



MEC
OPINION NO.

1999.09.110

COPY

STATE OF MISSOURI

MISSOURI ETHICS COMMISSION
P. O. BOX 1254
JEFFERSON CITY, MISSOURI 65102
September 13, 1999

573/751-2020
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At the September 7, 1999 meeting of the Missouri Ethics Commission, your May 10, 1999 request for an advisory opinion was discussed. The following is the Commission's response to your question:

Would it be a conflict of interest for the road and bridge supervisor and another road and bridge employee to, on their own time and using their own backhoe, do road work for the townships within Mercer County?

Section 105.454 states in pertinent part:

No elected or appointed official or employee of the state or any political subdivision thereof, serving in an executive or administrative capacity, shall:

(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;

(2) Sell, rent or lease any property to any agency of the state, or to any political subdivision thereof in which he or she is an officer or employee or over which he or she has supervisory power and received consideration therefor in excess of five hundred dollars per transaction or one thousand five hundred dollars per year unless the transaction is made pursuant to an award on a contract

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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; ...

(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; ...

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.

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.")

Because a county road and bridge "supervisor" would normally manage or supervise the execution, use or conduct of county road and bridge work, that county employee would appear to be subject to subsections (1), (2) and (4) of Section 105.454(1). Those provisions would prohibit him from being paid to do road work for towns within the county if the work exceeds \$500.00 per transaction or \$1,500.00 per year, unless (a) he is awarded a contract after going through a notice and bidding process, or (b) he has no supervisory power over the townships with which he proposes to do road work.

The powers and duties of the other road and bridge employee would need to be reviewed as outlined above for executive or administrative responsibilities to determine whether the prohibitions of Section 105.454 would apply to him or her.

This response has focused on the most likely potential conflict of interest problem areas. The employees should also be advised that the provisions of Section 105.452, RSMo (regarding such things as the misuse of confidential information and acting on

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matters to enrich themselves) would also be potentially applicable, depending upon the facts of each situation.

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.