



Vendor and Employee Responsibilities Under State Ethics Rules

Institutional Compliance Office | March 2019

State statutes govern employee and vendor behavior

“Standards of Conduct” statute

Governs employees
Tex. Gov't. Code
§ 572.051(a)(1)

•A state officer or employee should not ... accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct ...

“Bribery” statute

Governs vendors
Tex. Pen. Code § 36.02(a)

•A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another ... any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant ...

“Gift to Public Servant” statute

Governs employees
Tex. Pen. Code § 36.08(d)

•A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

Key terms in these statutes: Benefit and acceptance

Benefit: Anything reasonably regarded as pecuniary gain or advantage, including to another person or entity in whose welfare you have a meaningful interest

\$160 rifle Event tickets	\$60 restaurant meal Resort hotel stay	\$50 Clock Hunting trip
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Acceptance: Accepting gifts, favors, or services could violate the penal code.

Bribery: Soliciting, offering, or accepting a “benefit” in exchange for “official action”

Kickback: Soliciting, offering, or accepting a benefit *after* official action is taken

The key problem: the exchange; the appearance of “this for that”

The courts have interpreted “benefit” and “official action” broadly

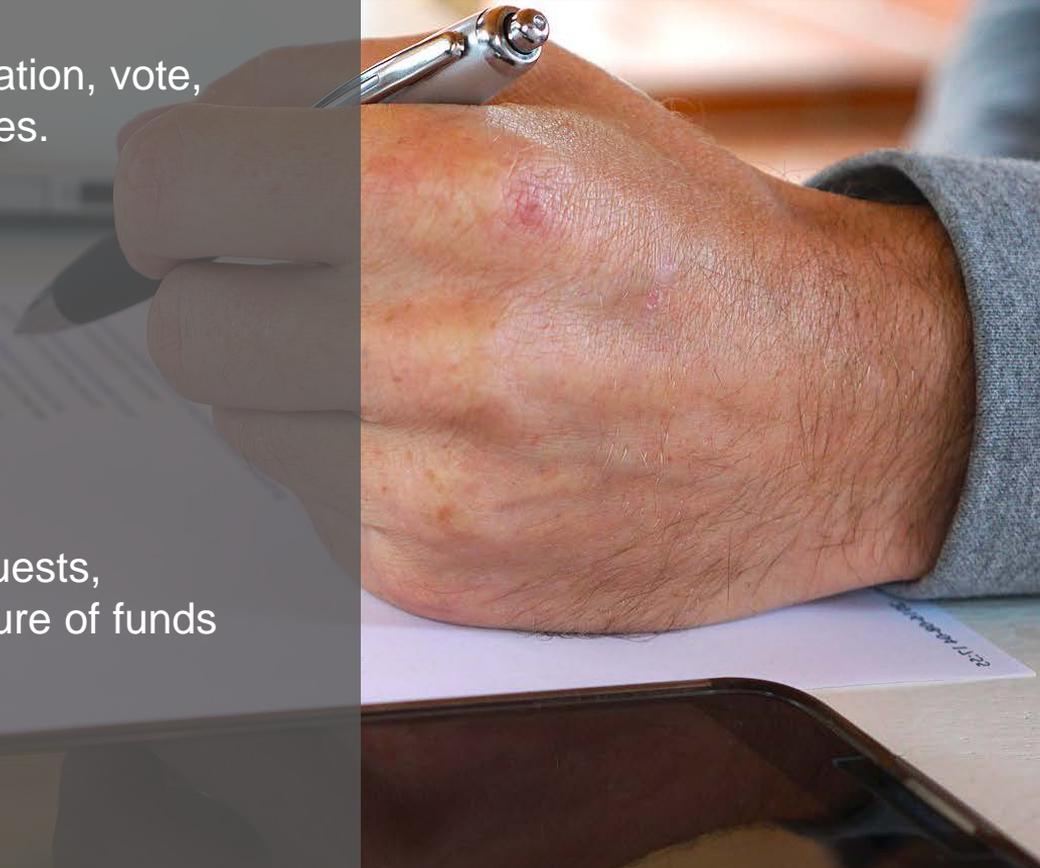


Key terms in these statutes: Official action

Any official decision, opinion, recommendation, vote, etc., that an MD Anderson employee makes.

- Vendor selection
- Hiring decisions
- Co-sponsoring conferences
- Providing outside entities or persons access to MD Anderson employees

Any purchase an employee makes or requests, any contract they enter, and any expenditure of funds they make.



The “Standards of Conduct” statute

MD Anderson employees should not:

- Accept or solicit any gift, favor, or service that might tend to influence us in the discharge of our official duties;
- Accept other employment or engage in a business that would involve disclosure of MD Anderson’s confidential information;
- Accept other employment that could impair our independence of judgment;
- Make personal investments that could create a conflict between our private and public interests; and
- Intentionally or knowingly solicit, accept, or agree to accept any benefit in exchange for official MD Anderson action.



The “Bribery” statute

Vendors should not offer, confer, or agree to confer any benefit to a public servant that he or she knows the public servant is prohibited by law from accepting.

- An offense under this section of the statute is a Class A misdemeanor
- This applies at least, and most frequently, at the individual level
- Note that each agency is governed by the laws specifically applicable to it
- Most public servants are subject to one or more prohibitions on the acceptance of “benefits” from persons subject to their jurisdiction



The “Gift to Public Servant” statute

Applies to MD Anderson employees who make contracting and purchasing decisions on behalf of the institution.

- If such an employee receives an unsolicited, prohibited benefit, they may not keep it; the statute requires that they return it or donate it to a recognized tax-exempt charitable organization
- An offense under this section is a Class A misdemeanor



Appearance of impropriety standard

In ethics advisory opinions, the Ethics Commission has answered opinion requests on the basis of what is permitted or prohibited by law.

