

**CONFLICTS OF INTERESTS
AFFECTING GROUNDWATER DISTRICT OFFICIALS**

BY

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CONFLICTS OF INTERESTS AFFECTING GROUNDWATER DISTRICT OFFICIALS

1. Economic Conflicts of Interest

Rule: A director of a groundwater district is subject to the provisions of Chapter 171, Local Government Code relating to the regulation of conflicts of officers of local governments.

(TEX. WATER CODE ANN. § 36.058)

A local public official may not knowingly participate in a vote or decision of any matter involving a business entity or real property in which the official has a substantial interest.

(TEX. LOCAL GOV'T CODE ANN. § 171.002)

What is a substantial interest in a business entity?

A person has a substantial interest in a business entity if:

- ! the person owns 10 percent or more of the voting stock or shares of the business entity;
- ! the person owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or,

How do you determine fair market value?

(The statute does not define; use your own judgment, but be aware that there is more than one way to estimate the fair market value of a business.)

- ! the funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(TEX. LOCAL GOV'T CODE ANN. § 171.002)

What is a substantial interest in real property?

A person has a substantial interest in real property if the person owns \$2500 or more in real property.

(TEX. LOCAL GOV'T CODE ANN. § 171.002)

Can a public official have a substantial interest through a relative?

Yes. If any person related to the official in the first degree by blood or marriage has a substantial interest, the official is considered to have a substantial interest. (See the lists below for determining degrees of relation.)

(TEX. LOCAL GOV'T CODE ANN. § 171.002(c))

What must a public official with a substantial interest in a business entity or real property that is subject to a decision by the public body do?

- (1) Reveal the nature and extent of the interest through the filing of an affidavit with the body; and,
- (2) abstain from further participation in a matter requiring a decision if a special economic effect will result from the official's substantial interest in the business entity or real property involved.

(TEX. LOCAL GOV'T CODE ANN. § 171.004)

What is a special economic effect?

Again, the statute does not define.

What if a majority of the voting officials of the public body have a substantial interest in a business entity or real property that is subject to a decision by the public body?

If a majority of the public officials of a public body have a substantial interest in a business entity or real property that is subject to a decision by the public body, and if all officials with such an interest have filed affidavits revealing that interest, all officials may vote in the decision.

(TEX. LOCAL GOV'T CODE ANN. § 171.004(c))

There may be other, higher standards:

The foregoing rules were developed, by the Legislature, relatively recently. Prior statutes and court decisions followed a stricter rule that forbid *any* interest by a public official in a contract with the public body. For example, one court wrote in 1925:

If a public official directly or indirectly has a pecuniary interest in a contract, *no matter how honest he may be*, (emphasis added), and although he may not be influenced by the interest, such a contract so made is violative of the spirit and letter of our law, and is against public policy.

See Meyers v. Walker, 276 S.W. 305, 307 (Tex. Civ. App. -- Eastland 1925, no writ).

Through the foregoing rules, the Legislature has set a new floor: public officials may take no part in a decision when they have a substantial interest, as defined above, in the outcome of the decision. But if you fear an appearance of impropriety, you may adopt more stringent requirement for yourself. Also, be aware that the **many governmental bodies adopt their own conflict of interest rules that are more strict** than the statutory rules discussed above.

2. Nepotism

Rule #1: A public official (an officer or member of a board of a political subdivision) may not employ (“appoint, confirm the appointment of, or vote for the appointment or confirmation of appointment of”) a person who is paid with public funds and:

! who is a blood relative within the third degree to the official; or,

! who is a relative by marriage within the second degree to the official.

(TEX. GOV’T CODE § 573.041)

Rule #2: A public official who holds appointment or confirmation authority as a member of a state or local board or court may not appoint, confirm the appointment of, or vote for the appointment or confirmation of appointment of a person who is paid with public funds and who is related to **another** member of the board or court:

! by blood within the third degree; or

! by marriage within the second degree.

(TEX. GOV'T CODE § 573.041)

What if the employee is already employed when the relative becomes a public official?

Tough luck. The Attorney General has held that an individual may not stay employed if a relative is elected or appointed to a public office. In one opinion, discussing a case where a chief probation officer sought to retain his wife as a probation clerk, the Attorney General wrote:

If the wife were employed on a yearly contract, she could serve out the year. At that time, the nepotism law would bar the chief probation officer from renewing her contract. If she were employed on a month-to-month basis, where in effect a new contract is made each month, she would continue to serve for one month. ... If her employment was at will, she could not be retained after her husband's appointment as chief in 1973. Although the nepotism statute would not necessarily require him to discharge his wife immediately ... it would prohibit any act resulting in her further employment or improvement of position.

