

## Texas Association of School Administrators

### Question & Answers related to HB 914

***Disclaimer:** This document is for informational purposes only and is intended to provide superintendents with insight on the applicable provisions of HB 914, which added Chapter 176 of the Local Government Code. This document is not intended to be a substitute for legal advice. Specific questions and circumstances regarding a local government officer's activities and the content and filing of the forms should be individually discussed with the school district's attorney. There are criminal penalties associated with not fully complying with this statute and thus superintendents and board members should contact the school district's attorney if any questions arise related to interpreting the new requirements and completing the applicable forms.*

#### **What does HB 914 require?**

Effective September 1, 2005, the records administrator of a school district is required to maintain and make available to the public a list of local government officers (superintendent and school board members).

Effective January 1, 2006, local government officers (superintendent and school board members) and vendors are required to file a conflicts disclosure statement and questionnaire, respectively, with the records administrator of the school district. If a school district maintains a Web site, the statements and questionnaires (forms) must be posted on the district's Web site.

#### **Who is the "records administrator"?**

Section 176.001 (5) of the Local Government Code defines a "records administrator" as the "director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity."

#### **Does HB 914 only apply to school districts, superintendents and school board members?**

No. Section 176.001 of the Local Government Code defines a "local governmental entity" as "a county, municipality, school district, junior college district, or other political subdivision of this state or a local government corporation, board, commission, district or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality.

A "local government officer" is "a member of the governing body of a local governmental entity or a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity."

#### **Can HB 914 apply to other employees?**

Yes. The statute requires school board members and superintendent to file the statements but a local governmental entity may extend the filing requirements to all employees or a class of employees. Failure to comply may result in the employee being reprimanded, suspended, or terminated. It is a Class C misdemeanor if an employee knowingly fails to comply with the filing requirements.

#### **Are certain entities excluded from the definition of "local governmental entity"?**

Yes. According to Section 176.001(3) of the Local Government Code, the term "local governmental entity" does not include "an association, corporation, or organization of governmental entities organized to provide to its

members education, assistance, products or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.”

**Does HB 914 apply to charter schools?**

No.

**Where are the disclosure forms located?**

The forms are now available on the homepage of the Texas Ethics Commission website. To access the forms, see { HYPERLINK "http://www.ethics.state.tx.us" }

**Does the Texas Ethics Commission have jurisdiction to interpret or enforce the new law?**

No.

**Can the forms be filed with the Texas Ethics Commission?**

No. The conflicts disclosure statement and the vendor questionnaire must be filed with the records administrator of the local governmental entity.

**Can the forms be electronically filed with the records administrator?**

Yes.

**When is a local government officer (superintendent or board member) required to file a conflicts disclosure statement?**

A local government officer is required to file a conflicts disclosure statement with the records administrator of school district if (1) the school district has contracted with a person or is considering doing business with the person **and** (2) the superintendent or board member or a family member within the first degree or consanguinity or affinity either has an employment or other business relationship with the person and receives taxable income **or** (3) has been given by a person one or more gifts that have an aggregate value of more than \$250 in a 12-month period preceding the date the local government officer became aware of the facts that require the filing of a conflicts disclosure statement.

The conflicts disclosure statement must be filed with the records administrator no later than 5 p.m. on the 7<sup>th</sup> day after the date the officer becomes aware of the facts that require the filing of a statement.

**What is the first degree of consanguinity & affinity?**

The degree of relationship by *consanguinity* between an individual and the individual’s descendant is determined by the number of generations that separate them. According to § 573.023 (a) of the Government Code, a parent and child are related to each other in the first degree of *consanguinity* (blood). According to § 573.025 (a) of the Government Code, a husband and wife are related to each other in the first degree of *affinity* (marriage). For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

**What is a “person”?**

HB 914 did not define a “person”. However, the Code Construction Act, which applies to the Local Government Code, provides a definition of a person when a statute does not specifically define the term.

Under the Code Construction Act, a “person” includes not only an individual but a “corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.”

**What is a “gift”?**

HB 914 did not define the term “gift”.

**Are gifts to the local governmental entity included in the conflicts disclosure statement?**

No. The only gifts that have to be reported are gifts received by the local government officer or family member.

**Are all gifts included in the \$250 aggregated total?**

No. Gifts of food, lodging, transportation, or entertainment accepted as a guest are not included in the \$250 calculation. The \$250 total is calculated on a per vendor basis.

**Who determines the value of the gift?**

Section 176 of the Local Government Code is silent on this issue. A person that provides a gift to the local government officer can provide a statement or letter indicating the value of the gift to facilitate the accounting and reporting of the gift.

**If I received a gift but didn’t accept the gift, do I need to report it?**

Yes. The gift needs to be reported. However, a local government officer can “check the box” on the conflicts disclosure statement that indicates that the gift was not accepted.

**Is there a penalty for not filing the conflicts disclosure statement?**

Yes. It is a Class C misdemeanor punishable by a \$500 fine if the local government officer knowingly violates the requirement.

**Are there any defenses to prosecution?**

Yes. A local government officer may file the conflicts disclosure statement no later than the seventh day after the date the person received notice of the violation.

**Is the conflicts disclosure statement a sworn document?**

Yes. The local government officer must sign an affidavit attesting to the truthfulness of the document. The sworn document is signed under penalty of perjury.

**Are vendors required to file a questionnaire?**

Yes. Vendors and other persons are required to file the questionnaire with the records administrator if the person “contracts or seeks to contract for the sale or purchase of property, goods, services with a local governmental entity; or is an agent of a person in the person’s business with the local governmental entity.”

**Does the Local Government Code define the word “vendor”?**

No. The new statute uses the word “person”, which as previously noted, includes a “corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.” Thus, a vendor could be any of the aforementioned persons.

**Are all “persons” subject to the disclosure requirements?**

No. A state, a political subdivision of a state, the federal government, or a foreign government or an employee of the aforementioned entities acting in the employee’s official capacity is not subject to the disclosure requirements.

**When is a person required to file a questionnaire?**

Effective January 1, 2006, a person that contracts or seeks to contract for the sale or purchase of property, goods, or services with the local governmental entity must timely file a conflict of interest questionnaire with the records administrator of the school district no later than the 7<sup>th</sup> business day after the vendor begins contract discussions or negotiations with the school district or submits to the school district an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the school district.

**Is a person required to file an updated questionnaire?**

Yes. A person is required to file an updated questionnaire no later than September 1 of each year in which the person has begun contract discussions or negotiations with the local governmental entity or submits to the local government entity an application, response to a request for proposals or bids, correspondence or another writing related to a potential agreement with the local government entity; and the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.

An updated questionnaire is not required if the person has filed an updated questionnaire on or after June 1, but before September 1, of that year.

**Are the forms required to be posted on the Internet?**

Yes. If a school district maintains a Web site, the statute requires that these disclosure forms be posted on the district’s Web site.