



MEC  
OPINION NO.

1999.09.109

COPY

STATE OF MISSOURI  
MISSOURI ETHICS COMMISSION  
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September 13, 1999

At the September 7, 1999 meeting of the Missouri Ethics Commission, your April 30, 1999 request for an advisory opinion on behalf of the Cottleville Fire Protection District was discussed. The following is the Commission's response to your question:

*Which persons within a fire protection district are deemed to be "serving in an executive or administrative capacity" for purposes of Section 105.454, RSMo?*

It is the opinion of the Commission that Section 105.454, RSMo, applies to individuals who are serving in an executive or administrative capacity for the state or one of its political subdivisions. Therefore, a determination of which officers and employees of a political subdivision are covered by those requirements and restrictions depends upon whether they are performing in an "executive" or "administrative" capacity.

Without having more specific information about each officer and employee of the Cottleville Fire Protection District and his or her powers, functions and duties, the Commission can only respond generally to your question. However, individuals who serve in managerial and policy-making positions would normally be covered by Section 105.454, RSMo, because they would be performing in executive or administrative capacities, as those words are normally defined. (Dictionary definitions indicate that persons who have managerial responsibilities or who manage or supervise the execution, use or conduct of work would be "serving in an executive or administrative capacity.")

The construction of Section 105.454 adopted by this opinion is based in part upon the fact that the word "serving" in the phrase "serving in an executive or administrative capacity" appears to apply to individuals who function in certain capacities within government. That would appear to make more sense than to apply the word "serving" to a political subdivision or to the state itself. In addition, the series of statutes from Section 105.454 through 105.464 appears to be directed toward persons who occupy influential positions throughout the various branches of

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government. Finally, Section 105.452, RSMo, does not contain this clause and clearly applies to all governmental officers and their employees – regardless of the branch of government within which they serve and regardless of the roles or services that they perform in their positions. It would therefore appear that the addition of the phrase "serving in an executive or administrative capacity" into Section 105.454 was meant by the legislature to provide words of limitation, which is consistent with this construction in the context of the accompanying statutes.

The Commission recommends that the position and responsibilities of each employee and officer be reviewed for service in an "executive or administrative capacity" to determine the specific applicability of Section 105.454, RSMo. The Commission, however, also recommends that the provisions of Sections 105.458, RSMo (applying to members of legislative and governing bodies), 105.462, RSMo (applying to persons with rulemaking power), and 105.452 (applying to all governmental officers and employees) be kept in mind as well.

Sincerely,

  
Charles G. Lamb, Ph.D.  
Executive Director

**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.**