See Op. Tex. Att'y Gen. No. MW-286 (1980).

Do these rules only apply to employees or appointees paid from public funds?

Yes.

Do these nepotism rules apply to a contract for services, as well as to employment?

Yes. For example, the Texas Attorney General has held that the Texas nepotism laws govern the hiring of an individual whether the individual is hired as an employee or as an independent contractor. *See Op. Tex. Att'y Gen. No. DM-76 (1992).*

Can a public official or public body avoid the nepotism laws by delegating the employment decision?

No. For example, the Texas Attorney General has held that the members of a city council do not avoid the prohibitions of the nepotism law by delegating their responsibility to hire city employees. *See* Op. Tex. Att’y Gen. No. DM-2 (1991).

BUT, if the employment decision already lies with a subordinate to the public official or body, the nepotism laws are not violated.

For example, the Texas Attorney General has held that a school district may employ relatives of a school superintendent where the superintendent exercises no control over who is selected. *See* Op. Tex. Att’y Gen. No. MW-56 (1979).

How do you determine the degree of relation?

Count one degree for each step back to a common ancestor, or consult the following lists:

Individuals related within the third degree by blood:

- ! one’s parent or child (relatives in the first degree);
- ! one’s brother, sister, grandparent, or grandchild (relatives in the second degree); and
- ! one’s great-grandparent, great-grandchild, aunt who is a sister of a parent, uncle who is a brother of a parent, or nephew or niece who is a child of a brother or sister (relatives in the third degree).

(TEX. GOV’T CODE § 573.023(c))

Individuals related in the second degree by marriage:

- ! the spouse of one’s parent or child; and,
- ! the spouse of one’s brother, sister, grandparent or grandchild.

(TEX. GOV’T CODE §§ 573.024 and 573.025)

What if the relationship between the public official and the individual subject to the employment decision changes because of a divorce?

The Texas Attorney General has recently opined that nepotism laws still apply, regardless of a divorce, if there is a living child, of any age, from the marriage. *See* Op. Tex. Att’y Gen. No. LO 94-039 (1994).

If the public official is a trustee or officer for a school district, the nepotism laws apply to divorcees only until the youngest child of the marriage reaches age 21. *See* TEX. GOV'T CODE ANN. § 573.024.

Are there any exceptions to the nepotism rules?

Yes.

Exception for Continuous Employment: the nepotism rules do not apply to the appointment, confirmation of appointment, or vote for appointment or confirmation of an appointment for an individual to a position where:

- 1) the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related; and
- 2) the prior employment of the individual is continuous for at least:
 - a) 30 days, if the public official is appointed;
 - b) six months, if the public official is elected at an election other than the general election for state and county officers; or
 - c) one year, if the public official is elected at the general election for state and county officers.

BUT the public official to whom the continuously employed individual is related may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and not to a bona fide class of employees. NOTE: this may require a separate line item in the budget for the affected employee.

(TEX. GOV'T CODE ANN. § 573.062)

Other Specific Exceptions:

- ! **Notary Publics:** the nepotism rules do not apply to the appointment of confirmation of appointment for a notary public.
- ! **Substitute School Teachers:** the nepotism rules do not apply to the appointment or employment of a substitute teacher by a school district.

- ! **School Bus Drivers in Certain Counties:** the nepotism rules do not apply to the appointment or employment of a school bus driver in a school district located in counties under 35,000 in population.
- ! **Personal Attendants:** the nepotism rules do not apply to the appointment or employment of a personal attendant to an officer of the state or a political subdivision who, because of physical infirmities, is required to have a personal attendant.
- ! **Continuous Service Exception for Appointed Officials:** the nepotism rules do not apply to the reappointment or confirmation of an appointed official who began his/her first term of office on a date when no relative of the appointed official was a member of or candidate for the legislature.

(TEX. GOV'T CODE ANN. § 573.061)

3. **Dual Office Holding and the Doctrine of Incompatibility**

Rule #1: Specifically for Groundwater Districts, a member of a governing body of another political subdivision is ineligible for appointment or election as a director.

