



April 28, 2017

Re: Advisory Opinion No. 2017.04.PF.011

Dear

At the April 28, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §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 §105.957, RSMo. The Commission receives complaints alleging campaign finance and personal financial disclosure reporting under Chapters 105 and 130. 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:

1. *When an elected public official is provided with transportation by a person or entity who is not a lobbyist to engage in travel outside of the state of Missouri, is such a provision of transportation required to be disclosed on a campaign finance disclosure report as an in-kind donation?*
2. *When an elected public official is provided with transportation by a person or entity who is not a lobbyist to engage in travel within the state of Missouri, is such a provision of transportation required to be disclosed on a campaign finance disclosure report as an in-kind donation?*
3. *When an elected public official is provided with transportation by a person or entity who is not a lobbyist to engage in travel outside of the state of Missouri, is such a provision of transportation required to be disclosed on a personal financial disclosure report?*
4. *When an elected public official is provided with transportation by a person or entity who is not a lobbyist to engage in travel within the state of Missouri, is such a provision of transportation required to be disclosed on a personal financial disclosure report?*

The answers to the questions are broken down as follows:

Campaign Finance

When an elected public official is provided with transportation by a person or entity who is not a lobbyist to engage in travel outside of the state of Missouri, is such a provision of transportation required to be disclosed on a campaign finance disclosure report as an in-kind donation?

When an elected public official is provided with transportation by a person or entity who is not a lobbyist to engage in travel within the state of Missouri, is such a provision of transportation required to be disclosed on a campaign finance disclosure report as an in-kind donation?

Both questions raise the issue of whether providing transportation for either in-state or out-of-state travel qualifies as an-kind contribution of Chapter 130, RSMo, and Article VIII, §23 of the Missouri Constitution.¹ The elected public official must qualify as a candidate for public office and it is assumed that the person, as defined in §130.011(22), RSMo has paid the transportation costs directly.²

Under §130.011(12), RSMo a contribution includes:

“a ... gift ... donation of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office... A contribution of anything of value shall be deemed to have a money value equivalent to the fair market value.”

A candidate is defined in §130.011(3), RSMo, as “an individual who seeks nomination or election to public office... A candidate shall be deemed to seek nomination or election when the person first:

- (a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote the person's candidacy for office; or
- (b) Knows or has reason to know that contributions are being received or expenditures are being made or space or facilities are being reserved with the intent to promote the person's candidacy for office...; or
- (c) Announces or files a declaration of candidacy for office;³

If the transportation is provided by the person for the purpose of supporting the public official as a candidate, it qualifies as an in-kind contribution. Article VIII, §23.3(1)(a) establishes

¹ For purposes of this opinion, to the extent definitions are identical, citations will be made to Chapter 130, RSMo.

² An in-kind contribution is in a “form other than money.” §130.011(16), RSMo.

³ In order to continue to receive contributions for an election, a successful office-holder must declare a particular office for the new election cycle. MEC No. 1995.09.146. <http://mec.mo.gov/Scanned/PDF/Opinions/144.pdf>

contribution limits of \$2,600.00 per election for candidates for state office, the general assembly and judicial office. Because it is possible that the elected public official is also a candidate for future office, this answer may depend on the purpose of the travel as well as conduct which occurs during the travel.

While not specifically asked in this request, it is also possible that an elected public official with an active candidate committee may choose to pay for travel with candidate committee funds as ordinary expenses relating to a campaign, or ordinary and necessary expenses related to duties of elective office. §130.034(2), RSMo.

Personal Financial Disclosure

§105.483, RSMo through §105.492, RSMo contain provisions requiring personal financial disclosure reporting by certain public officials. §105.483, RSMo states who must file these reports and §105.485, RSMo states what is required to be reported.

When an elected public official is provided with transportation by a person or entity who is not a lobbyist to engage in travel outside of the state of Missouri, is such a provision of transportation required to be disclosed on a personal financial disclosure report?

