



MISSOURI ETHICS COMMISSION

P.O. Box 1254

Jefferson City, MO 65102

www.mec.mo.gov

(573) 751-2020 / (800) 392-8660

Julie A. Allen

Executive Director

December 6, 2012

Re: Advisory Opinion # 2012.12.CI.005

Dear :

At the December 4, 2012 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions by a vote of 4 to 2:

Would there be a conflict of interest where a former county commissioner is hired as attorney for the county sheriff within one year of leaving office. The county is a first class county without a charter form of government, and the sheriff is a separate elected official from the county commission.

The county commission sets each officeholder's budget each year, and the monies used to pay for this position come from the salary allocation within the sheriff's budget. However, as an elected official of the county, the hiring and firing of this position as well as other positions within the sheriff's office can only be done by the sheriff and not the commission. The attorney reports directly to the sheriff and provides advice to the sheriff on legal issues. The commission has their own set of attorneys paid from the commission's budget.

The position will provide legal counsel to the sheriff on matters involving human resource questions and civil rights issues that arise with inmates from operation of a jail. The position will also provide advice to the sheriff to help educate his staff as to the proper procedures and techniques of dealing with the public, inmates and other employees, advising of the proper action to take based on situations that arise with the public, inmates or employees, and will help minimize the liability to the county for acts or omissions due to the sheriff's employees.

The job description will be in writing and will outline duties in order to avoid any influence over the county commission, and to prevent any lobbying of the commission directly or indirectly through commission employees. The budget process will not be part of the job description.

This opinion is issued within the context of Missouri's conflict of interest law pursuant to Chapter 105, and assumes the facts presented by you in your letter. In your letter, you made the following additional representations:

- The position reports to the sheriff, and the attorney is an employee of the sheriff's office paid out of the salaries budget line item in the sheriff's budget.
- The county issues a paycheck as it does for all county employees including officeholders. The commission has no authority over the sheriff's employees and cannot hire, fire, or reprimand them.
- This attorney will not enter the commission courthouse for one year, and will not speak to commissioners for one year. The attorney will not "lobby" the commission directly or indirectly or through commission employees.
- The job description will be in writing to outline the duties in order to avoid influencing the commission.

§105.452, RSMo contains numerous provisions which apply to the county commissioner. For example, the county commissioner cannot use or disclose confidential information obtained in that official capacity in any manner with intent to result in financial gain to the commissioner, spouse or dependent child, or any business with which he or she is associated. The commissioner cannot have favorably acted on any matter specifically designed to provide a special monetary benefit to the official, spouse or dependent child. "Special monetary benefit" is defined as being materially affected in a substantially different manner or degree different from how the general public is treated.

The question does not state whether this is an existing position or a newly created position after the commissioner resigns. The "special monetary benefit" provisions of §105.452 (4), RSMo may be implicated, for example, if the county commissioner voted to approve a new position designed specifically for the commissioner. However, there may be no "special monetary benefit" if the county commission voted on the sheriff's budget which included an existing position and which is open qualified attorneys or normal hiring practices.

§105.454, RSMo applies to public officials and employees who serve in an executive or administrative capacity. Specifically, §105.454 (5), RSMo prohibits:

the performance of any service for consideration, during one year after termination of office, by which performance a former elected official attempts to influence a decision of the political subdivision in which he or she was an officer or over which he or she had supervisory power.

The statute prohibits those public officials from attempting to influence the political subdivision they served for one year over which they had supervisory authority. The prohibition includes the payment of any consideration. The prohibition includes an exception which allows the former official to be paid for performance of a service in any adversary proceeding or in the preparation or filing of a public document. *See* MEC Opinion Nos. 2009.01.CI.001, 2008.09.CI.008, 2008.03.CI.001, 2003.01.10, and 1993.06.102.

Previous opinions issued by this Commission addressed positions in which former officials would report directly to the former boards and commissions they served, such as a mayor or alderman taking the position of city administrator, or a college board member taking the position of college president. These previous opinions discussed both the type of position

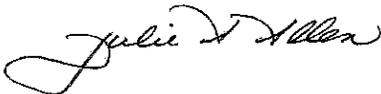
sought as well as whether there are specific attempts to influence the political subdivision. For example, in MEC Opinion No. 2008.03.CI001, the Commission stated that actions by a prospective college president making recommendations for employment decisions and contracts would constitute attempts to influence the board.

The legal position described in this question differs from those in the previous opinions because the person does not directly report to the county commission, is assigned to the sheriff's budget and provides legal advice only to the sheriff. While this raises a question of whether the sheriff and county commission are considered the same political subdivision, the information provided indicates that the county commission does not have supervisory authority over the sheriff's office an elected official of the county. Based upon that assumption, the position on its face is not one which appears designed to influence the county commission. For one year, a former county commissioner employed for another officeholder cannot influence a decision of the county commission.

The political dynamics and governmental structure of political subdivisions vary so there is no one formulaic job description that applies to all situations. However, the person who wants to avoid violating the statute should request the careful creation of a job description as well as develop an actual pattern of practices that avoid that person having any influence on any decision of the political subdivision. Such a job description would include at least a prohibition from formally or informally lobbying, giving opinions as to pending matters, recommending budgets or staffing, or taking other actions that might influence a decision of the county commission. The position is described in the question as one of "legal advice" and not one of litigation, and the question represents that that the items described above would not be included in this position. It is ultimately that person's responsibility to ensure that the position meets the law, and the political subdivision can also make safeguards to ensure the conflict of interest law is complied with.

While this Commission does not opine on attorney-client privilege issues, you should also consider the role of attorney-client privilege in this public position. Examples could include the potential need to rely on possible attorney-client communications with the sheriff in the event the former commissioner must defend allegations of a violation of Chapter 105 conflict of interest laws.

Sincerely,



Julie A. Allen, CPA, PMP
Executive Director