This practice should not be taken as expressing a view on the part of the commission that everything that is legally permissible is appropriate.

Ask yourself:

- How would the action look in the newspaper?
- What would your manager think?
- Would you want your family to know?



Appearance of impropriety standard

State officers and employees should always ask themselves whether it is appropriate for a public servant to accept something from a person who wants, or may want, or may be seen to want, an official favor within the public servant's authority.

Vendors should always ask themselves whether it is appropriate to offer or for a public servant to accept something from a person who wants, or may want, or may be seen to want, an official favor within the public servant's authority.



The State of Texas Procurement and Contract Management Guide

Management Guide: The contracting process

- All communication with potential respondents should be made through the Purchasing Department or other authorized staff (Staff).
- Staff should not have contact with potential respondents outside of solicitation conferences.
- Any respondent that contacts someone other than Staff regarding a solicitation may be disqualified.
- While Staff may not be able to answer all questions asked by potential respondents, they will ensure that such information is provided to all potential respondents.
- The solicitation document should provide only a purchasing point of contact with all applicable forms of communication.
- Should a potential respondent contact Staff, Staff must decline to discuss the procurement and forward the inquiry to the appropriate purchaser.

Note that MD Anderson staff involved in RFPs sign non-disclosure forms that are more restrictive than those in the guide.

STATE OF TEXAS PROCUREMENT AND CONTRACT MANAGEMENT GUIDE

STATEWIDE PROCUREMENT DIVISION



Glenn Hegar
Texas Comptroller of Public Accounts

MD Anderson Institutional Policy: Ethics for State Employees Policy (#ADM0337)

- Establishes the Ethical Principle for all activities at MD Anderson
- Prohibits employees from accepting improper benefits
- Cautions against the appearance of impropriety
- Provides a framework to promote ethical decision-making
- Outlines what may and may not be accepted on behalf of the institution
- Subjects MD Anderson employees to corrective action for violations of the policy, up to and including termination

Purpose

The purpose of this policy is:

- To promote awareness of and compliance with ethical standards and requirements dictated by the laws of the state of Texas, the Rules and Regulations of the Board of Regents of The University of Texas System (UT System), UT System policies, and this policy;
- To set forth the standards governing ethical conduct at The University of Texas MD Anderson Cancer Center (MD Anderson);
- To specify how to raise questions about ethical conduct and how to report ethical violations;
- To define our Ethical Principle and illustrate its application;
- To outline expectations around specific ethics-related issues such as gifts, honoraria, travel, and Vendor relationships; and
- To preserve the public trust in our integrity by preventing bias or the appearance of bias in our decision-making.

Policy Statement

It is the policy of MD Anderson to pursue our mission through commitment to our core values of Caring, Integrity, and Discovery while serving our patients, our community, our health care and research partners, and each other.

To that end, all Institutional Personnel must adhere to and act in accordance with applicable ethical standards and legal requirements when performing their institutional duties. To assist in achieving this obligation, Institutional Personnel are required to read and comply with this policy.

As public servants of the state of Texas, Institutional Personnel may not have a direct or indirect interest, including financial and other interests; or engage in a business transaction or professional activity; or incur any obligation of any nature that is in substantial conflict with the performance of their institutional duties in the public interest.

Institutional Personnel shall consider the appearance of impropriety before accepting any gift or Benefit. They should also consider whether accepting a gift or Benefit is ethically appropriate, regardless of whether it is legally permissible. This means that Institutional Personnel should always ask themselves whether it is appropriate for them to accept something from a person or entity who wants, or may want, or may be seen to want to influence an Institutional Personnel, or want an official favor (including a decision or action made to their benefit) based on the Institutional Personnel's official status or institutional duties with MD Anderson.

This policy is required by Section 572.051 of the Texas Government Code. A copy of this policy shall be distributed to all new employees. Employees acknowledge by signature receiving a copy of this policy, and the signed form is maintained in the employee's official personnel file.

Vendor goodies:

Acceptance of food and beverages as a state agency

The underlying purpose of all ethics law and regulation is to prevent the fact or appearance that government is influenced by gifts or consideration other than the objective merits of making a certain decision.

Even food and drink intended “for the whole department” can be problematic. It’s best not to send bagels, donuts and food baskets.



Vendor-paid travel: About equipment demos

Employees may accept transportation and lodging necessary for attendance at a vendor's demonstration of equipment even though the vendor's representatives are not in the vehicles or hotels if the vendor's representatives are present at the demonstration.



Vendor-paid travel: About seminars

Under certain circumstances, a vendor may waive tuition/fees for a seminar if the institution would have paid for the employee to attend the seminar.

The theory in this case is that the vendor's tuition waiver benefits MD Anderson, not the employee individually, and is therefore not an enrichment of the employee.



These statutes don't apply to every situation

These statutes don't prohibit personal friendships between MD Anderson employees and vendors.

And certain modest benefits offered to an MD Anderson employee who is a guest of the vendor aren't improper.

But the employee and the vendor must always keep in mind the "Bribery" statute and the appearance of impropriety standard.



Vendors have the responsibility to report a violation or potential violation

To discuss or report compliance concerns:

- The Chief Compliance Officer
via the page operator: **713-792-7090**
- The Institutional Compliance Office:
713-745-6636
- The Compliance Hotline: **1-800-789-4448**
- Institutional Compliance Office email:
Institutional_Compliance@mdanderson.org

To report suspected fraud, waste,
and abuse involving state resources,
call the State Auditor's Office Hotline
at 1-800-892-8348





Questions?

Email us at Institutional_Compliance@mdanderson.org

Call us at 713-745-6636

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