



MISSOURI ETHICS COMMISSION

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James Klahr
Executive Director

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Advisory Opinion # 2016.08.L.001

At the August 25, 2016 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to Section 105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to Section 105.957, RSMo. The Commission receives complaints alleging violation of the lobbyist reporting laws under Chapter 105, RSMo, and campaign finance laws under Chapter 130, RSMo. This opinion is issued within the context of Missouri's statutes governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

"I am a registered lobbyist who controls a continuing committee."

Under Section 130.097.2, RSMo, "Please answer, opine and expound on the issues presented by the following:

- 1. Because it reads in the present tense, "No person **who registers** as a lobbyist..." does that mean because I'm already registered as a lobbyist, this Section does not apply to me?*
- 2. Like every registered lobbyist, I am registered through December 31, 2016. Because it reads in the present tense, does this Section apply to me on January 1, 2017, after I renew my registration in December of 2016?*
- 3. Or, because it reads in the present tense, would this Section only apply to me, if I were to delete my registration, and then re-register (vs renewing), an event signified by a letter attaching to the end of my [Lobbyist Identification Number]?"*

Section 130.097.2, RSMo, applies to any person who, on or after August 28, 2016, files an annual lobbyist registration form with the Commission pursuant to Section 105.473, RSMo, whether the person is registering as a lobbyist for the first time or during future annual

registration periods. The registration period is “not later than January fifth of each year or five days after beginning any activities as a lobbyist.” § 105.473.1, RSMo.

Therefore, if you: 1) terminate your registration and later register as a lobbyist on or after August 28, 2016; or 2) do not terminate your registration and file a subsequent annual registration, then Section 130.097.2, RSMo, will apply and prohibit you from transferring funds from the continuing committee you control to any candidate committee, exploratory committee, debt service committee, or continuing committee controlled by a candidate or public official as defined under section 105.470.¹

Summary of House Bill 2203

Section 130.097, RSMo, was created by House Bill 2203 (2016), passed by the general assembly and signed by the governor with an effective date of August 28, 2016. The statute provides:

1. No person who transfers funds from:
 - (1) His or her candidate committee; or
 - (2) Any committee over which such person exerts control over the expenditures of such committeeto any other committee shall thereafter be compensated, for any purpose, by the committee that received such funds.

2. No person who registers as a lobbyist, as defined under section 105.470, shall transfer funds from any candidate committee, exploratory committee, debt service committee, or continuing committee under his or her control to any such committee controlled by a candidate or public official, as defined under section 105.470.

House Bill 2203 created two new statutes, § 105.465 and § 130.097, RSMo, and modified two others, § 130.021.4(3) and § 130.034.7, RSMo. The modified sections, § 130.021.4(3), and § 130.034.7, RSMo, govern the investment of funds held by certain committees, but are not directly applicable to your question and the changes to these sections do not impact continuing committees. Section 105.465, RSMo, requires a person who registers as a lobbyist to dissolve his or her candidate committee, and restricts the disposition of funds as the committee dissolves. Section 130.097.1, RSMo, which is not limited to lobbyists, restricts some uses of funds that are transferred from one committee to another committee.

Under Section 130.097.2, RSMo, which is directly pertinent to your question, a person who registers as a lobbyist may not transfer funds from a committee controlled by that lobbyist to

¹ The term “public official” is defined as any member or member-elect of the general assembly, judge or judicial officer, or any other person holding an elective office of state government or any agency head, department director or division director of state government or any member of any state board or commission and any designated decision-making public servant designated by persons described in this subdivision. § 105.470(8), RSMo.

certain committees controlled by a candidate or public official. This Commission has discussed “control” for purposes of Chapter 130, RSMo, in other advisory opinions. *See* Opinion 2012.03.CF.002 (president of political luncheon club did not control or direct a continuing committee registered by the club where any expenditure required approval of 3/5 of the membership present, the treasurer served as the financial officer, and the president’s role was limited to presiding over meetings, convening the lunch, recognizing guests, calling for announcements, and occasionally giving plaques); Opinion 1998.04.100 (discussing role of federal office holder in a continuing committee); Opinion 1996.06.135 (discussing expenditures made by continuing committee under direction or control of candidate).

Discussion

“Courts construe statutory language, including the tense used, in a way that appears to be most consistent with its plain meaning.” *Martinez v. State*, 24 S.W.3d 10, 16–17 (Mo.App. E.D. 2000). “Congress’ use of a verb tense is significant in construing statutes.” *United States v. Wilson*, 503 U.S. 329, 333, 112 S. Ct. 1351, 1354, 117 L. Ed. 2d 593 (1992). In addition, “[s]tatutes may be considered with reference to their historical background.” *Scott v. SSM Healthcare St. Louis*, 70 S.W.3d 560, 570–71 (Mo.App. E.D. 2002).

All of the sections modified or added by House Bill 2203 use the present tense. Consistent use of present tense verbs (“registers”), as opposed to the past perfective (“had registered”) or present perfective (“has registered”), is a “striking indicator of its prospective orientation.” *Carr v. United States*, 560 U.S. 438, 449–50, 130 S. Ct. 2229, 2237, 176 L. Ed. 2d 1152 (2010) (internal quotations and citations omitted).²

Consequently, with regards to the first question, the Commission construes Section 130.097.2, RSMo, as being prospective, applying only to those persons filing an annual lobbyist registration after the statute’s effective date. In other words, it does not apply to a person merely because the person has registered as a lobbyist prior to August 28, 2016. To construe Section 130.097.2 to apply to someone who “has registered” as a lobbyist, as opposed to someone who “registers,” might lead to unintended results. For example, Section 130.097.2, RSMo, is not intended to apply to someone who has registered as a lobbyist in the past but since withdrawn the registration or simply not filed a new registration in a subsequent year.

With regards to the second and third questions, the Commission construes “Any person who registers as a lobbyist” under Section 130.097.2, RSMo, to mean anyone who files a lobbyist registration form pursuant to Section 105.473.1, RSMo, whether this registration form is considered by the lobbyist as “renewing” the prior year’s registration or not. Missouri law requires all lobbyists to annually “file standardized registration forms,” pay a \$10 filing fee, and disclose the same information (name, address, persons employed, and lobbying principals). §105.473.1, RSMo. Section 105.473 does not use the words “renew” or “renewal.” The

² The Supreme Court used the term “past-perfect tense” in its opinion, but then immediately referred to examples using the present perfective tense. Chicago Manual of Style § 5.126 (“The present tense is formed by using have or has with the verb’s past participle.”); § 5.127 (“The past perfective tense is formed by using had with the principal verb’s past participle.”).

Commission provides a clerical convenience to allow lobbyists to avoid filing a repeat registration form, permitting them to "carry over" information from the previous year (name, address, persons employed for lobbying purposes, and lobbyist principals), but any use of the word "renewal" on the annual registration form is intended to assist the Commission's staff in processing the registration forms, and does not create a legal distinction between "new" forms and "renewal" forms.

In summary, any person who, on or after August 28, 2016, files an annual lobbyist registration form will be governed by the provisions of Section 130.097.2, RSMo.

Therefore, if you: 1) terminate your registration and later register as a lobbyist on or after August 28, 2016; or 2) do not terminate your registration and file a subsequent annual registration, then Section 130.097.2, RSMo, will apply and prohibit you from transferring funds from the continuing committee you control to any candidate committee, exploratory committee, debt service committee, or continuing committee controlled by a candidate or public official as defined under section 105.470.

Sincerely,



James Klahr
Executive Director