



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2023

The Honorable James M. Tirey
Hale County Attorney
500 Broadway, Suite 340
Plainview, Texas 79072

Opinion No. KP-0428

Re: Whether the City’s employment of an attorney who is the son-in-law of the city manager constitutes a conflict-of-interest under chapter 176 of the Local Government Code or the Texas Disciplinary Rules of Professional Conduct (RQ-0469-KP)

Dear Mr. Tirey:

You ask two questions about the employment of a law firm by a city.¹ You inform us that the city manager for the City of Petersburg (“City”) began working for the City in April of 2020. The City began using a certain law firm (the “Firm”) in June 2020.² Request Letter at 1. You further state that the city manager’s son-in-law “joined the Firm as an associate in August, 2021, and performed some legal work on behalf of the Firm for the City.” *Id.* at 1–2. You ask first whether the City’s employment of the Firm “constitute[s] an impermissible conflict of interest under Chapter 176 of the Texas Local Government Code[.]”³ *Id.* at 1. We understand you to ask whether chapter 176 allows a city to contract with a law firm when the law firm employs the son-in-law of the city manager.

Chapter 176 of the Local Government Code

Chapter 176 requires the filing of certain disclosure statements in specified circumstances. *See* TEX. LOC. GOV’T CODE §§ 176.002 (“Applicability to Vendors and Other Persons”), 176.003 (“Conflicts Disclosure Statement Required”), 176.006 (“Disclosure Requirements for Vendors and Other Persons; Questionnaire”). The chapter applies to a “vendor” and “a local government officer

¹*See* Letter from Honorable James M. Tirey, Hale Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (July 14, 2022), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2022/RQ0469KP.pdf> (“Request Letter”).

²*See* City of Petersburg Council Meeting Minutes at 1 (June 11, 2020) (council action accepting the Firm’s letter of legal services engagement agreement), *available at* <https://petersburgtx.com/city-council/agenda-minutes/>.

³You state that “[a]s a preliminary matter, the nepotism provisions in Chapter 573 of the Texas Government Code and the conflict-of-interest provisions in Chapter 171 of the Texas Local Government Code do not appear to apply,” and you do not ask any questions about those provisions. Request Letter at 2.

of a local governmental entity.” *Id.* § 176.002(1), (2). Chapter 176 defines a “local government entity” to include municipalities. *Id.* § 176.001(3). It defines a “local government officer” to include “an administrator . . . or other person designated as the executive officer of a local governmental entity,” and “an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.” *Id.* § 176.001(4)(B), (C); *see also id.* § 176.001(1) (defining “agent”). Thus, while you do not provide details of the city manager’s duties and authority, the city manager is likely a local government officer of a local governmental entity subject to chapter 176. Further, the Firm meets chapter 176’s definition of a “vendor”—“a person who enters or seeks to enter into a contract with a local governmental entity” and the person’s agents.⁴ *Id.* § 176.001(7); *see also id.* § 176.001(1-d) (defining “contract” to mean “a written agreement for the sale or purchase of . . . services”), (6) (defining “services” to include “skilled . . . professional services”).

Because the city manager and the Firm are likely subject to chapter 176, we next consider the chapter’s disclosure-filing requirements. Section 176.003 requires a local government officer to file a conflicts disclosure statement with the local governmental entity’s records administrator if, as pertinent here: (1) the local governmental entity has executed a contract with a vendor or considers such a contract; and (2) the vendor “has an employment or other business relationship with . . . a family member of the officer that results in the . . . family member receiving taxable income [exceeding] \$2,500 during the 12-month period preceding the date that the officer becomes aware” of the local governmental entity’s execution or consideration of a contract with the vendor. *Id.* § 176.003(a)(1), (2)(A).

