



MEC
OPINION NO.

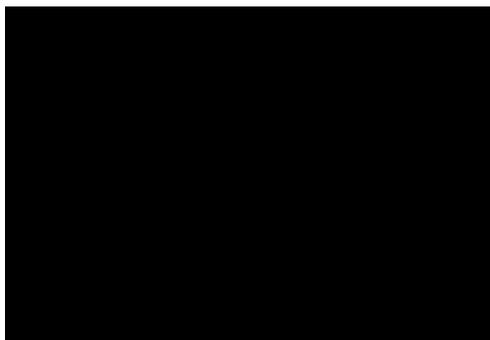
2008.06.CI.005

STATE OF MISSOURI

MISSOURI ETHICS COMMISSION
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July 1, 2008



At the June 27, 2008 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

A city activated a Land Clearance for Redevelopment Authority (LCRA) pursuant to state statutes and by authority of a popular vote four (4) years ago. Pursuant to that activation, the Board of Alderman blighted a geographic area consisting of some forty-seven (47) acres adjacent to the central city. The redevelopment process was begun and has progressed since.

In April 2008, a resident of the redevelopment area was elected to the Board of Aldermen from the Ward in which is contained the redevelopment area. This Alderman cohabits with the female owner of the real estate, is not related to the owner by blood or marriage and does not have an ownership interest in the real property.

The City has acquired ownership of approximately one third (1/3) of the real estate located in the redevelopment area by voluntary negotiations. The LCRA seeks to acquire additional real estate in the area in order to assemble contiguous properties to offer for development. Both the Board of Aldermen and the LCRA have passed resolutions limiting their prospective uses of the power of eminent domain by prohibiting its use against owner-occupied single family residences. Discussions relating to acquisition strategies and negotiation details occur during properly closed sessions of the Board of Aldermen.

The Alderman in question has agreed that he would refrain from any discussions or vote relating to the property he occupies. Does the Alderman in question have a conflict of interest if he participates in discussions or votes relating to the redevelopment of the area in question? If there is no conflict in general, is there a specific conflict relating to strategies and negotiations for the acquisition of real property in the redevelopment area?

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Pursuant to Section 105.955.16, RSMo, the Commission may issue advisory opinions regarding any issue that the commission can receive a complaint on pursuant to section 105.957." The question you pose may be addressed by considering the conflict of interest statutes contained in Chapter 105, as well Section 99.820.1(13), RSMo which specifically addresses conflicts of interests in relation to real property tax increment allocation redevelopment (TIF's).

From the facts presented, the question of whether a conflict of interest exists by its very nature may involve two issues: a) whether the statutes require that the public official recuse and/ or disclose interests; and b) whether a public official should recuse or disclose interests when an appearance of impropriety exists. The answer to the first is governed by the language of the statutes and may be determined on a case-by-case basis. The answer to the second will depend on the judgment and discretion of the public official.

The Board of Aldermen should be aware of all conflict of interest laws contained in Section 105.450 et seq. As outlined in Commission opinion No. 1997.11.121: Section 105.454(4), RSMo prohibits board members from favorably acting on matters which confer a "special monetary benefit" to themselves, spouses or dependent children. "Special monetary benefit" is defined in that subsection as "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.

Additionally, Section 105.461, RSMo requires specific officials to disclose "a substantial interest in a personal or private interest in a measure, bill, or ordinance as defined in Section 105.450(11), RSMo. That definition requires that any interest in a measure, bill, order or ordinance result from a substantial interest in a business entity. The Board should also be aware of Sections 105.452(2) and (3), RSMo relating to disclosure and use of confidential information.

The statutes require a specific benefit or interest of the public official, spouse or dependent child before the statutory requirements of recusal and disclosure apply. For example, in MEC Opinion No. 2001.03.102, the Commission stated that it is not a violation of Chapter 105 statutes for a church member who sits as a city alderman to vote on matters that may affect the church.

In the facts as presented, the alderman has agreed to refrain from any discussions or vote relating to the specific property he occupies. The alderman resides in the area, and has no ownership or financial interest. These facts alone do not support a requirement of recusal or disclosure under the Chapter 105 statutes. However, additional facts may trigger the statutory requirements, depending on whether discussions or votes relating to the redevelopment of the area in general confer a special monetary benefit to him and whether he has a substantial interest in a business entity. The Board should be cognizant of any future events or change of circumstances which may ultimately confer a special monetary benefit.

Of particular note is Section 99.820.1, RSMo as amended, effective August 28, 2008. That Section as amended states:

(13) If any member of the governing body of the municipality, a member of a commission established pursuant to subsection 2 or 3 of this section, or an employee or consultant of the municipality, involved in the planning and preparation of a redevelopment plan, or

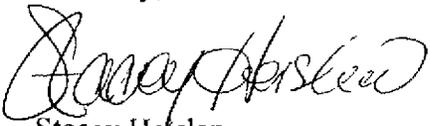
redevelopment project for a redevelopment area or proposed redevelopment area, owns or controls an interest, direct or indirect, in any property included in any redevelopment area, or proposed redevelopment area, which property is designated to be acquired or improved pursuant to a redevelopment project, he or she shall disclose the same in writing to the clerk of the municipality, and shall also so disclose the dates, terms, and conditions of any disposition of any such interest, which disclosures shall be acknowledged by the governing body of the municipality and entered upon the minutes books of the governing body of the municipality. If an individual holds such an interest, then that individual shall refrain from any further official involvement in regard to such redevelopment plan, redevelopment project or redevelopment area, from voting on any matter pertaining to such redevelopment plan, redevelopment project or redevelopment area, or communicating with other members concerning any matter pertaining to that redevelopment plan, redevelopment project or redevelopment area. Furthermore, no such member or employee shall acquire any interest, direct or indirect, in any property in a redevelopment area or proposed redevelopment area after either (a) such individual obtains knowledge of such plan or project, or (b) first public notice of such plan, project or area pursuant to section 99.830, whichever first occurs; (Emphasis added.)

Attorney General Opinion No. 61-2006 stated that an alderman or TIF commissioner who owns real property within a proposed redevelopment area has an "interest, direct or indirect, in any property" within a proposed redevelopment area, and that alderman or commissioner is thus barred by Section 99.820.1(13), RSMo, from voting on matters pertaining to the redevelopment plan for that area.

While the alderman in the facts presented does not have an ownership interest in the property, the alderman should consider whether he "controls an interest, direct or indirect, in any property included in any redevelopment area." No direct statutory or judicial authority was found defining this portion of the statute. If he is deemed to control such an interest, the statute requires that he not only disclose that interest in writing, but also refrain from any further official involvement in regard to such redevelopment plan, redevelopment project or redevelopment area, from voting on any matter pertaining to such redevelopment plan, redevelopment project or redevelopment area, or communicating with other members concerning any matter pertaining to that redevelopment plan, redevelopment project or redevelopment area. The alderman should also consider any local ordinances governing conflicts of interest.

Finally, the question of whether an appearance of impropriety exists and whether discretion should be used must be considered by the public official. As stated in MEC Opinion No. 1994.06.115 "It is very hard to distinguish the difference between the appearance of an impropriety and, in fact, a technical violation in the eyes of the public. The intent of the law is that conflicts of interest be avoided..."

Sincerely,



Stacey Heislén
Interim Executive Director

SH: ss

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.