



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 13, 1997

The Honorable Homero Ramirez
Webb County Attorney
P.O. Box 420268
1110 Victoria, Suite 403
Laredo, Texas 78040

Letter Opinion No. 97- 093

Re: Whether Local Government Code section
131.903 carves an exception to Local Government
Code chapter 171 (ID# 39647)

Dear Mr. Ramirez:

Local Government Code section 131.903 regulates conflicts of interest with respect to a political subdivision's selection of a depository. Local Government Code chapter 171 contains conflict-of-interest provisions that apply to local public officials generally. You ask whether section 131.903 provides an exception to chapter 171. We conclude that it does.

Because you ask your question in the context of county government, we will limit our discussion to counties. We will begin by discussing Local Government Code chapter 116, which governs a county's selection of depositories, in addition to Local Government Code section 131.903 and chapter 171.

All money collected or held by a county, district, or precinct officer must be deposited into a county depository,¹ and Local Government Code chapter 116 dictates the selection of those depositories and subdepositories (collectively, "depositories"). A county commissioners court must contract with its chosen depositories biennially or quadrennially in May² following public notice³ and an opportunity for interested banks to apply.⁴ Section 116.024 articulates how the commissioners court must select its depositories and explicitly states that Local Government Code section 131.903's conflict-of-interest provisions apply.⁵

Under Local Government Code section 131.903, a county may select a bank as its depository even if one or more of the county commissioners is an officer or director of the bank or owns ten

¹See Local Gov't Code § 116.002.

²See *id.* § 116.021(a).

³See *id.* § 116.022.

⁴*Id.* § 116.023.

⁵*Id.* § 116.024(d).

percent or less of the bank's outstanding capital stock, so long as both of two conditions are met.⁶ First, a majority of the commissioners must vote to select the bank as a depository.⁷ Second, the interested commissioner must abstain from the decision.⁸

Local Government Code chapter 171 also regulates conflicts of interest involving county commissioners. Chapter 171 restricts a county commissioners court's prerogative to transact business with any business entity⁹ or regarding any real property in which a commissioner has a substantial interest except in very limited circumstances.¹⁰ The commissioners court may transact business with such a business entity if the action will not economically affect the entity in a way that may be distinguished from the action's effect on the public generally.¹¹ Similarly, the commissioners court may take an action affecting such real property if it is reasonably foreseeable that the action will not economically affect the property's value in a way that may be distinguished from the action's effect on the public generally.¹² If, on the other hand, the commissioners court's action will peculiarly affect the business entity or the real property, the interested commissioner must file, prior to the action, an affidavit stating the nature and extent of the interest.¹³ Moreover, the interested commissioner must not participate in the matter.¹⁴

A commissioner has a *substantial interest*, for purposes of chapter 171, in a business entity if

he or she owns at least ten percent of the entity's voting stock;

he or she owns at least \$5,000 of the business entity's fair market value; or

he or she received over ten percent of his or her gross income in the previous year from the business entity.¹⁵

⁶*Id.* § 131.903(a).

⁷*Id.* § 131.903(a)(1).

⁸*Id.* § 131.903(2)(B).

⁹A business entity would include a bank. *See id.* § 171.001(2).

¹⁰*Id.* § 171.003(a).

¹¹*See id.* § 171.004(a)(1).

¹²*Id.* § 171.004(a)(2).

¹³*Id.* § 171.004(a).

¹⁴*Id.*

¹⁵*Id.* § 171.002(a).

to affect a statute, such as the statutory predecessor to section 131.903, that already had replaced the common law.²³

Our conclusion that section 131.903 provides an exception to chapter 171 for the selection of a depository is supported by our analogous conclusion in Attorney General Opinion JM-583. In that opinion, this office considered whether Education Code section 23.75,²⁴ which parallels Local Government Code section 131.903, excepts from the statutory predecessor to Local Government Code chapter 171 a school district's selection of a depository.²⁵ The opinion concludes that the Education Code provision is a special exception to the more general Local Government Code chapter 171:

The School Depository Act is a special statute which governs a particular kind of contract entered into by independent school districts As a specific statute, [section 23.75] was not repealed by [the statutory predecessor to Local Government Code chapter 171, which was enacted in 1983²⁶]. The latter statute is a general provision, which applies to conflict of interest situations involving local officers as a class. The specific statute more clearly evidences the legislative intent, and is considered to be an exception to the more recently enacted general statute.²⁷

