STATE OF MISSOURI

MISSOURI ETHICS COMMISSION
P. O. BOX 1254
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September 5, 2008

[redacted]

Opinion No: 2008.09.CI.008

[redacted]

At the September 2, 2008 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

Our City Administrator of a 4th Class City recently resigned and our current Mayor has indicated he is interested in applying for the position of City Administrator. The Board of Aldermen would like an advisory opinion with regard to whether there would be a violation of the conflict of interest statutes under any of the following scenarios in which the Mayor would be appointed to perform the duties of the City Administrator.

- *Mayor resigns his elected position and is immediately appointed as City Administrator with compensation (pay and benefits.)*
- *Mayor resigns his elected position and is immediately appointed as City Administrator without compensation (pay and benefits) other than reimbursement for actual expenses incurred.*
- *Mayor retains his elected position and assumes additional duties typically performed by the City Administrator with additional compensation (pay and benefits) beyond his current pay as Mayor.*
- *Mayor retains his elected position and assumes additional duties typically performed by the City Administrator with no additional compensation beyond his current pay as Mayor other than reimbursement for actual expenses incurred.*

Pursuant to Chapter 79 of the Missouri Revised Code, a mayor of a fourth class city is a member of the governing body of the city. See Sections 79.110 and 79.120, RSMo. Accordingly, the mayor may not perform any service for such political subdivision or any agency of the political subdivision for any consideration other than the compensation provided for the performance of his or her official duties. See Section 105.458, RSMo.

Previous Commission opinions have interpreted the statutory prohibitions to include stipend payments. See 2008.06.CI.004, 2006.12.106, 2001.01.100, 1999.12.115, and 1998.05.108. Accordingly, the statutes prohibit the Mayor from retaining his elected position and assuming the position and/or duties of City Administrator for any consideration.

Section 77.042, RSMo authorizes the governing body of a fourth class city to establish by ordinance, with the approval of the mayor, the position of city administrator who shall be the chief administrative assistant to the mayor and who shall have general superintending control of the administration and management of the government business, officers and employees of the city, subject to the direction and supervision of the mayor. See also Section 77.046, RSMo. Section 77.044, RSMo requires the city administrator to devote full time to performance of duties and that the city administrator shall receive a salary as set by ordinance. See also 79.270, RSMo.

The Board of Aldermen should consider whether the assumption of duties typically held by a city administrator without compensation is consistent with the above cited statutes, as well as that specified for that of a mayor in Chapter 79. See e.g. Sections 79.119, 79.120, 79.140, and 79.200, RSMo.

Section 105.454(5), RSMo prohibits the performance of any service for consideration, during one year after termination of his office, by which performance the mayor attempts to influence a decision of the political subdivision in which he or she was an officer or over which he had supervisory power. Assuming the City Administrator is a position of influence, the statute precludes the Mayor from assuming this position for one year after termination of his office. See Commission Opinions 2008.03.CI.001, 2003.01.101and 1993.06.102. As stated above, the prohibition includes the payment of any consideration.

Sincerely,

Stacey Heislen
Interim Executive Director

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