



MISSOURI ETHICS COMMISSION

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Julie A. Allen
Executive Director

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Opinion No. 2009.12.CI.005



At the December 18, 2009 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

Some two years ago my business won a competitive bid to provide products and services to the city of [REDACTED]. As the low bidder we have just entered the third year of a term and supply contract that may be renewed up to five years. If I sell my company along with existing contracts and pending work to a third party and am subsequently employed by that company who intends to continue to honor the term and supply contract, do I have a conflict of interest by serving in the unpaid position as the Mayor [REDACTED]?

In the event that you are elected as the Mayor, there is no per se conflict of interest for you serving in that position under the conflict of interest laws set forth in Chapter 105. However, you should be guided by those statutes depending on any continuing interest you may have in this company at the point you become employed by that company. You should also be governed by your City's Charter. Under Section 10 of the Charter the Mayor has no regular administrative duties. Under the Charter, you would be considered an elected official, and a member of the legislative and governing body of the City.

The conflict of interest statutes address both services performed by public officials individually and decision-making by those public officials who may have a financial interest in a transaction with the political subdivision. The statutes also address public officials who have a financial ownership in or who are officers or directors of businesses which do contractual work with the specific political subdivision. For example, Section 105.450(3), RSMo specifically defines a "Business with which a person is associated":

- (a) Any sole proprietorship owned by himself or herself, the person's spouse or any dependent child in the person's custody;
- (b) Any partnership or joint venture in which the person or the person's spouse is a partner, other than as a limited partner of a limited partnership, and any corporation or

limited partnership in which the person is an officer or director or of which either the person or the person's spouse or dependent child in the person's custody whether singularly or collectively owns in excess of ten percent of the outstanding shares of any class of stock or partnership units; or

(c) Any trust in which the person is a trustee or settlor or in which the person or the person's spouse or dependent child whether singularly or collectively is a beneficiary or holder of a reversionary interest of ten percent or more of the corpus of the trust;

Services Performed for the City

Under Sections 105.454(1), RSMo and 105.458.1(1), RSMo, you may not directly perform any service for the City for compensation in excess \$500.00 per transaction or \$500.00 per annum, unless the transactions were made pursuant to an award on a contract made after public notice and competitive bidding, provided that the bid or offer was the lowest received. In your question you state that your company was the bidder on the original contract.

Voting and Decision-Making

A number of sections prohibit you from voting, participating in matters, or otherwise influencing decisions of the City which may financially benefit you or your employer. Under Section 105.452(4), RSMo, you may not favorably act on any matter that is so specifically designed to provide a special monetary benefit to you, your spouse or dependent children. That statute defines "special monetary benefit" 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. This may include voting or otherwise favorably acting.

You should also be guided by Sections 105.454(3), RSMo which states that you may not participate in any matter, directly or indirectly, in which you attempt to influence any decision of City when you know the result of such decision may be the acceptance of the performance of a service or the sale, rental, or lease of any property to the City for consideration in excess of \$500.00 per transaction or \$5,000.00 per annum to you, your spouse, to a dependent child in your custody or to any business with which you are associated unless the transaction is made pursuant to an award on a contract 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. Again, this may include voting or otherwise participating in matters of influence.

Finally, under Sections 105.454(4) and 105.458.1(3), RSMo, you may not perform any services during the time of your office as mayor 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 you attempt to influence a decision of the City.

Confidential Information

You should also be guided by Section 105.452, RSMo. Specifically, Section 105.452(2) RSMo prohibits you from using confidential information obtained in the course of or by reason of your employment or official capacity in any manner with intent to result in financial gain for yourself, your spouse, your dependent child in your custody, or any business with which you are associated. As stated above, "any business with which you are associated" is defined by Section 105.450(3), RSMo. Section 105.452(3) RSMo prohibits you from disclosing confidential information in the course of or by reason of your employment or official capacity in any manner with intent to result in financial gain for yourself or any other person.

Because this is not an exhaustive list, you should become familiar with the laws contained in Chapter 105, as well as any statutes, charters or local ordinances which govern the City.

Sincerely,

Julie A. Allen, CPA, PMP
Executive Director

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