(TEXAS WATER CODE § 36.051(b))

Rule #2: Specifically for Groundwater Districts, a director is disqualified and vacates the office of director if the director is appointed or elected as a member of the governing body of another political subdivision.

(TEXAS WATER CODE § 36.051(b))

What is a “political subdivision?”

Political subdivision means a county, municipality, or other body politic or corporate of the state, including a district or authority created under Section 59, Article III, or Section 59, Article XVI, TEXAS CONSTITUTION, a state agency, or a nonprofit water supply corporation created under Chapter 67.

What are the exceptions?

The Chapter 36 restriction does not apply to districts with a population less than 50,000.

Rule #3: No person shall hold or exercise at the same time more than one civil office of emolument.

(TEX. CONST. art. 16, § 40)

What is a “civil office”?

The term “civil office” only applies to public officials who have discretion to exercise the powers or authority of civil government. *See State ex rel. Hill v. Pirtle*, 887 S.W.2d 921 (Tex. Crim. App. 1994). For example, the Texas Attorney General has held that city police officers, sheriff’s deputies, and school-district security officers do not hold “civil offices” as contemplated by the Texas Constitution. *See Op. Tex. Att’y Gen. No. DM-212* (1993). A groundwater district director holds a civil office.

What is a “civil office of emolument”?

An office in which the public officer receives “a pecuniary profit, gain, or advantage” from his or her office. *See* 147 Tex. Crim. 6, 177 S.W.2d 970, 973 (1944); *Op. Tex. Att’y Gen. No. MW-450* (1982). For example, it does not violate the constitutional prohibition against dual office holding for a county attorney to also serve as a school board trustee because trustees receive no remuneration. *See Op. Tex. Att’y Gen. No. LO 95-029* (1995).

Pursuant to § 36.060 of the Water Code, a director may receive \$150 per day, up to a limit of \$9,000 per year, plus reimbursement of actual expenses. Because of the compensation provision, the directorship is an office of emolument. *See Op. Tex. Att’y Gen. No. LO 98-011* (1998).

May a director avoid the emolument by refusing to accept preferred compensation?

No. Compensation is considered an “incident to the title of the office.” *See Op. Tex. Att’y Gen. No. H-1304* (1978).

Does the term “civil office” apply to federal offices as well?

Yes. *See Op. Tex. Att’y Gen. No. H-1304* (1978).

Does the term “civil office” apply to non-governmental offices?

No. For example, service on the board of directors for a non-profit corporation does not violate the constitutional prohibition against dual office holding. *See* Op. Tex. Att’y Gen. No. H-1309 (1978).

NOTE: while service on the board of directors for a for-profit corporation may not create a dual-office holding problem, it may pose a problem under the conflict of interest laws discussed above.

Are there exceptions to the prohibition against dual office holding?

Yes. The following positions are exempted from the prohibition against dual office holding: justice of the peace, county commissioner, notary public, postmaster, officer of a State soil and water conservation districts, and officer or enlistee in the armed forces. In addition, state employees (not officers) may serve on governing bodies for school districts, cities, towns or other local governmental districts if they receive no salary for their service. *See* TEX. CONST. art. 16, § 40. Note: a recent case allowed a school teacher to also draw a salary as a county commissioner. *See County of Maverick v. Ruiz*, 897 S.W.2d 843 (Tex. App. -- San Antonio 1995, no writ).

Rule #4: One person may not hold two offices if the duties of the offices are inconsistent or in conflict or if one office is subordinate to the other.

What are the three ways in which a public official may run up against the common-law doctrine of incompatibility?

- 1) Self-appointment, i.e., a public official may not be both a member of a public body and an appointee of that body.

Example: A school district trustee may not take an action to employ himself as superintendent.

- 2) Self-employment, in part because a public official may not hold two public positions where one public position has the ability to impose its policies on the other position.

Example: A chief appraiser for a county central tax appraisal district may not serve as a school board trustee for a school district that is a member of the central appraisal district.

- 3) Conflicting loyalties, i.e., a public official may not hold two public offices for which the duties are or may be inconsistent or in conflict.

Example: A county attorney may not serve as a school board trustee because the county attorney has certain, statutory duties to review district operations and the actions of trustees.

See Op. Tex. Att’y Gen. No. LO 95-029 (1995).

Example: A county attorney may not serve simultaneously as a member of the Board of managers at the county hospital because both positions are “offices of emolument.”