As used in chapter 176, a “family member” is “a person related to another person within the first degree by consanguinity [i.e., by blood] or affinity [i.e., by marriage],” as described by specified nepotism statutes. *Id.* § 176.001(2). The applicable nepotism statute instructs that “[t]wo individuals are related to each other by affinity if: (1) they are married to each other; or (2) the spouse of one of the individuals is related by consanguinity to the other individual.” TEX. GOV’T CODE § 573.024(a). A father-in-law and son-in-law are related to each other within the first degree of affinity. *See id.*; Tex. Att’y Gen. Op. No. GA-0186 (2004) at 3 (determining that an individual’s relatives within the first degree by consanguinity include the spouse of the individual’s child). Thus, the city manager has a duty to file a disclosure statement because the Firm contracting with the City also employs the city manager’s son-in-law. For similar reasons, the Firm has a duty to complete and file a conflict-of-interest questionnaire. *See* TEX. LOC. GOV’T CODE § 176.006(a)(1) (requiring a questionnaire from a vendor who has a business relationship with a local governmental entity and has an employment or business relationship with a family member of a local government officer of the entity); *see also id.* § 176.001(1-a) (defining “business relationship”).⁵

⁴*See also* TEX. GOV’T CODE § 311.005(2) (providing that “person” in a statute is generally construed as including a “corporation, organization, . . . partnership, association, and any other legal entity”); TEX. LOC. GOV’T CODE § 1.002 (stating that chapter 311 of the Government Code generally applies to the construction of the Local Government Code).

⁵The Local Government Officer Conflicts Disclosure Statement and the Conflict-of-Interest Questionnaire forms can be found on the Texas Ethics Commission’s website. *See* <https://www.ethics.state.tx.us/forms/conflict/>.

Accordingly, in answer to your first question, chapter 176 does not prohibit a contract between a local government entity and a vendor when one of the business or family relationships described in the chapter exists. *See id.* § 176.006(i) (providing that the validity of a contract is not affected solely because a vendor fails to file the required disclosure). Rather, it requires only that a local government officer and the vendor file a specified disclosure form. *See id.* §§ 176.003, .006.

Texas Disciplinary Rules of Professional Conduct

Your second question asks whether the City’s employment of the Firm “constitute[s] an impermissible conflict of interest under the Texas Disciplinary Rules of Professional Conduct[.]” Request Letter at 1. The Texas Disciplinary Rules of Professional Conduct (“Rules”) govern and provide guidance to enable a lawyer to evaluate the lawyer’s potential conflicts of interest. *See* TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.06(a), *reprinted in* TEX. GOV’T CODE, tit. 2, subtit. G, app. A (Tex. State Bar R. art. X, § 9). The conflict-of-interest rules concern not only potential conflicts between the interests of different clients, but also between the interest of a client and the lawyer’s own interest or that of the lawyer’s law firm. *See id.* preamble ¶ 7. However, this office has consistently explained that application of the Rules to particular circumstances involves fact-intensive questions outside the scope of the Attorney General opinion function. *See* Tex. Att’y Gen. Op. Nos. KP-0400 (2022) at 4, GA-0716 (2009) at 2, GA-0557 (2007) at 3. Accordingly, we cannot answer your second question.

S U M M A R Y

Chapter 176 of the Local Government Code requires disclosure when a local government entity contracts or considers contracting with a vendor with whom a local government officer of the entity has a specified employment, business, or family relationship. Chapter 176 likely applies when a law firm contracts with a city and the law firm employs the son-in-law of the city manager. The chapter does not prohibit a contract in such circumstances, but it requires the officer to file a conflict-of-interest statement and the vendor to file a conflict-of-interest questionnaire.

Whether a lawyer or law firm's employment in particular circumstances would constitute a conflict-of-interest under the Texas Disciplinary Rules of Professional Conduct involves fact-intensive questions that cannot be resolved in an Attorney General opinion.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON
Attorney General of Texas

BRENT E. WEBSTER
First Assistant Attorney General

LESLEY FRENCH
Chief of Staff

D. FORREST BRUMBAUGH
Deputy Attorney General for Legal Counsel

AUSTIN KINGHORN
Chair, Opinion Committee

CHARLOTTE M. HARPER
Assistant Attorney General, Opinion Committee