



MISSOURI ETHICS COMMISSION

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Julie A. Allen

Executive Director

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Opinion No. 2011.10.CL.005

At the October 7, 2011 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

[W]ould it be appropriate for the County Commission to appoint someone or would it be appropriate for someone to serve on the SB40 Board that has a child, sibling, or other relative either employed as workshop staff or as a client in the workshop to which the Board votes to allocate ballot mandated tax money to? Similarly, would it be a conflict of interest to sit on the Board and be an employee of the workshop yourself?

We have recently had two applicants to the Board, one of whom has a sister employed as a workshop staff member and the other has a sister working in the workshop as a client. I would like some clear guidance as who is eligible for appointment in order to avoid any conflicts of interest.

Under Section 105.957, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which Commission can receive a complaint pursuant to Section 105.957, RSMo. The Commission receives complaints alleging violation of the conflict of interest laws contained in Sections 105.450 to 105.468, RSMo. The Commission also receives complaints alleging violations of the provisions of state statutes relating to the official conduct of officials or employees of the state and its political subdivisions.

Missouri law provides general prohibitions on the actions of elected and appointed officials and employees. See, for example, Sections 105.452 through 105.458, RSMo. Section 205.970, RSMo, specifically governs the qualifications, terms, officers, powers and duties of the Board of Directors of "SB40" Boards.

Since the time that the Missouri Ethics Commission received this opinion request, you have also received a legal opinion from your prosecuting attorney. The prosecuting attorney serves as the legal advisor to counties pursuant to Section 56.070, RSMo. While you have requested an opinion pursuant to Section 105.96.1.16, RSMo, the Commission encourages you to consult with your legal advisor on such matters. In addition, while the Commission will give guidance about

the law, you must consult with your legal advisor regarding any specific applications and appointment of individuals to the SB40 Board. This opinion is issued within the context of Missouri's statutes governing such issues, and assumes the facts presented by you in your letter.

SB40 BOARDS: BACKGROUND

"Senate Bill 40," sometimes referred to as "SB40," is codified at Section 205.968 through 205.973, RSMo. It authorizes the creation of a board of directors, (generally referred to as an "SB40 Board"). Senate Bill 40 contains specific provisions governing the qualifications of board members. It also contains specific provisions governing employment by Board members and certain persons related to Board members. Any board member should be aware of these specific provisions in addition to the general provisions governing the conduct of appointed officials and employees. Any discussion of Senate Bill 40 contained herein is included solely for the purpose of providing context for this advisory opinion; the Commission provides no guidance or authority on any provision in Senate Bill 40 other than those governing the official conduct of Board members and Board employees.

Under Section 205.968, RSMo, the SB40 Board is a political subdivision. SB40 Board members are "appointed officials" governed by the terms of Section 105.452, RSMo. They are also appointed officials "serving in an . . . administrative capacity" governed by Section 105.454, RSMo. Finally, they are members of the governing body of a political subdivision governed by Section 105.458, RSMo.

We understand from your letter that your county has an SB40 Board, and that, pursuant to Section 205.970.6, RSMo, the Board has chosen to contract with a private, not-for-profit corporation to provide services. We assume for purposes of this opinion that the Board does not maintain any administrative control, management, or personnel decisions over the private not-for-profit corporation other than the oversight necessary to ensure that the funds provided to the corporation are spent in accordance with law. We also assume that employees of the workshop are employees of the private, not-for-profit corporation, and not employees of the Board itself.

Board members should be aware of the conflict of interest statutes governing appointed public officials and employees. As stated in Opinion No. 2007.02.CI.001-1, the Commission encourages Board members to recognize that they cannot use the position for private gain. Board members should also consult any relevant Board policy or procedure in addition to the state statutes.

DISCUSSION

- I. May the County Commission appoint a person to, and may that person serve on, the Board when that person has a child, sibling, or other relative employed as workshop staff?

There does not appear to be a prohibition against a person serving on an SB40 Board where such a person's child, sibling, or other relative is employed by a private, not-for-profit corporation with whom the Board has a contract to provide services.

Section 205.970.11, RSMo, provides that “No person shall be employed by the Board who is related within the third degree by blood or by marriage to any member of the Board.” This statute would not apply when the relative is not an employee of the Board but rather an employee of a private corporation that receives funds from the Board. You should consult with your local prosecuting attorney to determine on a case-by-case basis whether a person meets the legal definition of “employee” of the Board.

Board members should be aware that article VII, Section 6 of the Missouri Constitution prohibits any public officer from naming or appointing to public office or public employment “any relative within the fourth degree, by consanguinity or affinity.” MO. CONST. art. VII, § 6. Once appointed to the Board, any Board member who then names or appoints to public employment any such relative would forfeit a position with the Board. If such a relative is already employed by the Board, the Board member would not forfeit the position. *See* MEC Opinion No. 2001.10.109.

II. May the County Commission appoint a person to, and may such a person serve on, the Board when that person has a child, sibling, or other relative who is a client in the workshop?

There does not appear to be a prohibition against a person serving on an SB40 Board where such a person’s child, sibling, or other relative is a client of a sheltered workshop.

Section 205.970, RSMo, requires that two of the nine Board members “shall be related by blood or marriage within the third degree to a handicapped person as defined in Section 205.968.” The statute defines “handicapped person” as a person “who is lower range educable or upper range trainable mentally retarded or a person who has a developmental disability.” The Board may provide for services “only . . . for those persons defined as handicapped persons . . . in this section whether or not employed at the facility or in the community.” *See* § 205.968, RSMo.

The statute appears to require, rather than prohibit, at least some Board members who have family members “within the third degree” of relationship who qualify for services with the Board. A child is a family member within one degree of relationship. A sibling is a family member within two degrees of relationship. For a complete list of family relationships, see the Ethics Commission’s chart at <http://mec.mo.gov/WebDocs/PDF/Misc/RelationshipChart.pdf>.

Regardless of Board qualifications, a Board member must not provide himself, a spouse, or a dependent child any “special monetary benefit” in violation of Section 105.452.1(4), RSMo.

III. May a Board member be an employee of the workshop?

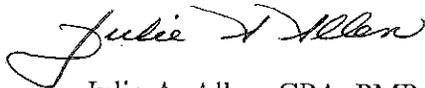
Section 205.970.10, RSMo, provides that, “Individual Board members shall not be eligible for employment by the Board within twelve months of termination of service as a member of the Board.” Similarly, Section 105.454 would prohibit a Board member from performing services for the Board for any consideration other than the compensation provided for the performance of his or her official duties as Board member. (See Ethics Opinion 2008.09.CI.008).

These statutes would not apply to a Board member (or former Board member) who is not an employee of the Board but rather an employee of a private corporation that receives funds from the Board. You should consult with your local prosecuting attorney to determine on a case-by-case basis whether a person meets the legal definition of "employee" of the Board.

Even to the extent that Sections 205.970.10 and 105.454, RSMo, would permit a Board member to also be an employee of the workshop, that Board member must not act or refrain from acting by reason of his or her employment with the workshop, and must not use or disclose any confidential information in violation of Section 105.452, RSMo. Likewise, the Board member must not perform any service for consideration for the Board, and must not sell, rent or lease any property to the Board, in any manner that would violate Section 105.454, RSMo, or Section 105.458, RSMo.

Finally, be aware that for any officer or director of a workshop, that workshop is a "business with which a person is associated," which triggers additional prohibitions under Sections 105.452, 105.454, and 105.462, RSMo.

Sincerely,



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Executive Director