Op. Tex. Att’y Gen. No. LO 97-100 (1997).

What are the consequences for a public official who violates the doctrine of incompatibility?

The public official who accepts a second public office in violation of this legal principle may automatically lose her former public office. *See Op. Tex. Att’y Gen. No. LO 95-029 (1995).*

4. Bribery & Corrupt Influence

Bribery

Rule #1:

A person may not intentionally or knowingly offer, confer, or agree to confer on another, or solicit, accept or agree to accept, any benefit as consideration for the recipient’s influence as a public servant, party official or voter, including consideration for his influence in a judicial or administrative proceeding. This definition extends to consideration for

the violation of a duty imposed by law on a public servant or party official, or for any benefit that is a political contribution accepted or solicited pursuant to an express agreement to exercise official discretion.

(TEX. PEN. CODE ANN. § 36.02(a))

What is a benefit?

A benefit means anything reasonably regarded as pecuniary gain or advantage, including benefit to another person in whom the recipient has a direct interest.

(TEX. PEN. CODE ANN. § 36.01(B)(3))

Transportation, meals, lodging, and theater tickets for a university official's wife, and theater tickets for the official, provided by a bookstore operator during the official's trip to finalize and extend a contract for the operation of university bookstore were "benefits." *Smith v. State*, 959 S.W. 2d 1, 21. (Tex. App.--Waco 1997, pet. ref'd.)

What is solicitation?

Solicitation is not defined by the penal code. However, the court in *Smith v. State*, mentioned above, defined it as "action which the relation of the parties justifies construing into a serious request." The court found that a university official had solicited benefits from a public contractor simply by stating that his wife would join him on a trip to visit the contractor. The contractor then paid for the wife's travel expenses and provided free theater tickets. The contractor had provided the same benefits to the official and his wife for prior trips. *Id.* at 22.

What would be considered a defense to prosecution under this section?

It is not a defense that the person whom the actor sought to influence had not yet assumed office.

It is not a defense that the benefit was not conferred or solicited until after the decision, vote, or recommendation has occurred. Nor is it a defense that the benefit was not solicited or conferred until after the public servant left office.

It is a defense that the benefit is a political contribution as defined by Title 15, Election Code Regulating Political Funds and Campaigns, or an expenditure made and reported in accordance with Chapter 305, Government Code, for Registration of Lobbyists.

(TEX. PEN. CODE ANN. § 36.02 (b), (c), (d))

How is an offense under this section classified?

Bribery is a felony of the second degree.

(TEX. PEN. CODE ANN. § 36.02(e))

Coercion

Rule #2:

A person may not influence or attempt to influence a public servant in a specific exercise of his official power, his official duty, or to violate his legal duty. It is also an offense to influence a voter either not to vote, or to vote in a particular manner.

(TEX. PEN. CODE ANN. § 36.03)

How is an offense under this section classified?

Coercion of a public servant or voter is a Class A misdemeanor, unless the coercion is a threat to commit a felony, in which case the offense is a felony of the third degree.

Are there any exceptions to this rule?

Yes. An exception is granted if the person who influences is a member of the governing body of a governmental entity, and his action to influence is an official action. More specifically, coercion is illegal when it is meant to induce specific action, not when its purpose is to persuade an official to act according to law.

Acceptance of Honorarium.

Rule #3:

A public servant may not solicit, accept or agree to accept an honorarium in consideration of services that would not have been requested of him, but for his official position or duties.

(TEX. PEN. CODE ANN. §36.07)

What are some examples of services rendered not related to “official status?”

An employee of a city police department in Texas may accept a fee for performing services as an expert fingerprint examiner in a criminal case in Louisiana. Presumably, a fingerprint expert is asked for his services because of his expertise, not because he is employed by a particular city. The Texas Ethics Commission issued an opinion saying that such an honorarium is permissible as long as the public servant’s official status was not the deciding factor in the decision to request his services. Op. Tex. Ethics Comm’n No. AOR-346 (1996).

A professor at a state university may accept a fee in addition to his regular salary for performing a service outside of his regular job duties. Presumably, university employees are often asked to perform services because of their academic expertise, and not because they hold a position at a particular university. Op. Tex. Ethics Comm’n No. AOR-339 (1996).