²³Our conclusion here is consistent with our conclusions in Attorney General Opinions DM-303 (1994) and DM-279 (1993). We concluded in those opinions that Local Government Code chapter 171 prevails over inconsistent provisions in the county auditors' and county commissioners' oath-of-office statutes. See Attorney General Opinions DM-303 (1994) at 2, 4; DM-279 (1993) at 1-2, 4. The oath-of-office statutes, Local Government Code sections 81.002 (regarding county commissioners) and 84.007 (regarding county auditors), codified the common law without modifying it. Compare Local Gov't Code §§ 81.002(a), 84.007(b) with *Meyers v. Walker*, 276 S.W. 305, 307 (Tex. Civ. App.--Eastland 1925, no writ). By contrast, the statutory predecessor to Local Government Code section 131.903 altered the common law. Compare Local Gov't Code § 131.903 with *Meyers*, 276 S.W. at 307.

²⁴(Current version at Educ. Code § 45.204.)

²⁵Attorney General Opinion JM-583 (1986) at 2, affirmed by Attorney General Opinion JM-1082 (1989) at 1-2.

²⁶See Act of May 30, 1983, 68th Leg., R.S., ch. 640, 1983 Tex. Gen. Laws 4079, 4079-82.

²⁷Attorney General Opinion JM-583 (1986) at 5 (footnotes added) (citations omitted).

A commissioner is *substantially interested* in real property if the commissioner owns, equitably or legally, the property and the property has a fair market value of at least \$2,500.¹⁶ Moreover, a commissioner has a substantial interest if the commissioner's spouse, parent, child, parents-in-law, step-child, step-parents, or children-in-law have a substantial interest in the business entity or real property.¹⁷

With respect to selecting a depository, you believe Local Government Code section 131.903 is inconsistent with chapter 171 of the same code. Under section 131.903, for example, a county may enter a depository contract with a bank that provides a commissioner's daughter's entire gross income. Under chapter 171, by contrast, the county may not enter the same contract. We consider, therefore, how to reconcile the two statutes.

We believe section 131.903 excepts from chapter 171 the selection of a depository. Where a general statute conflicts with a specific statute, we are to construe the specific statute as an exception to the general statute unless the legislature enacted the general provision later and manifestly intended it to prevail.¹⁸ In our opinion, chapter 171 is a general provision pertaining broadly to any conflict of interest.¹⁹ On the other hand, the legislature has tailored section 131.903 specifically to conflicts of interest involving a local government's selection of depositories. Moreover, although the legislature enacted the statutory predecessor to chapter 171 after it enacted the statutory predecessor to section 131.903,²⁰ we do not believe the legislature manifestly intended chapter 171 to supersede section 131.903. As this office previously has stated, the legislature intended the statutory predecessor to chapter 171 to "repeal and replace" the common-law conflict-of-interest doctrine.²¹ Prior to the enactment of chapter 171's statutory predecessor, no conflict-of-interest statute governed local public officials' conduct generally.²² The statutory predecessor to chapter 171, then, was designed to fill in the gaps, but we do not believe the legislature intended it

¹⁶*Id.* § 171.002(b).

¹⁷*Id.* § 171.002(c); *see also* Gov't Code §§ 573.023(c)(1), .025(b)(1) (defining first degree by consanguinity and first degree by affinity).

¹⁸Gov't Code § 311.026.

¹⁹*See, e.g.*, Attorney General Opinions JM-583 (1986) at 5; JM-310 (1985) at 2; JM-291 (1984) at 1.

²⁰The legislature enacted the statutory predecessor to Local Government Code chapter 171, V.T.C.S. article 988b (*repealed by* Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 49(1), 1987 Tex. Gen. Laws 707, 1306. *See* Act of May 30, 1983, 68th Leg., R.S., ch. 640, §§ 1-6, 1983 Tex. Gen. Laws 4079, 4079-81 in 1983. The legislature previously had enacted the statutory predecessor to Local Government Code 131.903, V.T.C.S. article 2529c, section 2 (*repealed by* Act of May 4, 1993, 73d Leg., R.S., ch. 268, § 46(1), 1993 Tex. Gen. Laws 583, 986), in 1967. *See* Act of Apr. 26, 1967, 60th Leg., R.S., ch. 179, 1967 Tex. Gen. Laws 370, 370-71.

²¹Attorney General Opinion JM-424 (1986) at 5.

²²*See* Attorney General Opinion JM-310 (1985) at 1.

S U M M A R Y

With respect to a county commissioners court's selection of a depository or subdepository, Local Government Code section 131.903, which provides for conflicts of interest in a local government's selection of depositories, carves an exception to Local Government Code chapter 171, which provides generally for local government officers' conflicts of interest.

Yours very truly,



Kymerly K. Oltrogge
Assistant Attorney General
Opinion Committee