



TEXAS DEPARTMENT

OF

CRIMINAL JUSTICE

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October 15, 2015

BOARD POLICY

SUBJECT: STANDARDS OF CONDUCT FOR THE TEXAS BOARD OF CRIMINAL JUSTICE AND THE EXECUTIVE DIRECTOR OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

AUTHORITY: Tex. Gov't Code §§ 492.001, 492.003, 492.0031, 492.004, 492.013, 508.083, 551.001–.146, 552.001–.353, 556.004, 556.008, 572.021, 572.051, 572.054, 572.058, 572.069, 573.041, 573.062, 659.032, 669.002–.004, 2113.012, 2113.014, 2252.901, 2256.007, 2261.252, 2262.0535; Tex. Penal Code §§ 36.02, 36.07, 36.08, 36.10, 39.02, 39.03, 39.06; *Meyers v. Walker*, 276 S.W. 305 (Tex. Civ. App. - 1925, no writ); Tex. Att'y Gen. LO-95-052 (1995); Tex. Att'y Gen. Op. GA-0351 (2005); *General Appropriations Act* art. IX § 5.07 (85th Leg); Tex. Const. art. XVI, § 40

APPLICABILITY: Texas Board of Criminal Justice (TBCJ) and Texas Department of Criminal Justice (TDCJ)

POLICY:

This policy restates constitutional, statutory, and common-law principles of ethical conduct and adopts some stricter standards to guide TBCJ members and the TDCJ executive director, where applicable, while conducting TDCJ business. This is not an exhaustive list of all potential areas of conduct or misconduct.

DEFINITIONS:

“Benefit” is anything reasonably regarded as pecuniary gain or pecuniary advantage to the beneficiary or to any other person in whose welfare the beneficiary has a direct and substantial interest.

“Contract” is all contracts and amendments to contracts such as depository contracts; interagency and interlocal contracts; contracts for consultant services, professional services, and utility services; and requests for lease and leases for office space.

“Deliberation” is verbal exchange, in person or by phone, or written communication including letters, faxes, and emails concerning an issue within the jurisdiction of the TBCJ.

PROCEDURES:

I. Membership on the TBCJ

A. It is grounds for removal from the TBCJ if a member:

1. Is unable to discharge the member’s duties for a substantial part of the member’s term because of illness or disability. Tex. Gov’t Code § 492.003(f)(4);
2. Is absent from more than half of the regularly scheduled TBCJ meetings or is absent from more than two consecutive regularly scheduled TBCJ meetings, unless the absence is excused by a majority vote of the TBCJ. Tex. Gov’t Code § 492.003(f)(5);
3. Is required to register as a lobbyist under Texas Government Code Ch. 305 on behalf of a profession related to the operation of the TBCJ. Tex. Gov’t Code § 492.003(d);
4. Is an employee, officer, or paid consultant of a Texas trade association in the field of criminal justice or private sector prison industries, or the spouse of such a person. Tex. Gov’t Code § 492.003(b), (c);
5. Is a person employed by or managing a business entity or other organization regulated by or receiving funds from the TDCJ, or the spouse of such a person. Tex. Gov’t Code § 492.003(a)(1);
6. Owns, or controls directly or indirectly, more than a 10% interest in a business entity or other organization regulated by or receiving funds from the TDCJ, including an entity or organization with which the TDCJ contracts under the Prison Industry Enhancement Certification Program (PIECP), or the spouse of such a person. Tex. Gov’t Code § 492.003(a)(2);
7. Uses or receives a substantial amount of tangible goods, services, or funds from the TDCJ, other than reimbursement authorized by law for expenses, or is the spouse of such a person. Tex. Gov’t Code § 492.003(a)(3); or

