



THE DEVIL IN THE DETAILS

An Ethical Journey Toward Governmental Approvals

BARBARA BOULWARE-WELLS

Partner, Knight & Partners

LAND USE AND DEVELOPMENT – ETHICAL DILEMMAS

Political Subdivision or Landowner/Applicant

- **Political Subdivision:**
 - City Staff (land use planner, development services directors, public works director)
 - Local Governmental Official (board member, commissioner or councilmember)
 - Attorney (employee or contract)
- **Landowner/Applicant:**
 - Landowner
 - Engineer/Consultant
 - Attorney (may or may not be represented)

REGULATIONS APPLICABLE TO LOCAL OFFICIALS

- Chapter 171, Texas Local Government Code provides the minimum amount of ethical conduct for local public officials. Chapter 171 provides, in part, as follows:
 - § 171.003. Prohibited Acts; Penalty.
 - (a) A local public official commits an offense if the official knowingly:
 - (1) violates Section 171.004;
 - (2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or
 - (3) acts as surety on any official bond required of an officer of the governmental entity.
 - (b) An offense under this section is a Class A misdemeanor.

According to § 171.001(1) of the Texas Local Government Code, a “local public official” means “a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.”

Tex. Loc. Gov’t Code, Sec. 171.004. Affidavit and Abstention From Voting Required.

(a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, 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; or
- (2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: The Devil in the Details: An Ethical Journey toward Governmental Approvals

Also available as part of the eCourse

[Avoiding Open Government Pitfalls; plus an Ethics Journey toward Government Approvals](#)

First appeared as part of the conference materials for the
19th Annual The Land Use Conference session

"The Devil in the Details: An Ethical Journey toward Governmental Approvals"