producer  
**GREG DANIELS**

- 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

# Conflicts of Interest – Texas LGC Ch. 171

# 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 1<sup>st</sup> 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 contracts with the governmental entity
  - Act as surety on any official bond required of an officer of the governmental entity

# 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.

[ie: EDC, PFC, Finance Corp]

Be sure to check your local charter or ordinance for local regulations on non-profit board service.



## Disclosure of Relationships –LGC Ch. 176

- Who is covered?
  - Member of governing body and relatives within 1<sup>st</sup> 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 7<sup>th</sup> business day after becoming aware of facts that warrant disclosure.

<https://www.ethics.state.tx.us/forms/conflict/>



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.

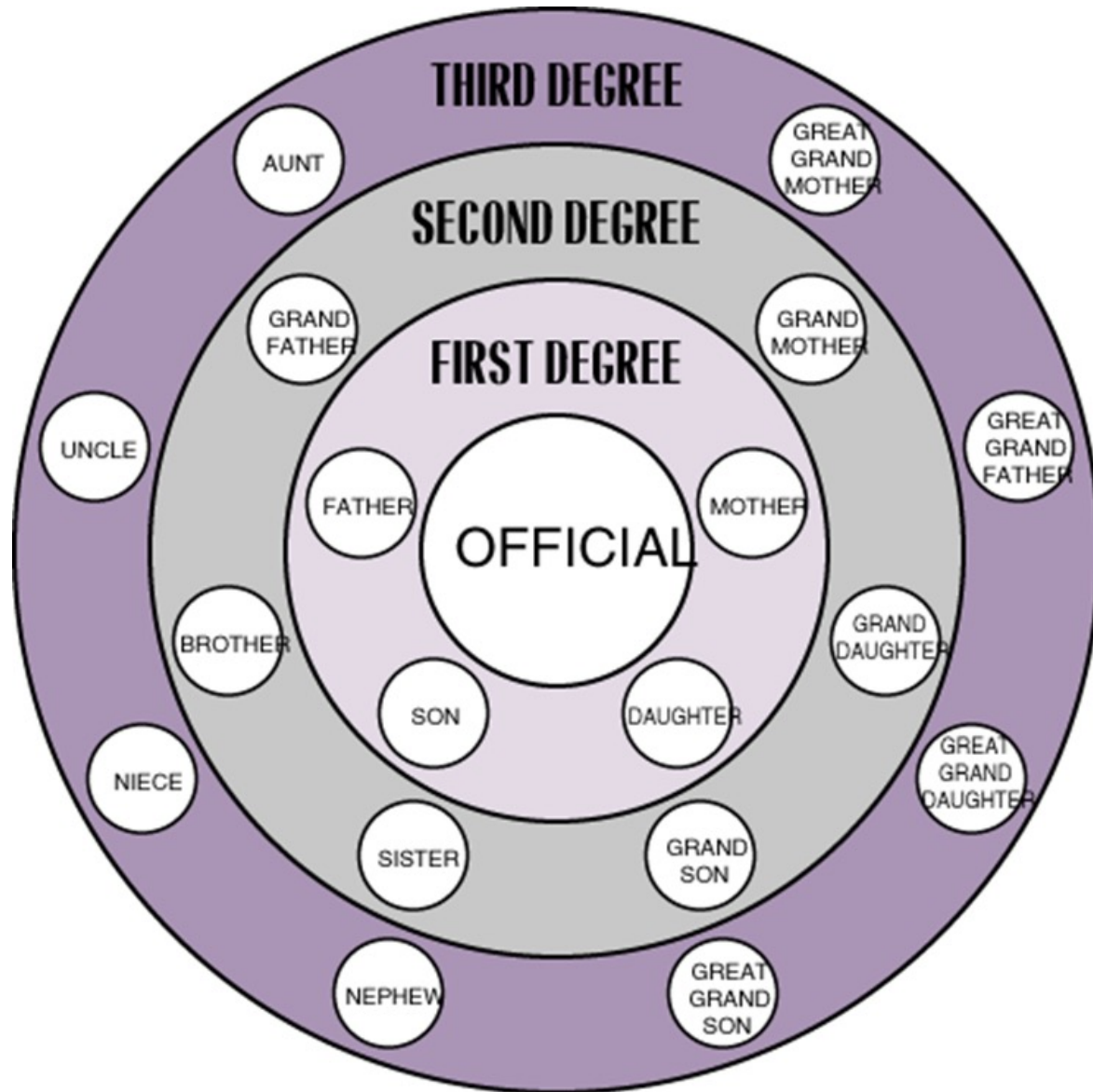
Conflict of Interest Statement (CIS) and Conflict of Interest Questionnaire (CIQ) forms are public documents and must be retained by records administrator and made available to the public.