Police officers may accept a cash award in recognition of their contributions for improvements to the justice system. The award in this case was from a national foundation, which had not requested any services, for the officer’s initiative in developing an auto-theft reduction program. Op. Tex. Ethics Comm’n No. AOR-253 (1994).

A legislator may accept fees for public speaking depending on the motivation of the person requesting that he speak. The Texas Ethics Commission held that “the fact that a legislator received fees for speaking before becoming a member of the legislature is certainly strong evidence that the legislator is a desirable speaker for reasons other than his status as a member of the legislature. Op. Tex. Ethics Comm’n No. AOR-306 (1995).

Are there exceptions to his rule?

Yes. A public servant may accept transportation and lodging expenses and meals in connection with an event where he renders official services that are more than perfunctory.

How is an offense under this section classified?

Acceptance of honorarium is a Class A misdemeanor.

Gift to Public Servant by Person Subject to His Jurisdiction.

Rule #4: A public servant commits an offense if he accepts a benefit from someone he knows to be subject to his official functions. Note this offense is different from bribery in that it is directed at the public servant only, and its general purpose is to discourage the buying of favors from public officials.

(TEX. PEN CODE ANN. §36.08)

What are some examples set out in the statute itself?

- ! A public servant in a regulatory agency who solicits, accepts, or agrees to accept any benefit from someone he knows to be subject not only to his particular functions, but also to regulation, inspection or investigation by the agency.
- ! A public servant in an agency having custody of prisoners who solicits, accepts or agrees to accept any benefit from someone he knows to be in his custody, or in his agency's custody.
- ! A public servant in an agency litigating on behalf of the government who solicits, accepts or agrees to accept any benefit from someone against whom he knows litigation is pending by himself or his agency.
- ! A public servant who exercises discretion in connection with contracts, purchases, payments, claims or other pecuniary transactions of government, who solicits, accepts or agrees to accept any benefit from someone he knows to be interested in any such transactions.

Recall, in *Smith v. State*, 959 S.W. 2d 1 (Tex. App.--Waco 1997, pet. ref'd.) The court found that a university official had solicited benefits from a public contractor simply by stating that his wife would join him on a trip to visit the contractor. The contractor then paid for the wife's travel expenses and provided free theater tickets. The contractor

had provided the same benefits to the official and his wife for prior trips. *Id.* at 22.

- ! A public servant who has judicial or administrative authority, or who is employed by a tribunal with judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, who accepts any benefit from a person the public servant knows is interested in a matter before him or the tribunal.
- ! A legislator, the governor or lieutenant governor, or anyone employed by them or by their agents, who solicits, accepts, or agrees to accept any benefit from any person.
- ! A public servant who is a hearing examiner employed by a regulatory agency and who hears contested cases, who solicits, accepts or agrees to accept a benefit from someone appearing before the agency in a contested case, who does business with the agency or who the public servant knows is interested in a matter before him.

How is an offense under this section classified?

A public servant who accepts a gift from someone subject to his jurisdiction has committed a Class A misdemeanor.

What if a public servant receives an unsolicited gift?

He may donate the benefit to a governmental entity which has the authority to accept it, or to a recognized tax-exempt charitable organization.

(TEX. PEN. CODE ANN. § 36.08)

What is the bottom line?

Don't ever accept, whether solicited or not, a "gift," unless it falls within an exception listed below.

Offering Gift to Public Servant.

Rule #5: A person commits an offense if he offers, confers, or agrees to confer a benefit on a public servant who is prohibited by law to accept it.

How is an offense under this section classified?

Offering a gift to a public servant who one knows is forbidden by law to accept it, is a Class A misdemeanor.

(TEX. PEN. CODE ANN. § 36.09)

Exceptions to Prohibitions against Gifts (applicable to Rules #4 and #5 above).

The prohibitions in Chapter 36 of the Penal Code concerning gifts to public servants (specifically § 36.08, Gift to Public Servant, and § 36.09, Offering Gift to Public Servant) do not apply to:

- ! a fee or benefit to which a public servant is lawfully entitled, or for which he gives consideration in a capacity other than as a public servant;
- ! personal, professional or business gifts or benefits given independent of the official status of the recipient; or,
- ! a benefit to a public servant that must be filed under the Personal Financial Disclosure provisions of Chapter 572 of the Government Code, or from a function in honor of the recipient that must be reported under Title 15 of the Election Code, Regulating Political Funds and Campaigns if:
 - o the benefit in excess of \$50 has been reported and it is used only to defray expenses accrued in connection with official duties that are nonreimbursable by the state;
- ! a political contribution defined by the Election Code;
- ! a benefit or memento given to a member of the legislative or executive branch that is required to be reported under the Government Code;
- ! a benefit less than \$50; or,

- ! an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.

