



MISSOURI ETHICS COMMISSION

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Julie A. Allen
Executive Director

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Opinion No. 2010.03.CI.001



At the March 3, 2010 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

May a sitting state legislator, acting as the paid director of a local nonprofit agency, meet with city elected officials of the city in which his/her district resides, to discuss changes to city codes or ordinances? May he/she do so with city elected officials of cities in which his/her district does not reside, but are within the State of Missouri?

May a sitting state legislator, acting as the paid director of a local nonprofit agency, meet with staff from county agencies which receive state funding, such as the county health department to discuss private foundation funded programs the nonprofit agency is involved in planning and promoting?

May a sitting state legislator, acting as the paid director of a local nonprofit agency, provide public testimony to committees, subcommittees or full meetings of the city council of the city in which his/her state legislative district reside? May he/she do so in front of such groups for cities in which his/her district does not reside, but are within the State of Missouri?

May a sitting legislator, acting as the paid director of a local nonprofit agency, meet with County elected officials to discuss land use codes or ordinances if the county contains his/her legislative district? May he/she do so if the County does not?

The conflict of interest statutes which should be considered can be found in §105.450 through §105.456, RSMo, and §105.461, RSMo. In addition, Article III, Section 12 prohibits a member of the General Assembly from holding any lucrative office or employment under the United States, this state or any municipality of the state.

Your request involves employment as the director of a local nonprofit agency which may involve contact and meetings with local agencies and elected officials while you are also a sitting

legislator. It is assumed that the meetings and/or testimony you reference are on behalf of the local nonprofit agency.

General Principals

As recently stated in Opinions 2009.10.CL004, 2009.04.CI.002 and 2008.09.CI.007, you must make every effort to separate any services performed on behalf of the local nonprofit agency from your official position as an elected official. The Commission reminds you that you cannot vote on any measure which would give preferential treatment to the local nonprofit agency. In addition you must make any necessary disclosures as required by §105.461, RSMo. Also be cognizant of the provisions of Section 105.452, RSMo. You should also contact the Chief Clerk of the House of Representatives or the Secretary of the Senate to determine if that body has any rules concerning such activity.

§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

§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. In your request, you do not suggest that you will be performing any services for the state or a political subdivision of the state.

§105.456.1(3), RSMo prohibits you from attempting, for compensation other than your compensation as a state legislator, to influence the decision of any agency of the state on any matter. Unlike Section 1 of the statute, this section does not specifically reference a political subdivision of the state.

While §105.456.1(3), RSMo does not define "agency of the state," previous opinions have found no prohibition under this section under the following circumstances. In Opinion 1997.06.112, the Commission stated that service by a state legislator on a not-for-profit corporate board did not violate the laws. In Opinion 1994.12.141, RSMo the Commission found no conflict of interest for a member of the General Assembly who was also employed with a Neighborhood Center to solicit funds from the federal government, a neighboring state government, a city or county of the State of Missouri, or private corporations and foundations. This was provided that the agency was not a state agency of Missouri. Other opinions have stated that service on a community task force did not violate the laws, see Opinion No. 1996.06.134, and that employment with an electric cooperative for economic development consulting did not itself violate the laws, see 1994.08.124. All of these opinions were issued prior to the establishment of the elected local government official lobbyist category in January 1, 2007, as discussed below.

More recently in Opinion No. 2007.03.L.008- 7, the Commission expressed serious concerns about the ability of a member of the General Assembly to avoid violation of conflict of interest laws while also being under contract to fundraise for groups which engage in education and grassroots lobbying campaigns. Concerns included the conflict of interest statutes, potential lobbyist reporting statutes, and campaign finance disclosure statutes.

All four questions address meetings and public testimony concerning issues on behalf of the local nonprofit agency with local elected officials or staff of county agencies which receive state funding. You do not state whether the meetings or testimony are an attempt to influence decisions on those matters.

In the event that any meetings or public testimony with local elected officials include an attempt to influence decisions on the matters raised, you should also consider whether your employment would require you to register as an "elected local government official lobbyist" under §105.470 (1), RSMo. That statute would require you to register if you are employed specifically for the purpose of attempting to influence any action by a local government official elected in a county, city, town, or village with an annual operating budget of over ten million dollars.

In the event you would be required to register, you should consider whether your registration and actions while a sitting member of the General Assembly raise any inherent conflict issues for you, especially while representing your District in the General Assembly. For example § 21.420, RSMo makes it unlawful for a lobbyist to go upon the House or Senate floor except upon invitation by the House.

Most of your questions involve meetings or testimony before local elected officials and agencies, both within and outside your district. As stated above, you must make every effort to separate any services performed on behalf of the local nonprofit agency from your official position as an elected official. To the extent that you interact with officials within your District, this may raise additional issues for you.

With consideration of the general principals outlined above, the Commission offers the following regarding your specific questions:

Meetings with city elected officials to discuss changes to city codes or ordinances and meetings with county elected officials to discuss land use codes or ordinances

Consideration should be given to whether such meetings will be conducted to attempt to influence the elected officials. Because you state that the meeting will be conducted to discuss changes in city codes or ordinances, or land use codes or ordinances, the matters being discussed in and of themselves suggest that there may be an attempt to influence the officials. For that reason you should consult the definition of elected local government official lobbyist and whether you have been specifically employed for this purpose. This will not depend on whether or not the officials are in the district you represent. In the event you determine that you are not required to register as a lobbyist, you might consider any potential conflicts which may arise as a member of the General Assembly as outlined above.

Meetings with staff from county agencies which receive state funding, such as the county health department to discuss private foundation funded programs the nonprofit agency is involved in planning and promoting

This question does not involve contact with local elected officials or meetings to discuss state funding which could involve the prohibition in §105.456.1(3), RSMo against attempting to influence a decision of an agency of the state. Because you state that discussions may involve private foundation funded programs, it does not appear on its face that such meetings as posed would implicate the conflict of interest laws under Chapter 105.

Public testimony to committees, subcommittees or full meetings of a city council

You might also be guided by analogy to §105.470 (5), RSMo which states that 1) responding to any request for information made by any public official or employee of the legislative branch of government, or 2) testifying as a witness before the general assembly or any committee thereof does not in and of itself cause a person to be a legislative lobbyist. Assuming that any testimony would be in your capacity as director of the local nonprofit agency, merely providing public testimony on issues would not in and of itself appear to implicate provisions of Chapter 105.

Sincerely,



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Executive Director

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