The Honorable Homero Ramirez  
Webb County Attorney  
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1110 Victoria, Suite 403  
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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

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¹See Local Gov’t Code § 116.002.
²See id. § 116.021(a).
³See id. § 116.022.
⁴Id. § 116.023.
⁵Id. § 116.024(d).
percent or less of the bank’s outstanding capital stock, so long as both of two conditions are met. First, a majority of the commissioners must vote to select the bank as a depository. Second, the interested commissioner must abstain from the decision.

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 entity or regarding any real property in which a commissioner has a substantial interest except in very limited circumstances. 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. 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. 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. Moreover, the interested commissioner must not participate in the matter.

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.

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6Id. § 131.903(a).
7Id. § 131.903(a)(1).
8Id. § 131.903(2)(B).
9A business entity would include a bank. See id. § 171.001(2).
10Id. § 171.003(a).
11See id. § 171.004(a)(1).
12Id. § 171.004(a)(2).
13Id. § 171.004(a).
14Id.
15Id. § 171.002(a).


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 1983\footnote{Attorney General Opinion \textbf{JM-583} (1986) at 5 (footnotes added) (citations omitted).}] 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.\footnote{Attorney General Opinion \textbf{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. 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.

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. In our opinion, chapter 171 is a general provision pertaining broadly to any conflict of interest. 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, 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. Prior to the enactment of chapter 171's statutory predecessor, no conflict-of-interest statute governed local public officials' conduct generally. The statutory predecessor to chapter 171, then, was designed to fill in the gaps, but we do not believe the legislature intended it

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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).

18 Gov't Code § 311.026.


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

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,

Kymberly K. Oltrogge
Assistant Attorney General
Opinion Committee