Thus, a city may provide free parking for legislators on any property or at any facility “owned leased, or operated” by the city according to this exception adopted by the 1994 legislature. This ethics advisory opinion emphasizes that the prohibitions in §§ 36 and 39 apply to the offer and acceptance of benefits, regardless of the purpose behind the exchange. Therefore, it is important to realize that even though this exception exists, “the provision of unlimited free parking by a city could be a violation of the bribery law if all the elements of the offense of bribery are present.” Op. Tex. Ethics Comm’n No. AOR-191 (1994).

§36.08, Gift to Public Servant, and §36.09, Offering to Public Servant, do not apply to food, lodging, transportation and entertainment accepted as a guest, if the donee and donor are required by law to report those items and do so.

5. Abuse of Office

Abuse of Official Capacity.

Rule #1: A public servant may not intentionally or knowingly violate a law relating to his employment; or misuse government property, services, or personnel in his control by virtue of his office, with the intent to obtain a benefit or to harm or defraud another.

(TEX. PEN. CODE ANN. §39.02)

What constitutes misuse?

“Misuse” means dealing with property contrary to: an agreement under which the public servant holds property; his employment contract; any law prescribing the custody and disposition of government property; or any limited purpose for which the property is delivered or received.

(TEX. PEN. CODE ANN. § 39.01)

How is an offense under this section classified?

A public servant who intentionally or knowingly violates a law relating to his employment, commits a Class A misdemeanor.

Misusing government property valued less than \$20 is a Class C misdemeanor; a Class B misdemeanor if it is valued between \$20 and \$500; a class A misdemeanor if it is valued between \$500 and \$1,500. It is a state jail felony if the property is valued between \$1500 and \$20,000.

Misusing government property valued between \$20,000 and \$100,000 is a third degree felony; a second degree felony if it is between \$100,000 and \$200,000; and a first degree felony if it is valued at over \$200,000.

What kinds of things would not be considered as government property?

Discounts or awards given for travel, including frequent flyer miles, and discounts on rental cars, hotels or food coupons are not considered things of value under this section, due to the administrative difficulty and cost involved in recapturing the discount or award for the governmental entity.

(TEX. PEN. CODE ANN. §39.02)

What other things might not be considered misuse?

The wife of a chief investigator for the district attorney, who was also an employee of the district attorney, was not misusing government property when she rode to and from work in an official vehicle assigned to the investigator. The investigator was authorized to drive the car daily from his residence to work, and her use of the car was merely incidental. The additional cost to the state resulting from the additional weight of the passenger was de minimus. Thus, due to the administrative difficulty in computing the additional cost to the state, the Attorney General held there was no misuse of government property. Tex. Op. Att’y Gen. LO 97-083 (1997).

Official Oppression.

Rule #2: A public servant acting under color of his office may not intentionally subject another to mistreatment or unlawful arrest, search or seizure.

Official oppression also includes intentionally denying another of any right,

privilege, power or immunity, or intentionally subjecting another to sexual harassment.

How is “color of office” defined under this section?

A public servant is acting under color of his office or employment if he acts or purports to act in an official capacity, or takes advantage of such capacity.

How is an offense classified under this section?

Official oppression is a Class A misdemeanor.

(TEX. PEN. CODE ANN. § 39.03)

Misuse of Official Information.

Rule #3: A public servant may not rely on non-public information to which he has access by virtue of his office, to acquire for himself or another, a pecuniary interest in any property, transaction or enterprise that may be affected by such information. This includes speculation, or coercing another into suppressing or not reporting such information to a law enforcement agency. It also includes disclosure of such information with the intent to obtain a benefit, or harm or defraud another.

An individual may not solicit from a public servant information that has not been made public, and that he has access to by virtue of his official position, with either the intent to obtain a benefit, or to harm or defraud another.

(TEX. PEN. CODE §39.06)

What does “information that has not been made public” mean?

This refers to any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 522, the Open Records Act, of the Government Code.

How is an offense classified under this section?

All offenses are considered to be third degree felonies, with the exception of coercion of another to suppress information, which is a Class C misdemeanor.