

the date of this order, then Respondent will be required to pay the remainder of the fee as originally imposed by the Commission. The fee will be due immediately upon final adjudication finding that Respondent committed such a violation.

SO ORDERED this 22nd day of July, 2014

By:



Charles Weedman, Chair
Missouri Ethics Commission

Filed
JUL 22 2014
Missouri Ethics
Commission

**BEFORE THE
MISSOURI ETHICS COMMISSION**

MISSOURI ETHICS COMMISSION,)
)
) Case No. 13E110
)
v.)
)
DAVID PRICE,)
)
)
) Respondent.

**JOINT STIPULATION OF FACTS, WAIVER OF HEARING
BEFORE THE MISSOURI ETHICS COMMISSION, AND
CONSENT ORDER WITH JOINT PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The undersigned parties jointly stipulate to the facts and consent to the action set forth below.

The undersigned Respondent, David Price, acknowledges that he has received and reviewed a copy of the Complaint filed by the Petitioner in this case, and the parties submit to the jurisdiction of the Missouri Ethics Commission.

The undersigned Respondent further acknowledges that he is aware of the various rights and privileges afforded by law, including but not limited to: the right to appear and be represented by counsel; the right to have all charges against Respondent be proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Respondent; the right to present evidence on Respondent's behalf at the hearing; and the right to a decision upon the record of the hearing. Being aware of these rights provided to Respondent by operation of law, the undersigned Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation of Facts, Waiver of Hearing before the Missouri Ethics Commission, and Consent

Order with Joint Proposed Findings of Fact and Conclusions of Law, and agrees to abide by the terms of this document.

I.

Based upon the foregoing, the Petitioner and the undersigned Respondent jointly stipulate to the following and request that the Missouri Ethics Commission adopt as its own the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law, as follows:

JOINT PROPOSED FINDINGS OF FACT

1. The Missouri Ethics Commission (“the Commission”) is an agency of the State of Missouri established pursuant to Section 105.955, RSMo, in part for the purpose of enforcing the provisions of Chapter 105, RSMo.

2. The City of Aurora is a political subdivision of the State of Missouri and a third class city operating with the “city manager” form of government. *See* § 78.430 *et seq.*, RSMo.

3. Respondent Price was elected as a member of the city council of the City of Aurora, Missouri in 2012.

4. In April 2013, the city council chose Respondent Price as mayor pursuant to Section 78.560.1, RSMo.

5. The mayor is a member of the city council, presides over all meetings of the city council, and “shall be recognized as the official head of the city by the courts for the purpose of serving civil process, by the governor for the purpose of military law, and for all ceremonial purposes.” § 78.560, RSMo.

6. The city council, including the mayor, “shall appoint a suitable person not a member of the council to be the administrative head of the city government whose official title shall be ‘city manager.’” § 78.570.2, RSMo.

7. The city council appoints a city manager, city clerk, city assessor, and city treasurer. § 78.600, RSMo.

8. The city council may create other offices, which shall be appointed and discharged by the city manager, “the council to have power to make rules and regulations governing the same.” § 78.600, RSMo.

9. The city manager is the administrative head of the government “subject to the direction and supervision of the council and shall hold his office at the pleasure of the council, or may be employed for a term not to exceed one year.” § 78.610, RSMo.

10. The city manager’s responsibilities include “[t]o attend all meetings of the council with the privilege of taking part in the discussions,” and “[t]o recommend to the council for adoption such measures as he or she may deem necessary or expedient.” § 78.610, RSMo.

11. Pursuant to Section 105.961, RSMo, the Commission’s staff has investigated a complaint filed with the Commission and reported the investigation’s findings to the Commission.

12. Based on the report of the Commission’s staff, the Commission determined that there were reasonable grounds to believe that violations of law occurred, and it therefore authorized a hearing in this matter pursuant to Section 105.961.3, RSMo

13. In January 2013, the City of Aurora’s city manager resigned.

14. On April 9, 2013, the city council adopted resolution 2013-1226, creating a job description for the position of city manager:

The city manager is responsible to and held accountable by the mayor and city council. ...

Several Examples of Duties provided include but are not limited to
... will *recommend an annual budget* to the city council; administer
the budget as finally adopted under policies formulated by the city
council....

(emphasis added).

15. On June 25, 2013, the city council, including Respondent Price, went into closed session. In that closed meeting, Respondent Price stated that the last five months had been wearing on him as mayor. He offered to perform the city manager position for half of the pay the city manager would make for 90 days, plus gas and cell phone reimbursement.

16. In that closed meeting, another member of the city council, Steve Ramirez, stated that he also would be interested in the city manager position.

