Secondment Agreements:
What are They and Why Do We Need One?

The 89th Texas Legislature passed HB 3372 which prohibits an administrator from receiving *any financial benefit* for the performance of *personal services* for:

1. Any business entity that does business with the administrator's employing district;
2. An education business providing curriculum or administration services to any ISD; or
3. Another ISD, ESC, or OECS

Each violation can result in a $10,000 civil penalty assessed against the administrator, payable to the state. For services provided under elements 2 and 3, above, the administrator (other than a superintendent or assistant superintendent) can avoid a penalty by obtaining board approval to perform the services and performing them on his or her own time. There is no board approval process in the bill that allows an administrator to perform personal services for a company with which the district does business, such as the Texas Association of School Business Officials (TASBO).

Floor discussion of the bill clearly indicated that mentoring and volunteer services were not prohibited. Unfortunately, the plain language of the bill does not include any exception or safe harbor for these activities. Nor does the bill clarify whether reimbursement for expenses incurred while performing volunteer services would be considered a "financial benefit".

Because administrators bear the brunt of compliance—potentially being subject to a $10,000 penalty *per violation*—it is critical to protect them from running afoul of this law. This is especially true given the uncertainty as to what exactly is prohibited.

A major motivating factor behind passage of the bill was the lack of transparency between some districts and administrators when it came to outside service arrangements. For this reason, it is important that volunteer services provided by a district administrator that could result in any kind of financial benefit (which is not defined but could potentially include travel and meal reimbursements) be at the behest of the district. A secondment agreement, which is an agreement between an employer (the district) and a host (TASBO) accomplishes this by outlining the terms of service and clarifying that the district and TASBO are the contracting parties for the services. This achieves the transparency HB 3372 appears to contemplate and, more importantly, converts the services provided by the administrator from personal to professional in nature.

A district administrator providing volunteer services to an outside organization while on district time raises gift of public funds considerations. The Texas Constitution prohibits a school district from using public funds or resources to benefit a private interest, but such an expenditure or grant may be made if done so for the direct accomplishment of a legitimate public purpose. The Texas Supreme Court adopted a three-part test to determine whether a grant of resources is a constitutional use of public funds. Specifically, the district must: (1) ensure that the main purpose of the grant is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the grant to ensure that the public purpose is accomplished and to protect the public's

investment; and (3) ensure that the political subdivision receives a return benefit. *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 384 (Tex. 2002)

The recitals in the proposed Secondment Agreement assert the public purpose served by school administrators volunteering as TASBO Board members, including, but not limited to, professional development, networking, and leadership opportunities that they gain and then utilize in the district. The Agreement allows the district to agree to the time commitment involved, reserving the district's right to limit the administrator's participation should it unduly conflict with their district duties. Finally, the Agreement ensures a return benefit for the district by setting forth the administrator's duties as a Board member, including, but certainly not limited to, developing strategic plans and goals that inure to the benefit of district school business professionals, as well as those statewide.