



MEC
OPINION NO.

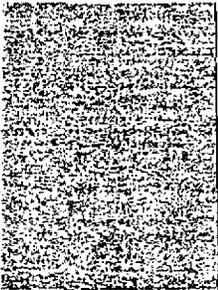
1999.03.101

STATE OF MISSOURI

MISSOURI ETHICS COMMISSION
P. O. BOX 1254
JEFFERSON CITY, MISSOURI 65102

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March 19, 1999



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 the March 2, 1999 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

Would employment of a state employee by a not-for-profit agency violate any portions of sections 105.452, 105.454 or 105.462, RSMo if the state employee receives compensation from a not-for-profit agency in addition to the state employee's normal compensation? In addition, should the state employee abstain from participating in decisions which may affect members of a not-for-profit agency?

Further, should state resources (i.e. office space, etc.) be utilized by a not-for-profit agency for the conduct of a not-for-profit business?

In addition, you said it should be assumed that "the state employee would remain a state employee for all purposes . . . (and) that the employee's salary would be paid in part directly by the State of Missouri and in part directly by a not-for-profit agency."

Given the limited number of facts provided, the Commission cannot opine with certainty. If the employee has one job and that job is as a division director for a state agency, but he or she receives payment, in part from a private source (the not-for-profit agency), then section 105.452(1) RSMo, appears to prohibit payment by the private source.

Section 105.452(1) states:

- (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;

Likewise sections 105.454(1) and (4) may also prohibit the payment by the private source.

Section 105.454 states:

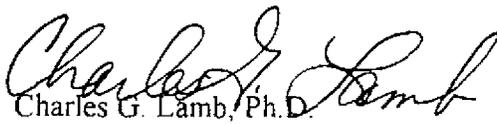
(1) Perform any service for any agency of the state, or for any political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power for receipt or payment of any compensation, other than of the compensation provided for the performance of his or her official duties, in excess of five hundred dollars per transaction or one thousand five hundred dollars per annum, except on transactions made pursuant to an award on a contract let or sale made after public notice and competitive bidding, provided that the bid or offer is the lowest received;

(4) Perform any services during the time of his or her office or employment for any consideration from any person, firm or corporation, other than the compensation provided for the performance of his or her official duties, by which service he or she attempts to influence a decision of any agency of the state or of any political subdivision in which he or she is an officer or employee or over which he or she has supervisory power;

If, however, the state employee has a job with the state for which he or she receives payment from the state for that work, and also works for a private source and receives payment for the latter work from the private source, the sections of the statute which were cited above would not be implicated. Nonetheless, the employee would, in this instance, need to be mindful of the conflict of interest restrictions in sections 105.452 and 105.454, RSMo.

Regarding the issue of whether state resources, such as office space, should be utilized for a not-for-profit agency, from the facts you provided there appears to be no violation of laws under the jurisdiction of the Ethics Commission. Please be advised that the Ethics Commission makes no representation of the validity of this conduct under other laws or agency policy.

Sincerely,



Charles G. Lamb, Ph.D.
Executive Director
MCR:bd

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Missouri Ethics Commission
State of Missouri