Filed
APR 17 2015
Missouri Ethics Commission

BEFORE THE
MISSOURI ETHICS COMMISSION

MISSOURI ETHICS COMMISSION,	)	
	)	
Petitioner,	)	
	)	Case No. 14E174
v.	)	
	)	
SCOTT FRANKENBERG,	)	
	)	
Respondent.	)	

CONSENT ORDER

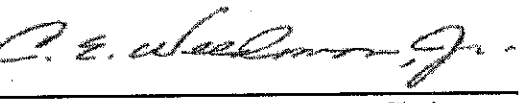
The parties have filed a Joint Stipulation of Facts, Waiver of Hearing, and Proposed Consent Order with the Missouri Ethics Commission in this matter. Accordingly, the Missouri Ethics Commission accepts as true the facts stipulated and finds that Respondent Frankenberg violated Section 105.454(3), RSMo.

The Commission directs that all terms and orders of the Joint Stipulation be adopted herein and implemented.

1. Respondent shall comply with all relevant sections of Chapter 105 and 245, RSMo.
2. It is the order of the Missouri Ethics Commission that a fee is imposed against Respondent Frankenberg in the amount of $2,062.50 pursuant to Section 105.961.4(6), RSMo. However, if Respondent pays $410 of that fee within forty-five (45) days after the date of the Order, the remainder of the fee will be stayed. The fee will be paid by check or money order made payable to and sent to the Missouri Ethics Commission.
3. Regardless of the stay in paragraph 2 above, if Respondent Frankenberg commits any further violations of the conflict of interest laws pursuant to Chapter 105, RSMo, within the two-year period from the date of this order, then Respondent Frankenberg

will be required to pay the remainder of the fee. The fee will be due immediately upon final adjudication finding that Respondent committed such a violation.

SO ORDERED this 17th day of April, 2015

By: 

Charles E. Weedman, Jr., Chair
Missouri Ethics Commission

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MISSOURI ETHICS COMMISSION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 14E174
	)	
SCOTT FRANKENBERG,	)	
Board Member, Missouri Valley Levee	)	
District,	)	
	)	
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, Frankenberg, 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 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, and the provisions of statute "relating to the official conduct of officials or employees of the state and political subdivisions."

2. Respondent Frankenberg was a member of the Board of Supervisors for the Missouri Valley Levee District at all times relevant to this complaint.

3. The Missouri Valley Levee District is a political subdivision of the State of Missouri. *See, e.g.*, § 70.210(3), RSMo (Political subdivisions include "levee and fire districts"); *Halls Levee Dist. of Buchanan Co. v. Hauber*, 461 S.W.2d 16, 23 (Mo. App. 1970) ("The plaintiff levee district is a public corporation and a political subdivision of the state . . . [Its] functions are expressly delegated to plaintiff district as a specific grant of the state's police power.").

4. The Board of Supervisors, acting through its individual members, exercises executive and administrative control of the Missouri Valley Levee District.

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

6. 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

7. Respondent Frankenberg is a duly elected or appointed member of the Board of Supervisors for the Missouri Valley Levy District, and was so at all times relevant to this complaint.

8. Respondent Frankenberg participated in the Missouri Valley Levee District's decision to hire MKA Contracting, LLC, to operate a track hoe to perform work for the Missouri Valley Levee District.

9. Respondent Frankenberg's spouse, Jamie Frankenberg, owns MKA Contracting, LLC.

10. The Missouri Valley Levee District paid at least $2,062.50 to MKA Contracting, LLC, for this work.

11. MKA Contracting, LLC, paid Respondent Frankenberg as an employee of MKA Contracting, LLC, to perform this work.

12. Respondent Frankenberg knew that the result of his decision to hire MKA Contracting, LLC, would result in the performance of services by MKA Contracting, LLC, for consideration in excess of $500.

JOINT PROPOSED CONCLUSIONS OF LAW

13. Under Missouri law, elected or appointed officials of a political subdivision, serving in an executive or administrative capacity, are prohibited from participating

> in any matter, directly or indirectly, in which he or she attempts to influence any decision of any agency of the state, or political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power, when he or she knows the result of such decision may be the acceptance of the performance of a service or the sale, rental, or lease of any property to that agency for consideration in excess of five hundred dollars' value per transaction or five thousand dollars' value per annum to him or her, *to his or her spouse*, to a dependent child in his or her custody or *to any business with which he or she is associated* unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received.

§ 105.454(3), RSMo (emphasis added).

14. A "business with which a person is associated" includes any corporation of which the person's spouse owns in excess of ten percent of the outstanding shares of any class of stock or partnership units. § 105.450(3), RSMo.

15. There is probable cause to believe that Respondent Frankenberg violated Section 105.454(3), RSMo, by participating in the decision to pay his spouse through his spouse's

company, MKA Contracting, LLC to perform work for the Missouri Valley Levee District, when he knew the value of that work would exceed $500, and when MKA Contracting, LLC, is a business with which Respondent Frankenberg is associated, and that Respondent Frankenberg did so while serving on the Board of Supervisors for the Missouri Valley Levee District.

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. Respondents shall comply with all relevant sections of Chapters 105 and 245, RSMo.

   b. It is the Order of the Missouri Ethics Commission that a fee is imposed against Respondent Frankenberg in the amount of $2,062.50, pursuant to Section 105.961.4(6), RSMo. However, if Respondent Frankenberg pays $410 of that fee within forty-five days after the date of the Order, the remainder of the fee will be stayed. The fee will be paid by check or money order made payable to the Missouri Ethics Commission.

   c. Regardless of the stay in paragraph 2.b above, if Respondent Frankenberg commits any further violation of the conflict of interest laws under Chapter 105, RSMo, within the two-year period from the date of this order, then Respondent Frankenberg will be required to pay the remainder of the fee. The fee will due immediately upon final adjudication finding that any 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.

SO AGREED:

RESPONDENT SCOTT FRANKENBERG

By: _____ 3/31/15
Scott Frankenberg — Date

By: _____ 3/31/15
L.B. Eckelkamp, Jr. — Date
Attorney for Respondent

PETITIONER MISSOURI ETHICS COMMISSION

By: _____ 4/16/15
James Klahr — Date
Executive Director

By: _____ 4/16/15
Curtis R. Stokes — Date
Attorney for Petitioner