

**OFFICE OF THE COUNTY ATTORNEY
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June 30, 2025

Via Email Transmission Opinion.committee@oag.texas.gov And Certified Mail, RRR
The Honorable Ken Paxton
Texas Attorney General Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: Applicability of Texas Education Code Section 11.067, prohibition on contracts with vendors in which board members or their relatives have a financial interest.

Request for expedited opinion

Dear General Paxton:

I respectfully request your opinion regarding the interpretation of the newly enacted Texas Education Code § 11.067, as adopted by House Bill 210 during the 88th Legislative Session. Section 11.067 provides that a "vendor that bids on or receives a contract" from a school district commits an offense if a current board member has a substantial ownership or financial interest in the vendor or is related by blood or marriage to someone who does. The statute raises a key question: what does it mean for a vendor to "receive a contract" under this provision?

Background

Prior to the enactment of Section 11.067, conflicts of interest involving school board members were governed primarily by Chapter 171 and Chapter 176 of the Texas Local Government Code. See TEX. LOC. GOV'T CODE CHS. 171, 176. Under Chapter 171, a board member with a "substantial interest" in a business affected by a school district action must file a conflict disclosure affidavit and abstain from participation in any decision involving that business. See TEX. LOC. GOV'T CODE § 171.004(a). Chapter 176 further requires the filing of conflict disclosure forms by both trustees and vendors in situations involving qualifying financial or family relationships. See TEX. LOC. GOV'T CODE §§ 176.003(a), 176.006(a). Under both of these provisions, a transaction with a vendor connected to a school board member has not been prohibited outright. So long as the proper disclosures were made and the board member recused themselves from voting or deliberation, a school board could lawfully proceed with the transaction. These rules have allowed many small and rural school districts to continue doing business with local vendors who may be connected to trustees, while still maintaining transparency and avoiding improper influence. Section 11.067 represents a significant departure from this framework. Rather than relying on disclosure and recusal, the new statute makes certain transactions with vendors categorically unlawful, regardless of transparency or board member participation.

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Issue and Legal Question

Section 11.067 provides that a “vendor that bids on or receives a contract” from a school district commits an offense if a current board member either has a substantial ownership or financial interest in the vendor, or is related by blood or marriage to someone who does. A “vendor” is defined as a “a company, individual, contractor, subcontractor, or professional services provider with whom a school district or open-enrollment charter school enters into an agreement, contract, memorandum of understanding, interlocal agreement, fee schedule, retainer, or similar instrument for goods or services.” TEX. GOV'T CODE § 11.067.

While the statute includes several forms of formal written agreements—such as “contract,” “memorandum of understanding,” “interlocal agreement,” “fee schedule,” and “retainer”—it also uses the catch-all phrase “similar instrument for goods or services.” This language introduces ambiguity and raises questions about how broadly the Legislature intended the statute to apply. Specifically, does this provision extend beyond traditional procurement methods to include informal or low-dollar transactions memorialized through less-formal mechanisms, such as purchase orders, invoices, or checks? If interpreted broadly, any documented transaction regardless of size or whether a formal contract was executed might qualify as a “similar instrument,” thereby triggering the statute’s prohibitions and criminal penalties if the vendor is connected to a board member. This lack of definitional clarity raises compliance concerns, particularly in smaller communities where school districts often engage in recurring purchases from local businesses owned by, or affiliated with, trustees or their family members. In many such instances, there is no competitive bidding process or signed contract. The vendor simply receives payment on a routine basis for requested goods or services through purchase orders or other informal arrangements.

Texas courts have consistently held that the starting point for statutory interpretation is the plain meaning of the words chosen by the Legislature. *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012). The statute’s words and phrases are not to be considered in isolation, but rather in the context of the statute as a whole. See *Meritor Auto., Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, 90 (Tex. 2001). Courts look first to the plain meaning of the words used in the statute, unless a different meaning is supplied, is apparent from context, or would lead to absurd results. *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 389–90 (Tex. 2014). According to widely accepted dictionaries, the verb “receive” means “to come into possession of.” See “Receive,” MERRIAM-WEBSTER.COM DICTIONARY, Merriam Webster, <https://www.merriam-webster.com/dictionary/receive> (accessed June 25, 2025). The common usage of “receive” does not require a formal process or documentation. See *id.* It focuses on the act of accepting or obtaining something that is offered or provided by another party. Texas law generally recognizes a “contract” as “a promise or a set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.” See TEX. BUS. & COM. CODE § 1.201(b)(12). In common usage, a contract is “a promise between two parties that can be legally enforced.” See “Understanding Contracts,” TEXASLA WHELP.ORG, <https://texaslawhelp.org/article/understanding-contracts-houston-bar-association#moreinformation> (accessed June 25, 2025). Thus, even in the absence of a signed contract, a vendor may be considered to have “received a contract” if the essential elements of contract formation—offer, acceptance, mutual assent, and consideration—are present and the district accepts goods or services with the expectation of payment.