8. Owns, or controls directly or indirectly, or is employed by a business entity or other organization with which the TDCJ contracts concerning a PIECP approved and certified by the TBCJ, or is the spouse of such a person. Tex. Gov't Code § 492.003(a)(4).
- B. The validity of an action of the TBCJ is not affected by the fact that it was taken when a ground for removal of a TBCJ member existed. Tex. Gov't Code § 492.003(g).
- C. If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the TBCJ. The chairman shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chairman, the executive director shall notify the next highest ranking officer of the TBCJ, who shall then notify the governor and the attorney general that a potential ground for removal exists. Tex. Gov't Code § 492.003(h).
- D. Holding another office is incompatible with TBCJ membership if one office might impose its policies on another office or subject it to control in some other way, such as if the duties of the two positions are inconsistent or in conflict, or if one office is subordinate to the other. Incompatibility is not the same as a conflict of interest, although it may involve a conflict of interest. Incompatibility requires the involvement of two governmental offices or positions, while a conflict of interest may arise when only one office or position is involved with a nongovernmental interest. Tex. Att'y Gen. LO-95-052.

II. Training

- A. A TBCJ member may not vote, deliberate, or be counted as a member in attendance at a meeting of the TBCJ until the member completes a training program that provides information regarding:
 1. The legislation that created the TDCJ and TBCJ;
 2. The programs operated by the TDCJ;
 3. The role and functions of the TDCJ;
 4. The rules of the TDCJ to include those that relate to disciplinary and investigatory authority;
 5. The current budget and the results of the most recent formal audit of the TDCJ;

6. The requirements of the open meetings law, the public information law, the administrative procedures law, and other laws relating to public officials to include conflict of interest laws;
7. Any applicable ethics policies adopted by the TDCJ or the Texas Ethics Commission; and
8. The legislative history of the Private Sector Prison Industries Oversight Authority, Texas Government Code §§ 497.051.–.064, the history and operations of the PIECP, as well as any applicable federal laws concerning the operations or certification of a program.

Tex. Gov't Code § 492.0031.

- B. Each member of the TBCJ is required to participate in investment training relating to the person's responsibilities under the *Public Funds Investment Act (Act)* within six months after taking office or assuming duties. Training shall include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with the *Act*. Tex. Gov't Code § 2256.007.
- C. Each member of the TBCJ shall complete an abbreviated contract training program, provided by the comptroller for members of the governing bodies of state agencies. Tex. Gov't Code § 2262.0535.
- D. As often as necessary, the executive director or designee shall provide TBCJ members with information regarding requirements for office, to include responsibilities related to standards of conduct. Tex. Gov't Code § 492.004.

III. Standards of Conduct

- A. A TBCJ member and the executive director shall timely file the personal financial statement required by Texas Government Code Chapter 572, Subchapter B.
- B. A TBCJ member shall not:
 1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the TBCJ member in the discharge of official duties or that the TBCJ member knows or should know is being offered with the intent to influence the member's official conduct. Tex. Gov't Code § 572.051(a)(1);
 2. Accept employment or engage in a business or professional activity that the TBCJ member might reasonably expect would require or induce the TBCJ member to disclose confidential information acquired by reason of the official position. Tex. Gov't Code § 572.051(a)(2);

3. Accept other employment or compensation that could reasonably be expected to impair the TBCJ member's independence of judgment in the performance of the TBCJ member's official duties. Tex. Gov't Code § 572.051(a)(3);
 4. Make a personal investment that could reasonably be expected to create a substantial conflict between the TBCJ member's private interest and the public interest. Tex. Gov't Code § 572.051(a)(4); or
 5. Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the TBCJ member's official powers or performed the TBCJ member's official duties in favor of another. Tex. Gov't Code § 572.051(a)(5).
- C. The executive director shall not engage in any conduct that would violate Section III.B. of this policy. The executive director shall devote the entirety of the executive director's work life exclusively to the business of the TDCJ. The executive director shall not conduct business with an individual or firm with whom the executive director has a current or prospective financial interest, either direct or indirect.

