



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

573/751-2020
1-800/392-8660

January 28, 2009



Opinion No. 2009.01.CI.001



At the January 27, 2009 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's Response to your questions:

Because of a change in my residency, I resigned my position as an elected alderman for a fourth class city, on October 13, 2008. The City desires to retain my services to assist in several ongoing projects, including installation of a city-wide sewer system, with which I have been primarily responsible as an alderman, and for which I have invaluable, if not irreplaceable knowledge and contacts. However, both the City and I are concerned about the application of Section 105.454(5) pertaining to conflict of interest.

The City has abandoned plans to retain me as City Administrator based upon your opinion No. 2008.09.CI.008. Instead, the City now desires to employ me for consideration as an administrative assistant to the Mayor, but with specific contractual prohibitions upon any attempt by me to influence any decision of the City of Duquesne.

Would my employment by the City for consideration constitute a violation of Section 105.454(5) or any other conflict of interest statute within your jurisdiction?

A related question is whether I may volunteer my services without consideration and represent the City in the aforementioned activities and projects, but be reimbursed actual expenses incurred in such activities, without violating the conflict of interest statutes.

Finally, could I serve as City Administrator for the City for a zero salary, but with actual expenses reimbursed?

As stated in MEC Opinion No. 2008.09.CI.008, Section 105.454(5), RSMo prohibits the performance of any service for consideration, during one year after termination of office, by

which performance a former alderman attempts to influence a decision of the political subdivision in which he or she was an officer or over which he had supervisory power. See Commission Opinions 2008.03.CI.001, 2003.01.101 and 1993.06.102. The prohibition includes the payment of any consideration. MEC Opinion No. 2000.11.113, states that you may act as a technical consultant, assuming there is no violation of Section 105.454, RSMo.

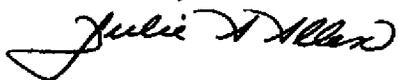
In this position you would be employed as "Administrative Assistant" to the Mayor to assist the Mayor, serving as a non-exclusive liaison and representative of the City in connection with projects in which you were involved with as an alderman. In this capacity, you will work closely with the Mayor, the Board of Aldermen and other employees and officials of the City in an effort to confront and resolve the many issues inherent with the projects. The position specifically prohibits you from attempting to influence a decision of the City or the Board of Aldermen, the City.

To the extent that you would serve as a liaison and representative of the City in these projects, it may be difficult to distinguish between duties by which performance you attempt to influence a decision of the City by their very nature. This is despite a specific prohibition in the position itself. While past Commission opinions state that serving as a technical consultant may not violate the statute, you are prohibited from performing any services in that role by which you attempt to influence any decision of the City.

You also question whether you may volunteer your services without consideration and represent the city in the aforementioned activities and projects, but be reimbursed actual expenses incurred in such activities, without violating the conflict of interest statutes. Section 105.454(5), RSMo prohibits the performance of service for "any consideration." Prior Commission opinions state that you may not be paid stipend or per diem payments. In your request, you have not defined "actual expenses". Consideration is generally defined as "some right, interest, profit, or benefit accruing to one party, or some forbearance, loss, or responsibility given, suffered, or undertaken by the other party." See Walker v. Rogers, 182 S.W.3d 761 (Mo. App. W.D. 2006); Kells v. Missouri Mountain Properties, Inc., 247 S.W.3d 79 (Mo. App. S.D. 2008); Section 400.3-304, RSMo. The Commission cautions you to avoid any payments which could be considered consideration as commonly defined in the law.

Your final question is addressed in MEC Opinion No. 2008.09.CI.008.

Sincerely,



Julie A. Allen, CPA, PMP
Executive Director

JAA: ss
