



MISSOURI ETHICS COMMISSION
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James Klahr
Executive Director

September 20, 2017

Re: Advisory Opinion No. 2017.08.PF.015

Dear

At the September 20, 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 concerning personal financial disclosure reporting under Chapter 105. 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 questions presented and responses for each question are as follows:

The following questions relate to Clean Energy Development Boards formed as political subdivisions of the state pursuant to §67.2800 to §67.2835, RSMo. Clean Energy Development Boards provide financing for energy efficiency and renewable energy improvements of real estate. The project costs are financed through special property tax assessments on the property benefiting from the improvement. Clean Energy Development Boards typically have an annual operating budget in excess of one million dollars, provide millions of dollars in the clean energy financing every year, and collect and disburse millions of dollars in assessments and other funding each year.

1. Are all Clean Energy Developments Boards and other political subdivisions, regardless of annual operating budget, required to report annually to the Commission

(i) whether their annual operating budgets are over one million dollars,

(ii) whether they have adopted a conflict of interest resolution, and

(iii) whom from their political subdivision is required to file a Personal Financial Disclosure statement with the Commission?

2. In the absence of a resolution adopted pursuant to 105.485(4), RSMo are the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of a Clean Energy Development Board with an annual operating budget in excess of one million dollars, required to file a "long-form" personal financial disclosure statement annually with the Commission pursuant to 105.483(11), RSMo?

§§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.

§§67.2800 to 67.2835, RSMo establish the “Property Assessment Clean Energy Act”. §67.2810, RSMo authorizes municipalities to form Clean Energy Development Boards by ordinance or order. §67.2810.1, RSMo. A Clean Energy Development Board is a political subdivision of the state. §67.2810.2, RSMo. Board members are appointed by the chief elected officer of each participating municipality, with the consent of the governing body of the municipality. §67.2810.1, RSMo.

In MEC Opinion No. 1998.06.100, the Commission stated that individuals with positions of the Metropolitan Zoological Park Museum District fell within the personal financial disclosure law as those districts were political subdivisions of the state under §§184.350 to 184.384, RSMo 1994.

Because the Clean Energy Developments Boards are political subdivisions, they fall within the following requirement for political subdivisions as it relates to the financial disclosure law:

§105.483, RSMo provides as follows:

Each of the following persons shall be required to file a financial interest statement:

...

(11) Each elected official, candidate for elective office, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of each political subdivision with an annual operating budget in excess of one million dollars, and each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules and regulations with the force of law; unless the political subdivision adopts an ordinance, order or resolution pursuant to subsection 4 of section 105.485;

Therefore, the chief administrative officer, the chief purchasing officer and any full-time general counsel, of each board with an annual operating budget in excess of one million dollars is a required filer of a personal financial disclosure statement (long form), unless the board adopts an ordinance, order or resolution pursuant to §105.485.4, RSMo as outlined below. In addition, to the extent that the boards may have rulemaking authority, board members are required to file the long form unless the board adopts an ordinance, order or resolution pursuant to §105.485.4, RSMo.

§105.485.4, RSMo gives political subdivisions with an annual operating budget in excess of one million dollars, the authority to adopt an ordinance, order or resolution which establishes and makes public its own method of disclosing potential conflicts of interest and substantial interests. At a minimum, the chief administrative officer and chief purchasing officer are required filers, although the ordinance, order or resolution may require additional filers. Those required filers file a Financial Disclosure Statement for Political Subdivisions (short form). In MEC Opinion No. 1993.09.104, page 20 - 23, the Commission gave guidance regarding how the annual operating budget is determined.

3. If a Clean Energy Development Board adopts a resolution pursuant to 105.485(4), RSMo and opts out of “long-form” personal financial disclosure statement filing, must it file that resolution with the Missouri Ethics Commission within 10 days of passage?

§105.485.4, RSMo requires that the board biennially adopt an ordinance, order or resolution at an open meeting by September 15 of the preceding year. A certified copy of the ordinance, order or resolution shall be sent to the commission within ten days of its adoption.

4. Once an opt-out resolution is filed with the Commission, will the Clean Energy Development Board be issued a political subdivision number and be required to report which individuals are subject to "short-form" annual personal financial disclosure statement filing?

If a political subdivision adopts an ordinance, §105.958, RSMo requires the commission be notified of all persons required to file a financial interest statement. The commission is required to send written notification to such filers.

5. If a Clean Energy Development Board wants to continue to opt-out of "long-form" personal financial disclosure statement filing, must it file a new resolution with the Commission bi-annually?

§105.485.4, RSMo requires that the board biennially adopt an ordinance, order or resolution at an open meeting by September 15 of the preceding year.

6. Are there any exemptions from the Missouri Ethics Law applicable to political subdivisions created under 67.2800 to 67.2835, RSMo that are different from laws and standards that would apply to any Missouri political subdivision?

§105.450(9), RSMo defines a political subdivision for purposes of Chapter 105 as "any political subdivision of the state, and any special district or subdistrict." Therefore, the board should familiarize itself with the conflict of interest statutes of Chapter 105.

7. Has the Commission provided guidance to any Clean Energy Development Board or Clean Energy Development District with respect to any exemptions or exceptions to the Missouri Ethics Law?

The Commission has not issued any other advisory opinions related to Clean Energy Development Boards or Districts.

Sincerely,



James Klahr
Executive Director