IV. Acceptance of Certain Benefits Prohibited

- A. A TBCJ member or the executive director may not solicit, accept, or agree to accept any benefit in exchange for any exercise of official discretion. Tex. Penal Code § 36.02(a)(1);
- B. A TBCJ member or the executive director may not solicit or accept, on behalf of any person, a benefit from a person who the TBCJ member or the executive director knows or should know is:
 1. Interested in a facility, site, contract, purchase, claim, or other pecuniary transaction that may be substantially affected by the performance or nonperformance of the TBCJ member's or executive director's official duties;
 2. Subject to regulation, inspection, or investigation by the TDCJ; or
 3. In the custody of the TDCJ.

Tex. Penal Code § 36.08.

- C. A TBCJ member or the executive director may accept a benefit in a situation described by Section IV.B of this policy if the benefit is:
1. A fee or other benefit that the TBCJ member or executive director is legally entitled to receive or for which the member or executive director has given legitimate consideration in a non-official capacity;
 2. A gift based on kinship or a relationship independent of the TBCJ member's or the executive director's official status;
 3. Derived from a function in honor of the TBCJ member or the executive director, the benefit is solely used to defray non-reimbursable expenses accrued in the performance of the TBCJ member's or executive director's duties, and any benefit in excess of \$50 and its source are reported on the TBCJ member's or executive director's personal financial statement filed with the Texas Ethics Commission;
 4. A gift, award, or memento that is required to be reported by a lobbyist under Texas Government Code Chapter 305;
 5. Not cash or a negotiable instrument and is an item worth less than \$50; or
 6. Food, lodging, transportation, and entertainment accepted as a guest and reported by the TBCJ member or the executive director on the TBCJ member's or the executive director's personal financial statement filed with the Texas Ethics Commission.

Tex. Penal Code § 36.10.

- D. A TBCJ member or the executive director may not solicit, accept, or agree to accept an honorarium in consideration for services that the TBCJ member or the executive director would not have been requested to provide but for the TBCJ member's or the executive director's official position. Although other standards might be violated, this section does not prohibit a TBCJ member or executive director from accepting transportation and lodging expenses in connection with a conference or similar event in which the TBCJ member or the executive director 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. Tex. Penal Code § 36.07.

V. Recusal for Acceptance of Benefit

- A. Although acceptance of a benefit may be allowed under Section IV.C of this policy, a TBCJ member who accepts a benefit shall recuse himself or herself from any discussion or action taken by the TBCJ with regard to any matter in which the

TBCJ member knows or should know the donor of the benefit may have a personal or economic interest. If disclosure of the personal or private interest would not reveal information made confidential by law, the TBCJ member shall disclose the basis for the recusal at the time of the recusal, in a meeting called and held in compliance with the *Texas Open Meetings Act*. Tex. Gov't Code §§ 551.001–.146. The disclosure shall be entered in the minutes of the meeting.

- B. Recusal under this section is not required if the matter in question affects an entire profession or class of business entities and the interest that would otherwise require recusal is no different than that of any other member of the affected profession or class.
- C. Recusal under this section is not required if the benefit is not cash or a negotiable instrument and is an item worth less than \$50. Tex. Penal Code § 36.10(a)(6).

VI. Disclosure of Private Interests and Financial Interests

A. Private Interests in Measure or Decision

A TBCJ member who has a personal or private interest in a decision pending before the TBCJ, other than a financial interest in a contract as covered by Section VI.B of this policy, shall publicly disclose the fact to the TBCJ in a meeting called and held in compliance with the *Texas Open Meetings Act*. The TBCJ member may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting. For purposes of this section, an individual does not have a “personal or private interest” in a measure, proposal, or decision if the individual is engaged in a profession, trade, or occupation and the individual’s interest is the same as all others similarly engaged in the profession, trade or occupation. A “personal or private interest” would include a non-financial, fiduciary interest in a contract with, or other decision affecting, an entity other than the TBCJ. Tex. Gov’t Code §§ 572.058, 2261.252(a).

B. Disclosure of Financial Interests

- 1. The TDCJ may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:
 - a. A TBCJ member;
 - b. The executive director, general counsel, chief financial officer, or contracts and procurement director; or
 - c. A family member related to an employee or official, as described herein, within the second degree by affinity or consanguinity.

