

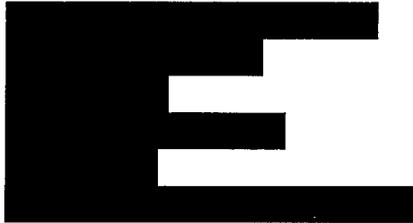


MISSOURI ETHICS COMMISSION

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Julie A. Allen
Executive Director

October 8, 2009



Opinion No. 2009.10.CI.004



At the October 6, 2009 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

I am writing this letter to ask for clarification of rules for outside employment. I am currently serving as a State Representative of the Missouri General Assembly. I also have a private consulting company that I operate. I have been presented with the opportunity to do some work with another consulting company as a subcontractor.

The other consulting company works with private companies but may also contract with school districts and local government entities in the state of Missouri to provide management services. I am requesting clarification from the Ethics Commission regarding the propriety of my working as a subcontractor for this consulting company given these circumstances. I would not be an employee of the other consulting firm but would contract with them to provide some services to their clients.

Please advise if this arrangement is allowed under the Missouri Ethics laws for elected officials.

Your question raises a number of issues which should be considered prior to entering any contractual relationship as a subcontractor for consulting services. In general, the conflict of interest statutes which should be considered can be found in §105.450 through §105.456, RSMo, and §105.461, RSMo.

§105.456, RSMo which specifically applies to members of the General Assembly provides as follows:

1. No member of the general assembly or the governor, lieutenant governor, attorney general, secretary of state, state treasurer or state auditor shall:

(1) Perform any service for the state or any political subdivision of the state or any agency of the state or any political subdivision thereof or act in his or her official capacity or perform duties associated with his or her position for any person for any consideration other than the compensation provided for the performance of his or her official duties; or

(3) Attempt, for compensation other than the compensation provided for the performance of his or her official duties, to influence the decision of any agency of the state on any matter, except that this provision shall not be construed to prohibit such person from participating for compensation in any adversary proceeding or in the preparation or filing of any public document or conference thereon. The exception for a conference upon a public document shall not permit any member of the general assembly or the governor, lieutenant governor, attorney general, secretary of state, state treasurer or state auditor to receive any consideration for the purpose of attempting to influence the decision of any agency of the state on behalf of any person with regard to any application, bid or request for a state grant, loan, appropriation, contract, award, permit other than matters involving a driver's license, or job before any state agency, commission, or elected official. Notwithstanding Missouri supreme court rule 1.10 of rule 4 or any other court rule or law to the contrary, other members of a firm, professional corporation or partnership shall not be prohibited pursuant to this subdivision from representing a person or other entity solely because a member of the firm, professional corporation or partnership serves in the general assembly, provided that such official does not share directly in the compensation earned, so far as the same may reasonably be accounted, for such activity by the firm or by any other member of the firm. This subdivision shall not be construed to prohibit any inquiry for information or the representation of a person without consideration before a state agency or in a matter involving the state if no consideration is given, charged or promised in consequence thereof.

2. No sole proprietorship, partnership, joint venture, or corporation in which a member of the general assembly, governor, lieutenant governor, attorney general, secretary of state, state treasurer, state auditor or spouse of such official, is the sole proprietor, a partner having more than a ten percent partnership interest, or a coparticipant or owner of in excess of ten percent of the outstanding shares of any class of stock, shall:

(1) Perform any service for the state or any political subdivision thereof or any agency of the state or political subdivision for any consideration in excess of five hundred dollars per transaction or one thousand five hundred dollars per annum unless the transaction is made pursuant to an award on a contract let or sale made after public notice and competitive bidding, provided that the bid or offer accepted is the lowest received...

§105.456.1(1), RSMo prohibits you from performing any service for the state or political subdivision of the state in your official capacity for any compensation other than your compensation as a member of the General Assembly. As recently stated in opinions 2009.04.CI.002 and 2008.09.CI.007, you must make every effort to separate any services

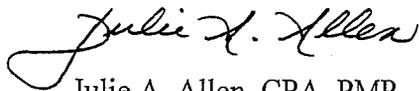
performed in your consulting business from your official position as an elected official. In addition you must make any necessary disclosures as required by §105.461, RSMo.

While your question does not provide details of your ownership of your consulting business, §105.456.2, RSMo does provide that certain businesses in which you may have an interest may conduct business with the state or a political subdivision if the transaction is made pursuant to competitive bidding in which the bid or offer is the lowest received. The common law rule disfavored public officials from having contracts with the body they represent. *See Becker v. St. Francois County*, 421 S.W.2d 779 (Mo. 1967); *Polk Twp., Sullivan County, Spencer*, 259 S.E. 2d 804 (Mo. 1953); *Nodaway County v. Kidder*, 129 S.E. 2d 857 (Mo. 1929). In general, statutes regarding pay for public officials are strictly construed against the official receiving the pay. *Maxwell v. Daviess County*, 190 S.W. 3d 606, 613-14 (Mo. App. W.D. 2006).

While §105.456.2, RSMo does not specifically address a subcontracting arrangement, a strict reading of the statute suggests that because you will be ultimately performing a service for the state or a political subdivision, services performed in excess of \$ 500.00 per transaction or \$5,000.00 per annum must be made after public notice and competitive bidding. Therefore, the initial contract entered into by the contractor must be the lowest received.

Finally, you indicate that the contract entered into may concern consulting services to provide management services. Because the term "management services" may suggest issues of influence, be cognizant of §105.456.3, RSMo which prohibits you from attempting, for compensation, from influencing the decision of any agency of the state on any matter. Also be aware of the provisions of §105.452 and §105.454, RSMo.

Sincerely,



Julie A. Allen, CPA, PMP
Executive Director

JAA:sc