

THE FOWLER LAW FIRM PC



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THE FOWLER LAW FIRM NEWSLETTER

The Seven Deadly Sins of Public Procurement and What You Can Do to Avoid Them

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Submitted by Laura S. Fowler JD, Attorney at Law with The Fowler Law Firm PC

Dear Readers:

Whether you have been a purchasing director in a Texas political subdivision your entire career or are just getting started, the following are, in your author's opinion, some of the most serious mistakes purchasing professionals make. Happily, most of these mistakes can easily be avoided if you follow the following suggestions.

Consultants and the political subdivisions that compensate them are being challenged by the IRS and other regulators. Different agencies have different criteria for what constitutes a legitimate consultant rather than an employee. The failure of some political subdivisions to correctly distinguish between the two has resulted in huge fines and penalties this year.

IRS: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>

TEA: <http://www.tea.state.tx.us/school.finance/audit/resguide9/far/far-196.html>

U.S. Department of Labor: <http://www.dol.gov/esa/regs/compliance/whd/whdfs13.pdf>

TRS: http://www.trs.state.tx.us/benefits/documents/benefits_handbook.pdf

The Fowler Law Firm Electronic Newsletter on this topic: http://www.thefowlerlawfirm.com/TACS_Conference_2007/101807.htm

Political subdivisions face real obstacles when trying to enforce contracts or collect damages against hired consultants and contractors that are not authorized to conduct business in Texas or are delinquent in their tax payments. Political subdivisions face ridicule and negative media scrutiny when they employ a consultant or contractor without the proper current licenses. Designate a highly responsible employee to check a contractor's status, licenses and certificates.

Texas Secretary of State Business Records Search: <http://www.sos.state.tx.us/corp/sosda/index.shtml>

Texas Comptroller Taxable Entity Search: <http://ecpa.cpa.state.tx.us/coa/index.html>

Sample licensing boards include Texas Integrated Pest Management, Texas Board of Nursing, Texas Board of Architectural Examiners, Department of Public Safety Driver License Division, etc.

Failure to carefully determine in advance whether a position is actually exempt from payment of overtime wages is one of the biggest and most expensive mistakes employers can make.

US Department of Labor Fair Labor Standards Act Advisor: <http://www.dol.gov/elaws/esa/flsa/screen5.asp>

Don't let employees, consultants or volunteers walk away with your political subdivision's assets. Insist that employees and consultants sign an agreement that makes clear that materials and software created for your institution's benefit remain the sole and exclusive property of your institution. Expressly forbid any employee, consultant or contractor to use your institution's name without your prior written consent.

The Fowler Law Firm Electronic Newsletter on this topic: <http://www.thefowlerlawfirm.com/newsletter/schools/060908.htm>

Don't let employees, consultants or volunteers assert a right to privacy when they misuse computers, cell phones and other electronic devices to access pornography, online gambling, or other objectionable materials. Make clear in employee handbooks, licenses and other electronic documents that grant access to electronic sites that your institution has full access to review and inspect anything issued to the employee by the employer at any time and without notice.

Don't authorize the purchase of **ANYTHING** until you have read the purchasing laws AND made sure you have complied with your political subdivision's requirements for purchasing.

Tex. Local Gov't Code – Purchasing and Contracting Authority: <http://tlo2.tlc.state.tx.us/statutes/docs/LG/content/htm/lg.008.00.000271.00.htm#271.001.00>

Tex. Education Code – Purchasing Contracts: <http://tlo2.tlc.state.tx.us/statutes/docs/ED/content/htm/ed.002.00.000044.00.htm#44.031.00>

Don't accept any insuring agreement or bond unless or until you have carefully confirmed that the companies exist and that the insuring agreements and bonds have been issued to your benefit. Make certain your political subdivision appears as an additional named insured on the Certificate of Insurance.

Tex. Gov't Code - Public Work Performance and Payment Bonds: <http://tlo2.tlc.state.tx.us/statutes/docs/GV/content/htm/gv.010.00.002253.00.htm#2253.001.00>

Tex. Dept. of Insurance - List of Authorized Companies: <http://www.tdi.state.tx.us/webinfo/colists.html>

U.S. Department of the Treasury - Certified Surety Bond Companies: http://www.fms.treas.gov/C570/c570_a-z.html

Bonus Sins:

- Demand to use a letter or contract *you* create. If you can't get that, *never* sign any document that has language you don't understand!
- Insist on the full name of the person or consultant/contractor... It better be the same every time.
- If the entity to receive payment is different than the consultant or contractor, investigate carefully and find out why.
- Insist on doing business with entities with a well-established Texas presence.