2. A financial interest exists if the individuals identified above:
 - a. Own or control, directly or indirectly, an ownership interest of at least one percent in a business entity, including the right to share in profits, proceeds, or capital gains; or
 - b. Could reasonably foresee that a contract with a business entity could result in a financial benefit to the employee or official.
3. A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership interest of less than one percent in a corporation. Tex. Gov't Code § 2261.252(b)-(d).
4. An employee or TBCJ member identified in Section VI.B.1 shall complete a Disclosure of Financial Interests form (Attachment A).

VII. Nepotism

- A. A person's relatives within the third degree of consanguinity are the person's: parent, child, brother, sister, grandparent, grandchild, great-grandparent, great-grandchild, aunt who is a sister of a parent of the person, uncle who is a brother of a parent of the person, nephew who is a child of a brother or sister of the person, or niece who is a child of a brother or sister of the person. A person's relatives within the second degree by affinity are:
 1. A parent, child, brother, sister, grandparent, or grandchild of the person's spouse; and
 2. The spouse of the person's parent, child, brother, sister, grandparent, or grandchild.
- B. A TBCJ member may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of a person who is to be directly or indirectly compensated from public funds if the person is related to the TBCJ member or another TBCJ member within the third degree by consanguinity or within the second degree by affinity. Tex. Gov't Code § 573.002-.041.
- C. This prohibition does not apply if the person is employed in the position immediately before the appointment of the TBCJ member to whom the person is related in the prohibited degree, and that prior employment is continuous for at least 30 days. Tex. Gov't Code § 573.062(a).
- D. If the prohibition does not apply due to Section VII.C of this policy, and the person continues in the position, the TBCJ member to whom the person is related

in a prohibited degree 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 person if that action applies only to the person and is not taken to affect a bona fide class or category of employees. Tex. Gov't Code § 573.062(b).

VIII. Abuse of Office

- A. A TBCJ member or the executive director may not intentionally or knowingly violate a law relating to the member's or the executive director's office, or misuse government property, services, personnel, or other thing of value, in order to obtain a benefit or harm or defraud another person. Tex. Penal Code § 39.02(a).
- B. A TBCJ member or the executive director acting under color of office, and knowing the conduct is unlawful, may not intentionally deny or impede another person's exercise or enjoyment of any right, privilege, power, or immunity, or subject another person to sexual harassment. Tex. Penal Code § 39.03(a).
- C. A TBCJ member or the executive director may not use non-public information acquired by virtue of official status to speculate or achieve a pecuniary gain, or aid another person in speculating or achieving a pecuniary gain. Tex. Penal Code § 39.06(a).
- D. A TBCJ member or the executive director may not disclose or misuse non-public information that is acquired by virtue of official status, in order to obtain a benefit or harm or defraud another person. Tex. Penal Code § 39.06(b).

IX. TBCJ Member Travel

- A. As described in the *Texas Board of Criminal Justice Orientation Manual*, a TBCJ member is entitled to reimbursement for expenses incurred in travel connected to TDCJ business in accordance with state travel regulations. Due to limitations on the use of appropriated funds for political purposes, a TBCJ member may not use state resources or seek reimbursement for travel expenses incurred in connection with activity supporting or opposing a political candidate or influencing the outcome of any election or the passage or defeat of any legislative measure. This does not prohibit reimbursement if a TBCJ member testifies before or provides information to the legislature as an invited resource witness. Tex. Gov't Code § 556.004, 556.008; *General Appropriations Act* art. IX § 5.07 (85th Leg).
- B. Documents submitted to the comptroller for travel outside the state of Texas must also be provided to the Texas Ethics Commission and the Legislative Budget Board (LBB) before reimbursement may be received by a TBCJ member.

