



**THE ATTORNEY GENERAL  
OF TEXAS**

December 19, 1988

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable Stephen C. Howard  
Orange County Attorney  
Courthouse  
Orange, Texas 77630

Dear Mr. Howard:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

**J I M M A T T O X  
Attorney General of Texas**

JAM/er  
Enclosure



**THE ATTORNEY GENERAL  
OF TEXAS**

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ATTORNEY GENERAL**

Honorable Stephen C. Howard  
Orange County Attorney  
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Orange, Texas 77630

LO-88-136

Dear Mr. Howard:

By letter of December 6, 1988, you requested further clarification of Attorney General Opinion JM-927 (1988), which held that a county commissioner could not act as a surety on a bail bond in which the county has an interest. We discussed Attorney General Opinion JM-927 in our letter opinion to you dated November 17, 1988, and identified as LO-88-127.

Your recent inquiry concerns a newly elected county commissioner who will take office January 1, 1989. You inform us that he has been a bail bondsman for a number of years and has bonds outstanding which may become the subject of bond forfeiture proceedings. He has represented to your office that he will no longer engage in bonding after he takes office, but that his son will conduct a separate bonding business. You state that it is the policy of the Orange County Attorney's Office to actively pursue bond forfeiture proceedings, and you ask the following question concerning this commissioner's participation in budget-setting for your office:

Can the newly elected commissioner participate in any vote (especially concerning budgetary or personnel matters) involving the County Attorney's Office? If he can participate, under what circumstance can he participate?

You direct our attention to chapter 171 of the Local Government Code, which regulates conflicts of interest of local public officers. The 70th session of the legislature codified article 988b, V.T.C.S., as chapter 171 of the Local Government Code, and the same legislature adopted three bills amending article 988b, V.T.C.S. The repeal of a statute by a code does not affect an amendment of that

statute by the same legislature; the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). In answering your question, we will incorporate the 1987 amendments to article 988b, V.T.C.S., into chapter 171 of the Local Government Code. The provisions we quote will be worded and organized differently from those you have quoted in your brief, but there are no substantive differences relevant to your question.

Section 171.003 of the Local Government Code, as modified by the amendment to article 988b, V.T.C.S., by House Bill 1948 of the 70th Legislature, provides in part:

(a) A local public official commits an offense if he knowingly:

(1) violates Section 4 of this Act [section 171.004 of the Local Government Code];

. . . .

(b) An offense under this section is a Class A misdemeanor.

Local Gov't Code § 171.003 (as amended by Acts 1987, 70th Leg., ch. 362, § 1, at 1799).

Section 171.004 of the Local Government Code, as modified by House Bill 1948, provides in part:

(a) If a local public official or a person related to that official in the first degree by either affinity or consanguinity has a substantial interest in a business entity or in real property, the local public official, before a vote or decision on any matter involving the business entity or the real property, shall file an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; . . .

Local Gov't Code § 171.004 (amended by Acts 1987, 70th Leg., ch. 362, § 1, at 1799). (Emphasis added.)

A person has a substantial interest in a business entity if he owns 10 percent or more of its voting stock or shares, or if he owns \$5,000 or more of its fair market value. Local Gov't Code § 171.002(a) (amended by Acts 1987, 70th Leg., ch. 362, § 1, at 1799). An interest of a person related within the first degree by consanguinity to the local public official is a "substantial interest" of that public official. Id. § 171.002(c).

You state that the commissioner's son is the sole owner of his company, which is worth many times the \$2,500 minimum interest stated in section 171.002(a) before its amendment by House Bill 1948. Based on the facts you have provided, the newly elected commissioner has a substantial interest in his business and his son's. You inform us that the county commissioner's business may become inactive to the extent that no new bonds will be made after the beginning of the year, but it will still be an ongoing concern to the extent that it owes or will owe substantial debts to the county. We will assume, for purposes of this letter, that both the commissioner's bonding company and his son's company are business entities within chapter 171 of the Local Government Code, and that these will continue to be business entities after he takes office and when the commissioners court votes on matters concerning your office.

Section 171.004 of the Local Government Code will require the county commissioner to refrain from participating in a vote or decision on "any matter involving" his or his son's business. You argue that he must refrain from participating in decisions involving the county attorney's office, especially budget or personnel matters, because such decisions could reduce the resources available to the office and therefore divert resources from prosecuting bond forfeitures.

None of our opinions on chapter 171 has addressed a comparable question. Attorney General Opinion JM-379 (1985) determined that article 988b, V.T.C.S., prohibited a school trustee from participating in a school board decision about a lawsuit against a bank in which he had a substantial interest. You are concerned about a different fact situation, the commissioners court's considering the budget and resources of the county attorney's office generally, rather than specific lawsuits brought by that office.

Honorable Stephen C. Howard  
December 19, 1988  
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Violation of section 171.004 is a Class A misdemeanor. To be valid, a penal law must be written so that it may be understood. 18 Tex. Jur.3d, Criminal Law, § 9, at 37. The offense must be defined in plain language and give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute. Id. at 37-38. The statutory language bars participation in a vote or decision on "any matter involving the business entity." We believe this language implies that the the governmental body is considering a matter that directly and explicitly affects the particular business entity, or affects a county function that, on the facts of the particular case, has a very close connection to the business entity's interests. For example, if the commissioner's court approved an assistant county attorney position devoted to prosecuting forfeitures of bail bonds, the majority of which were bonds made by the county commissioner and his son, such a close connection might be shown. You have not established facts showing that kind of connection. We believe that the language of the statute does not give fair notice of the the expansive application which you suggest.

Accordingly, based on the facts you provide, chapter 171 of the Local Government Code does not prohibit the newly elected commissioner from participating in all votes involving the county attorney's office, including votes on budgetary or personnel matters. The facts surrounding a particular vote on the county attorney's office might show that it would so directly and predictably affect the commissioner's business interests that chapter 171 could be validly applied to him.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee

SLG/er  
ID# 5139