17. In the closed meeting on June 25, the city council was advised by legal counsel that Respondent Price would have to resign from the city council before being considered for the position of interim city manager. The remaining members of the city council would have to meet and determine who to choose for the position. The city council was not advised during this meeting by legal counsel of the provisions of Section 105.454(5), RSMo.

18. Respondent Price resigned as mayor and as a member of the city council, effective immediately, and the city council voted to hire Respondent Price as interim city manager for a period ending October 8, 2013.

19. As interim city manager, Respondent Price made recommendations to the city council. For example:

- a. On July 23, 2013, during an open meeting of the city council, Respondent Price advised that it would be better to appoint city employees as flood plain

administrators, rather than the city manager, as the city manager might leave after receiving the necessary certification;

- b. On August 13, 2013, during an open meeting of the city council, Respondent Price advised the city council that “UDAG funds” could be transferred to a Transportation Fund, but that Respondent Price recommended saving the UDAG funds for downtown revitalization projects;
- c. Respondent Price submitted the city’s budget and invoices to the city council, and provided recommendations on which invoices to pay;
- d. Respondent Price made personnel recommendations to the city council.

20. While serving as interim city manager, Respondent Price was paid approximately \$8,500 for three months of work at 20 hours per week, which was based largely on calculating half of the city manager salary of approximately \$70,000 per year set by the city council.

21. As city manager, Respondent Price also received one tank of gas per month and reimbursement for his cell phone bill once per month.

JOINT PROPOSED CONCLUSIONS OF LAW

22. “No elected or appointed official or employee of ... any political subdivision thereof, serving in an executive or administrative capacity, shall ... Perform any service for consideration, during one year after termination of his or her office or employment, by which performance he or she attempts to influence ... a decision of any political subdivision in which he or she was an officer or employee or over which he or she had supervisory power.” § 105.454(5), RSMo.

23. The prohibition at Section 105.454(5), RSMo, does not “prohibit any person from performing such service and receiving compensation therefor, in any adversary proceeding or in the preparation or filing of any public document....” § 105.454(5), RSMo.

24. There is probable cause to believe that Respondent Price violated Section 105.454(5), RSMo, when he served as an elected member of the city council and as the appointed mayor of the City of Aurora, Missouri, and he accepted employment by the city within one year after resigning those positions, by which employment he attempted to influence decisions of the city and its city council.

II.

Based on the foregoing, the parties hereto mutually agree and stipulate that the following shall constitute the order entered by the Missouri Ethics Commission in this matter. This order will be effective immediately upon the issuance of the Consent Order of the Missouri Ethics Commission without further action by any party:

1. The parties to this Joint Stipulation understand that the Petitioner will maintain this Joint Stipulation as an open and public record of the Missouri Ethics Commission.

2. The Commission shall issue its Consent Order in the form attached hereto as Exhibit A.

a. Respondent shall comply with all relevant sections of Chapter 105, RSMo.

b. It is the Order of the Missouri Ethics Commission that a fee is imposed against Respondent David Price in the amount of \$8,500, pursuant to Section 105.961.4(6), RSMo. However, if Respondent pays \$850 of that fee within forty-five days after the date of the Order, the remainder of the fee will be stayed, subject to the provisions below. The fee will be paid by check or money order made payable to the Missouri Ethics Commission.

c. If Respondent David Price commits any further violation or violations of the conflict of interest laws under Chapter 105, RSMo, within the two-year period from the date of this order, then Respondent will be required to pay the remainder of the fee. The fee will be due immediately upon final adjudication finding that Respondent has committed such a violation.

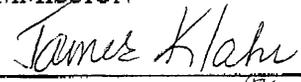
3. The parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the Complaint filed by the Petitioner in the above action.

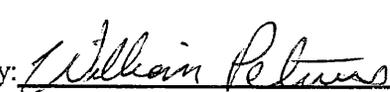
4. Respondent, together with his heirs, successors, and assigns, does hereby waive, release, acquit and forever discharge the Missouri Ethics Commission and its attorneys of or from any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, a claim for attorney's fees whatsoever which Respondent or Respondent's attorney may now have or which they may hereafter have, which are based upon or arise out of the above cases.

RESPONDENT DAVID PRICE

PETITIONER MISSOURI ETHICS
COMMISSION

By:  7/8/14
David Price Date

By:  7/22/2014
James Klahr Date
Executive Director

By:  7/14/14
William Bill Petrus Date
Attorney for Respondent
MBN 34285

By:  7/17/14
Curtis R. Stokes Date
Attorney for Petitioner