X. Conduct After Service

A former TBCJ member or executive director may not:

- A. Represent an offender, or receive compensation for services rendered on behalf of any person, including oneself, in a matter before the Board of Pardons and Paroles (BPP) or a panel of the BPP, for a period of two years after terminating service on the TBCJ or as executive director. Tex. Gov't Code § 508.083;
- B. Make any communication or appear before an officer or employee of the TDCJ with intent to influence and on behalf of any person, including oneself, in connection with any matter on which the person seeks official action, or inaction, for a period of two years after terminating service on the TBCJ or as executive director. Tex. Gov't Code § 572.054(a);
- C. Represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the TBCJ member or executive director participated during the period of service or employment, either through personal involvement or because the matter was within the TBCJ member's or executive director's official responsibility. Tex. Gov't Code § 572.054(b); or
- D. Accept any position of employment from a person who is or has been involved in a procurement or contract negotiation in which the member participated in the member's official capacity for a period of two years after the contract is signed or the procurement is terminated or withdrawn. Tex. Gov't Code § 572.069.

XI. Limits on Appropriated Funds

- A. Funds appropriated by the *General Appropriations Act*, regardless of the source or character, may not be used:
 - 1. For the payment of salaries to any employee who uses alcoholic beverages while on active duty. Tex. Gov't Code § 2113.012; or
 - 2. To enter into an employment contract, a professional services contract, or a consulting services contract with any individual who has been previously employed by the TDCJ within the past 12 months. Tex. Gov't Code § 2252.901.
- B. Funds appropriated by the *General Appropriations Act*, regardless of the source or character, may not be used to compensate any employee who:
 - 1. Accepts or solicits any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties or that the

employee knows or should know is being offered with the intent to influence the employee's official conduct;

2. Accepts other employment or engages in a business or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information acquired by reason of the official position;
3. Accepts other employment or compensation that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;
4. Makes personal investments that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest; or
5. Intentionally or knowingly solicits, accepts, or agrees to accept any benefit for having exercised the employee's official powers or performed the employee's official duties in favor of another.

Tex. Gov't Code § 572.051, 2113.014.

XII. Contracts with and Reassignment of Executive Director

- A. The TBCJ may not enter into a contract with the executive director of the TDCJ, with a person who at any time during the four years before the date of the contract was the executive director of the TDCJ, or with a person who employs a current or former executive director of the TDCJ or another state agency unless the TBCJ votes, in meeting called and held in compliance with the *Texas Open Meetings Act*, to approve the contract and notifies the LBB, no later than the fifth day before the date of the vote, of the terms of the proposed contract. Tex. Gov't Code § 669.003.
- B. The terms of a reassignment of the executive director and the terms of a contract with a current or former executive director are public information. A record regarding the reassignment of the executive director, the terms of a consulting service contract with a current or former executive director, or an agreement under which the TDCJ has paid or will pay any monetary or other consideration for any settlement of disputes of the TBCJ or TDCJ with a current or former executive director may not be withheld from public disclosure. Tex. Gov't Code § 669.004.
- C. The TBCJ may not reassign the executive director to another position within the TDCJ unless the TBCJ votes to approve the proposed reassignment in a meeting called and held in compliance with the *Texas Open Meetings Act*. Tex. Gov't Code § 669.002.

XIII. Communication Between Members

- A. A quorum of the members of the TBCJ or of a committee of the TBCJ is prohibited from deliberating on any issue within the jurisdiction of the TBCJ unless such deliberation occurs in meeting called and held in compliance with the *Texas Open Meetings Act*. Five members constitute a quorum of the TBCJ, while three members constitute a quorum of a four-member committee.
- B. Communications concerning issues that are not within the TBCJ's jurisdiction can take place without violation of the *Texas Open Meetings Act*.
- C. Written communication by a TBCJ member, which includes letters, faxes, and emails, should be assumed by the TBCJ member to be subject to disclosure under the *Public Information Act*, unless the communication is clearly subject to attorney-client privilege or other specific exception to disclosure.
- D. To avoid inadvertent violation of the *Texas Open Meetings Act*, members shall, when responding to a substantive written communication sent from staff to all TBCJ members, respond without copying any other TBCJ member, except the chairman.

Hon. Dale Wainwright, Chairman*
Texas Board of Criminal Justice

* Signature on file