# Nepotism

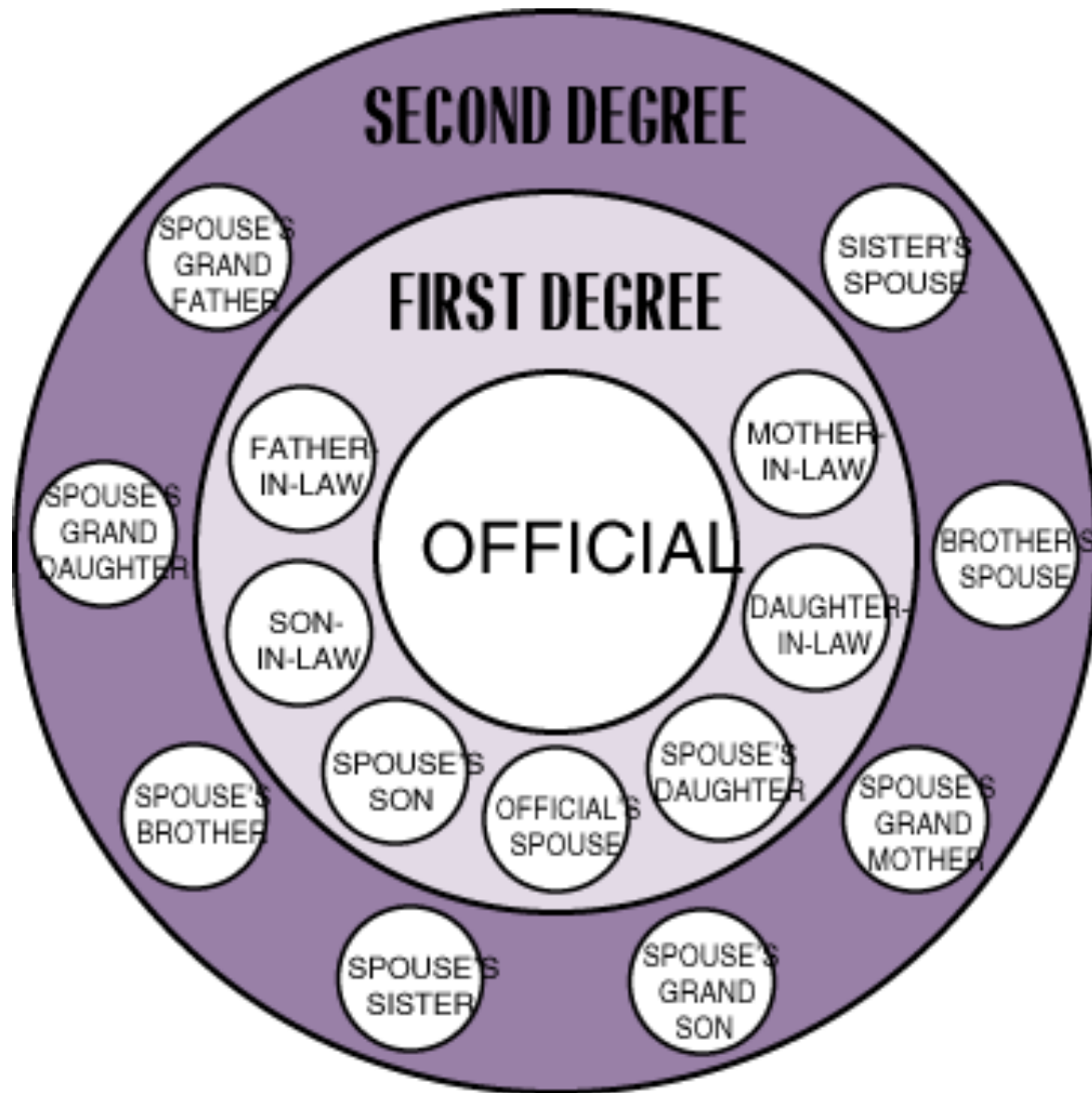
Chapter 573, Government Code

Applies to relationships within:

- 3rd degree of consanguinity (blood)
- 2nd degree of affinity (marriage)



## 3RD DEGREE OF CONSANGUINITY



# 2ND DEGREE OF AFFINITY



- 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 Prohibition

# Nepotism (Psuedo – 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
- Check Personnel Policies, Charter, Code of Ordinances



My son's Office

# 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!

# Questions???

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