



MEC
OPINION NO.

1997. 11. 121

STATE OF MISSOURI

MISSOURI ETHICS COMMISSION
P. O. BOX 1254
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COPY

NOTICE

Anyone examining this advisory opinion should be careful to note that an opinion of the Missouri Ethics Commission deals only with the specific request to which the opinion responded and only as to the law as it existed at the date of the response and cannot be relied upon for any other purpose or in any other manner.

At its meeting on November 18, 1997, the Missouri Ethics Commission reviewed your request for an opinion. Generally, your questions related to the limits imposed by Chapter 105, RSMo, on a person who serves on the city council and is also a real estate developer.

Many circumstances can arise for the councilperson that involve the interplay between service on the council and being a developer. The Ethics Commission cannot anticipate every situation that can arise and provide an answer for it. The councilperson must use his judgment based upon several provisions of law as the situations arise.

First, a list of prohibited acts is found at section 105.452(1) to (4), which states:

No elected or appointed official or employee of the state or any political subdivision thereof shall:

(1) Act or refrain from acting in any capacity in which he is lawfully empowered to act as such an official or employee by reason of any payment, offer to pay, promise to pay, or receipt of anything of actual pecuniary value paid or payable, or received or receivable, to himself or any third person, including any gift or campaign contribution, made or received in relationship to or as a condition of the performance of an official act, other than compensation to be paid by the state or political subdivision; or

(2) Use confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself, his spouse, his dependent child in his custody, or any business with which he is associated;

97.11.121

(3) Disclose confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself or any other person;

(4) Favorably act on any matter that is so specifically designed so as to provide a special monetary benefit to such official or his spouse or dependent children, including but not limited to increases in retirement benefits, whether received from the state of Missouri or any third party by reason of such act. For the purposes of this subdivision, "special monetary benefit" means being materially affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected. In all such matters such officials must recuse themselves from acting and shall not be relieved by reason of the provisions of section 105.460, except that such official may act on increases in compensation subject to the restrictions of section 13 of article VII of the Missouri Constitution; or . . .

Subsection (4) of section 105.454 is of particular interest to a developer/councilperson. Under that provision, if a matter before the council is so specifically related to the councilperson's interests that it could provide him with a special monetary benefit, then the councilperson must recuse himself from participation in that matter. However, if the councilperson has "a substantial personal or private interest in any measure, bill, order or ordinance proposed or pending," but the measure is not so specifically related to the councilmember as to confer a special monetary benefit, he may participate, provided that he discloses his interest in the manner set out in section 105.961, RSMo. Whether a councilmember would stand to gain a special monetary benefit or holds a substantial personal or private interest in a measure must be determined on a case-by-case basis.

The councilperson who is involved with real estate development would also want to review section 105.458, RSMo, which relates to selling, renting, or leasing property to the city.

The councilperson is not prohibited from participating or voting on matters relating to real estate unless he falls under the provisions set out above.

Enclosed for your assistance is a copy of Chapter 105. This version includes changes in the law that became effective August 28, 1997.