105.485.2 (9), RSMo specifically requires the reporting of out-of-state travel expenses under specific circumstances:

The lodging and travel expenses provided by any third person for expenses incurred outside the state of Missouri whether by gift or in relation to the duties of office of such official, except that such statement shall not include travel or lodging expenses:

- (a) Paid in the ordinary course of business for businesses described in subdivisions (1), (2), (5) and (6) of this subsection which are related to the duties of office of such official; or
- (b) For which the official may be reimbursed as provided by law; or
- (c) Paid by persons related by the third degree of consanguinity or affinity to the person filing the statement; or
- (d) Expenses which are reported by the campaign committee or candidate committee of the person filing the statement pursuant to the provisions of chapter 130; or
- (e) Paid for purely personal purposes which are not related to the person's official duties by a third person who is not a lobbyist, a lobbyist principal or member, or officer or director of a member, of any association or entity which employs a lobbyist. The statement shall include the name and address of such person who paid the expenses, the date such expenses were incurred, the amount incurred, the location of the travel and lodging, and the nature of the services rendered or reason for the expenses;

The statute specifically requires the public official to report out-of-state travel expenses, including transportation, lodging, food and other incidentals when paid for by a third-party, not

related by the 3rd degree by blood or marriage, and which are not paid for purely personal purposes (with exception for lobbyist and principals).

The Commission has addressed out-of-state travel reporting in a number of earlier opinions. In MEC No. 1996.01.103, the Commission stated that a public official must report travel, motel or living expenses incurred outside of the state paid for by a corporation, association or membership organization to attend an official meeting and regardless of whether the official speaks at the meeting, <http://mec.mo.gov/Scanned/PDF/Opinions/65.pdf>. In MEC No. 1996.03.116, <http://mec.mo.gov/Scanned/PDF/Opinions/218.pdf>, the Commission stated that expenses provided by a third party to a state official which could otherwise be paid for by the state must be reported on the official's personal financial disclosure report. For similar guidance, see MEC No. 1996.06.127, <http://mec.mo.gov/Scanned/PDF/Opinions/220.pdf>.

When an elected public official is provided with transportation by a person or entity who is not a lobbyist to engage in travel within the state of Missouri, is such a provision of transportation required to be disclosed on a personal financial disclosure report.

Unlike out-of-state travel, §105.485, RSMo does not specifically reference payment for in-state travel by a third-party. The answer therefore depends on whether the providing of transportation in the state of Missouri qualifies as a "gift" in excess of \$200 in value per source during the year. §105.485.2(8), RSMo.⁴

With the exception of the statutory examples below, §105.485, RSMo does not specifically define "gift":

For the purposes of this section, a "gift" shall not be construed to mean political contributions otherwise required to be reported by law or hospitality such as food, beverages or admissions to social, art, or sporting events or the like, or informational material. For the purposes of this section, a "gift" shall include gifts to or by creditors of the individual for the purpose of cancelling, reducing or otherwise forgiving the indebtedness of the individual to that creditor; §105.485.2(8), RSMo.

Courts therefore rely on the term's plain and ordinary meaning, which may be derived from a dictionary. *Campbell v. County Comm'n of Franklin County*, 435 S.W.3d 762 (Mo. banc, Feb. 3, 2015). A "gift" is a "voluntary transfer of property to another without compensation," GIFT, Black's Law Dictionary (10th ed. 2014), or "A thing given willingly to someone without payment." GIFT, Oxford Dictionaries, http://www.oxforddictionaries.com/us/definition/American_english/giftER (last visited Mar. 26, 2015).

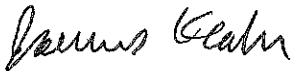
It is simply not possible to respond in a general sense to every circumstance in which travel within the state paid for by a third party, with a value over \$200 annually may qualify as a "gift" for purposes of personal financial disclosure reporting. Unlike out-of-state travel in which the general assembly has determined specific reporting is required in particular circumstances, the legislature has not included specific circumstances that would trigger required reporting of in-

⁴ The section exempts gifts from persons within the 3rd degree by blood or marriage.

state travel. Travel paid for by third parties within the state may take various forms and may be conducted for various reasons.

A public official is cautioned to be aware of the context in which the travel was provided by the third party within the state in determining whether the in-state travel should be reported. To the extent the official considers and determines that such travel either does or does not qualify for reporting, the official is also advised to keep records supporting the personal financial disclosure report filed with the Commission.

Sincerely,



James Klahr
Executive Director