Examples from Texas school districts underscore the practical ambiguity. In some communities, district staff routinely purchase supplies from a hardware store owned by a trustee using district-issued credit cards or purchase orders—none of which involve formal bidding or a signed agreement. In others, trustee-owned restaurants may provide recurring catering for school board meetings or events, paid for via invoice or check. Similarly, campus staff might order custom T-shirts from a trustee-owned print shop without a written contract. Such purchases often fall below procurement thresholds and may not require board approval.

Whether such transactions are considered “receiving a contract” or constitute a “similar instrument” is unclear. One possible interpretation is to read “receives a contract” narrowly in the context of the preceding clause “bids on.” In procurement law, “bidding” typically refers to a formal process involving solicitation, sealed submissions, and board award under statutes such as Texas Education Code section 44.031(a). Under this view, the statute would apply only to contracts awarded through those formalized processes. This reading focuses on the Legislature’s intent to prevent undue influence in competitive procurement settings and excludes incidental or one-time transactions that do not require formal district action.

However, a broader interpretation is also supported by statutory construction principles. The phrase “similar instrument” indicates legislative intent to cover a broader category of documents that functionally operate like contracts, even if they are not labeled as such. The canon of *eiusdem generis* suggests that “similar instrument” includes items of the same nature as those listed—i.e., formal documents that establish enforceable obligations. Applying that canon, the phrase “similar instrument” would reasonably encompass other documents that are legally operative and reflect an agreement to exchange goods or services for compensation, even if not subject to formal procurement procedures. For example, or a standardized invoice submitted under an ongoing business relationship, could meet this standard. Even payment by check might be viewed as part “contract.” This broader reading may more closely align with the Legislature’s intent in enacting HB 210: to eliminate any avenue through which board members or their relatives might benefit financially from school district expenditures, regardless of the formality of the arrangement.

In sum, Section 11.067 may be construed in one of two ways: narrowly, as applying only to contracts awarded through formal procurement procedures; or more broadly, as encompassing any documented or implied agreement in which a school district pays a vendor for goods or services—regardless of the transaction’s formality. Each interpretation carries significant compliance implications for school districts, particularly given the criminal penalties attached to violations. Clarification is essential to guide district purchasing decisions and ensure that trustees and administrators can act in good faith under the law.

Conclusion

Section 11.067 of the Texas Education Code introduces a categorical prohibition on school district contracts with vendors tied to sitting trustees or their close relatives, marking a departure from the longstanding disclosure-and-recusal framework under Chapters 171 and 176 of the Local Government Code. However, the absence of a statutory definition for what it means to “receive a contract” creates substantial uncertainty in day-to-day operations, particularly for rural and mid-

sized districts that rely on informal purchasing from locally connected vendors. The statute's use of the terms "bids on or receives a contract" may suggest that the prohibited conduct is limited to formal procurement governed by state purchasing law and board policy, yet a plain-meaning reading could sweep more broadly to encompass informal transactions and routine purchase orders. Because the statute imposes criminal penalties and may apply to common practices that have historically been lawful and transparent, guidance is necessary to clarify the scope of this prohibition. We respectfully request an opinion from your office interpreting the phrase "receives a contract" as used in Section 11.067. Such clarification will help ensure that school districts and their trustees can meet their obligations under the law while avoiding unintended violations.

Section 11.067 becomes effective on September 1, 2025. *Given the importance of this question, I respectfully request that this opinion be considered as expeditiously as possible.*

Sincerely,



Humberto Martinez
Jim Hogg County Auditor



Rodolfo Gutierrez
Jim Hogg County Attorney