- Make sure your contract or letter offer is signed by the parties and dated.
- Make sure your contract contains a start and finish date.
- Make sure your contract states how much the employee or contractor or consultant will be paid and avoid reference to other documents or schedules.
- Make sure you define who owns the right to the work and the right to promote it.
- Make sure you keep your original documents in a safe place.

*Did you find these materials helpful and practical? Then don't miss the opportunity to enjoy the all new and up to date 2008 edition of *Protect Your Great Ideas and Assets* currently being adopted for use by many universities and by practicing administrators in a variety of institutions in Texas. Proceeds from the sales support scholarships to deserving students. To order the current book, a complete information system or to learn more about about THE FOWLER LAW FIRM FOUNDATION and its scholarships, or to learn more about its authors Nevin Shaffer and Laura Fowler, link to www.thefowlerlawfirm.com, <http://www.thefowlerlawfirm.com/program1.html> and <http://www.thefowlerlawfirm.com/howitworks.html>.*

You can hear Mrs. Fowler speak on this and other related topics at the following conferences throughout Texas this summer:

Texas Association of Secondary School Principals' 2008 Summer Workshop Legal Digest Law Conference on June 11, 2008 at the Austin Convention Center in Austin, Texas. Mrs. Fowler will be presenting from 9 to 10 AM in Room 10A/B on *How to Avoid Getting Sued, Grieved or Indicted – Is the Campus Principal in Charge of EVERYTHING?* For more information, please visit <http://www.tassp.org/displaycommon.cfm?an=1&subarticlenbr=108>.

Texas Association of Community College Business Officers' 2008 Conference on June 11, 2008 at the Waco Convention Center in Waco, Texas. Mrs. Fowler will be presenting from 3 PM to 5 PM in McLennan 1 on common concerns related to purchasing. For more information, please visit <http://www.taccbo.org/>.

TASBO's Alamo Area Association of School Business Officials' 12th Annual Summer Conference on June 13, 2008 at Tivy High School in Kerville, Texas. Mrs. Fowler will be presenting from 11 AM to 12 PM in Room A108 on the topic *How a Texas School District Business Official Avoids Getting Sued, Indicted or Fired... in One Easy Lesson*". For more information, please visit <http://65.205.109.51/PDFs/May06.pdf>.

Texas Council of Women School Executives' Summer Conference on June 21, 2008 at the Renaissance Austin Hotel in Austin, Texas. Mrs. Fowler will be presenting from 10:45 AM to 12 PM on *Personnel Law Points that Everyone Can Follow*. For more information, please visit <http://www.tcwse.org/conference/summer/2008/summer08.html>.

San Antonio Texas Community College Human Resources Professionals on June 23, 2008.

National Association of Purchasing Managers' Momentum 2008 on June 25, 26 and 27, 2008 at the Bahia Mar Resort in South Padre Island, Texas. Mrs. Fowler will be presenting on June 25 from 1:05 to 1:30 PM in Class W1a on *Tough Talk about Municipalities, Counties and Other Political Subdivisions – Construction Procurement* in and from 2 to 2:30 PM in Class W2a on *Purchasing People: Labeling*

People, a Few Words of Caution. She will be presenting on June 26 from 8-9 AM in Classroom C on *Insurance Purchasing Requirements.* For more information, please visit <http://www.napmrgv.org/momentum/momentum.htm>.

Laura Fowler and THE FOWLER LAW FIRM P.C. are so grateful to so many of you who have helped to make our firm a success. *The Fowler Law Firm P.C. is a full service law firm whose attorneys have many years of experience in the handling of education institution issues, both public and private, non-profit associations, real estate, family law, probate and estate, business formation and taxation and all aspects of copyright, trademarks and patents. We never charge a client a fee or incur any expense until the client understands and agrees. In addition, we often counsel with your clients and friends and give them the information they need at no charge when we cannot truly be of service. For more information or to refer a matter to us please contact us at (512) 441-1411 or visit our website at www.thefowlerlawfirm.com.*

This information is provided by Laura S. Fowler JD, and J. Nevin Shaffer JD, Attorneys at Law with The Fowler Law Firm PC. It is not intended as a substitute for careful review by legal counsel of your choosing. We would be most honored to assist you in your every real legal need.

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As with any legal issues, please consult your attorney with questions.