



**MISSOURI ETHICS COMMISSION**

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Julie A. Allen

Executive Director

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Opinion No. 2011.11.L.006

Dear

At the November 10, 2011 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

*A trade association is registered with the IRS as a 501(c)6 organization and is incorporated pursuant to the laws of the State of Missouri. As a trade association, it employs and contracts with several lobbyists and satisfies the description of lobbyist-principal, as found in 105.473, RSMo. The association is led by a Board of Trustees and is led by the president and chief executive officer, who is an employee of the organization. The trustees are not employees of the association; rather, they are selected for board membership through various avenues as described in the organization's bylaws. Participation in the board is purely voluntary and not a requirement of membership.*

*The board meets multiple times throughout the year, both at the association's office and at sites throughout the state. During these meetings the association pays for the trustee's meals, overnight accommodations, and travel expenses. The association also gives the trustees a holiday gift.*

*Currently, the spouse of a Missouri state representative is the CEO of a hospital and is a member of the association's Board of Trustees.*

*Question 1: In light of subdivision (3) of section 105.470, RSMo, which defines "expenditure" to include "any payment made or charge, expense, cost, debt or bill incurred; any gift, honorarium or item of value bestowed including any food or beverage..." and subsection 2 of section 105.473 which states "a lobbyist shall file with the commission...the total of all expenditures by the lobbyist or his or her principals made on behalf of all public officials, their staff and employees, and their spouses..." is the association required to report the expenditures made on behalf of the CEO? Although there are several exceptions to the definition of expenditure, none appear to address the current situation.*

*Question 2: If the Commission determines an exception to the definition of expenditure is applicable to the current situation, what elements are required to be reported and what elements are exceptions? For example, is the association required to report the holiday gift as an expenditure, but not the mileage reimbursement?*

*Additionally, the association coordinates advocacy trips to Washington D.C., for key hospital personnel. Participants on these trips may include hospital executives, members of the hospital medical staff and hospital board members. The association makes the travel arrangements and pays for travel (including airfare) and lodging. MHA also pays for some meals and other reasonable expenses related to the event, as appropriate. Participation of these trips is truly voluntary.*

*Question 3: Is the Commission's analysis of Question 1 applicable to this scenario? If not, in what other ways is the analysis different and what is the difference the association's reporting obligation?*

*Question 4: If the participant in the advocacy trip is a hospital CEO whose spouse is a state representative, does the analysis change?*

For the purposes of your request, the Commission assumes that the association is a lobbyist principal, and that the spouse of the elected official is not an employee of the association, but an unpaid member of the Board of Trustees of the association. Your request raises numerous issues, and the Commission is not able to opine in advance on the myriad of possible scenarios which may occur. See Opinion No. 97.07.112. This opinion is issued within the context of Missouri's statutes governing such issues, assumes the facts presented by you in your letter, and should be considered as general guidance to the question presented.

The lobbyist disclosure laws are contained in Chapter 105. In general, Section 105.473, RSMo requires reporting of lobbyist "expenditures" on behalf of all public officials, their staff and employees, and their spouses and children. The definition of "expenditure" in 105.470(3), RSMo is broad but contains specific expenditures. If any payment by a principal falls within the definition of expenditure, it must be reported unless it falls within a statutory exception. While the general definition of an expenditure is not dependent on the intended purpose of the payment (i.e. for lobbying purposes), some of the exceptions provide guidance for such payments.

Previous Commission opinions have stated that when in doubt it is in the best interest of the lobbyist to report a payment or gift to an official or an official's spouse. For example, in Opinion No. 1994.01.101, the Commission stated that when in doubt, a lobbyist who was the spouse of an elected official should report expenditures such as dinners and gifts. . See Section 105.470(3)(a), RSMo: "the term "expenditure" shall not include ... (a) [a]ny item, service or thing of value transferred to any person within the third degree of consanguinity of the transferor which is unrelated to any activity of the transferor as a lobbyist. " In Opinion No. 1993.09.106, the Commission stated that personal gifts between spouses, joint checking accounts, dinner purchases and family gifts are not reported by the lobbyists spouse, or the legislator's spouse. However, gifts given to a public official by lobbyists for wedding gifts should be reported. See also Opinion No. 2007.03.L.006—5 and Opinion No. 1996.01.103.

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**Meals, Accommodations and Holiday Gifts to the Spouse of an Elected Official**

In your first set of questions, you ask whether meals, accommodations and holiday gifts to a trustee who is married to an elected official is a reportable expenditure under Section 105.473, RSMo. For the purposes of the question, the Commission assumes that meals, accommodations and holiday gifts are given in relationship to the spouse's role as a member of the Board of Trustees, and is not related to lobbying. Section 105.473.2(a), RSMo requires a lobbyist to report the following:

2 (a) The total of all expenditures by the lobbyist or his or her lobbyist principals made on behalf of all public officials, their staffs and employees, and their spouses and dependent children, which expenditures shall be separated into at least the following categories by the executive branch, judicial branch and legislative branch of government: printing and publication expenses; media and other advertising expenses; travel; the time, venue, and nature of any entertainment; honoraria; meals, food and beverages; and gifts;

A lobbyist's report must include a statement, verified by a written declaration that it is made under the penalties of perjury.

The following exceptions under Section 105.470(3) should be consulted:

(e) Any item, service or thing of de minimis value offered to the general public, whether or not the recipient is a public official or a staff member, employee, spouse or dependent child of a public official, and only if the grant of the item, service or thing of de minimis value is not motivated in any way by the recipient's status as a public official or staff member, employee, spouse or dependent child of a public official;

...

(f) The transfer of any item, provision of any service or granting of any opportunity with a reasonably discernible cost or fair market value when such item, service or opportunity is necessary for a public official or employee to perform his or her duty in his or her official capacity, including but not limited to entrance fees to any sporting event, museum, or other venue when the official or employee is participating in a ceremony, public presentation or official meeting therein;

...

(g) Any payment, gift, compensation, fee, expenditure or anything of value which is bestowed upon or given to any public official or a staff member, employee, spouse or dependent child of a public official when it is compensation for employment or given as an employment benefit and when such employment is in addition to their employment as a public official;

From the facts as presented in your questions, it appears that meals, accommodations or gifts are reportable items, and do not serve as compensation of employment of the trustee. In the

absence of a specific statutory exception, the Commission must interpret these as reportable expenditures. While subsection (f) makes an exception for a public official or employee of the public official, it does not create an exception for the spouse or children of the official. Therefore, it is assumed that the General Assembly intended to create an exception for the public official's and staff in performance of official duties, not the official duties of the spouse, including under these unique circumstances. Finally, you might consider whether the holiday gift is of de minimis value offered to the general public and not motivated by the trustee's status of spouse of an elected official.

**Travel and Accommodations for Advocacy Trips**

The answer to your second question depends on whether you consider the costs and travel to be compensation for employment or given as an employment benefit of the spouse as a hospital employee. Because the facts indicate that the spouse is an employee a member hospital and not the association, you should determine whether such costs are then considered benefits of employment which would apply under these exceptions. In the event a specific exception does not apply, these expenses are reportable expenditures.

Sincerely,



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Executive Director