



MISSOURI ETHICS COMMISSION

PO Box 1370

Jefferson City, MO 65102

www.mec.mo.gov

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

James Klahr

Executive Director

December 28, 2017

David Humphreys
220 West 4th St
Joplin MO 64801

Re: File No. 17-0062-I

Dear Mr. Humphreys:

The Missouri Ethics Commission considered the complaint filed against you at its December 28, 2017 meeting. The complaint alleged you violated Section 105.473.7, RSMo, when you knowingly employed Mr. Paul Mouton to lobby the legislature on your behalf, though you knew that Mr. Mouton was not registered as a lobbyist.

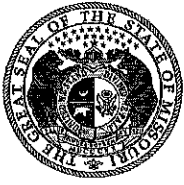
The complaint was filed after the Commission resolved a previous complaint filed against Paul Mouton in which Mr. Mouton was alleged to be engaged in lobbying activities though he was not registered as a lobbyist. In that complaint, 17-0041-I, the Commission entered into a consent order with Mr. Mouton on September 25, 2017. As part of the Joint Proposed Findings of Fact, Mr. Mouton agreed to the following which is contained in paragraph 6:

During the 98th General Assembly – 2nd Regular Session, and through 2017, the 99th General Assembly – 1st Regular Session, Respondent Mouton was retained and compensated by Mr. David Humphreys as a political consultant – While Respondent Mouton was not designated or engaged as a lobbyist by Mr. Humphreys or any other entity, during these sessions of the General Assembly, Mr. Mouton, in the course of his compensated duties, met at times with members of the General Assembly and their staff relating to the passage of and content of certain legislative matters pending in the General Assembly. Such meetings and communications were periodic and not constant but were more than just an occasional meeting.

Under the consent order, Mr. Mouton agreed that the Commission had probable cause to believe that Mr. Mouton had violated Section 105.473, RSMo, by not registering as a lobbyist nor filing regular lobbyist disclosure reports, including the List of Principals and Legislative Action, after he attempted to influence official action on matters pending before the Missouri General Assembly. Pursuant to the agreement with the Commission, Mr. Mouton is now registered as a lobbyist with the Commission, has filed a List of Principals and Legislative Action for 2016 and 2017, and has begun filing monthly lobbyist expenditure reports.

The statute identified in this complaint is Section 105.473.7, RSMo:

No person shall knowingly employ any person who is required to register as a registered lobbyist but is not registered pursuant to this section. Any person who knowingly violates this subsection shall be subject to a civil penalty in an amount of not more than ten thousand dollars for each violation. Such civil penalties shall be collected by action filed by the commission.



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Staff reviewed the complaint and conducted an investigation. Based on that investigation, staff determined that Mr. Mouton began providing services for you in 2011. At that time, you communicated that Mr. Mouton's services would not include lobbying on your behalf. During the 2016 and 2017 legislative sessions of the Missouri General Assembly, Mr. Mouton had meetings with certain legislators regarding pending legislation. According to the List of Principals and Legislative Action which Mr. Mouton has now filed with the Commission, Mr. Mouton listed you as the lobbyist principal and, under Legislative Action, indicated that he lobbied on Right to Work, other labor related issues and on general pro-business related issues including tort reform.

The Commission has not previously considered a complaint alleging a violation by a lobbyist principal of Section 105.473.7, RSMo. Nor has the Commission determined what conduct would constitute a "knowing" violation of the statute.

Commission staff reviewed the recently decided case of *Laut v. City of Arnold*, 491 S.W.3d 191 (Mo. 2016) which reviewed the term "knowingly" as it relates to alleged violations of the Missouri Sunshine Law. The majority opinion concluded that, for the plaintiff to obtain attorney's fees and costs as a result of a knowing violation of the law, the plaintiff must prove that the public body or official subject to the law knew that the conduct in question violated the Sunshine Law, not merely that it knew it was not providing a record subject to the law.

As in *Laut*, the Commission is presented with the question of what a principal is required to "know" in order to be liable under Section 105.473.7, RSMo. There is no question that you knew that you had a contractual relationship with Mr. Mouton. However, staff was not able to determine that you knew that Mr. Mouton was engaged in activities that required him to register as a lobbyist.

The definition of "legislative lobbyist" is found at Section 105.470(5):

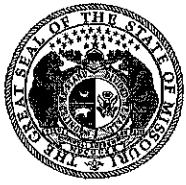
(5) "**Legislative lobbyist**", any natural person who acts for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by the general assembly and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or

(b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or

(d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or



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one or more employees of the legislative branch of state government in connection with such activity.

A "legislative lobbyist" shall include an attorney at law engaged in activities on behalf of any person unless excluded by any of the following exceptions. A "legislative lobbyist" shall not include any member of the general assembly, an elected state official, or any other person solely due to such person's participation in any of the following activities:

- a. Responding to any request for information made by any public official or employee of the legislative branch of government;
- b. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;
- c. Acting within the scope of employment of the legislative branch of government when acting with respect to the general assembly or any member thereof;
- d. Testifying as a witness before the general assembly or any committee thereof;

While Mr. Mouton did spend time at the Capitol to keep you up-to-date on the legislative developments regarding particular legislation, there is insufficient evidence that you knew that you were employing a person who was required to register as a registered lobbyist under section 105.473.7, RSMo. While Mr. Mouton acknowledged in the consent order that such meetings and communications with legislators "were periodic and not constant but were more than just an occasional meeting" there is not evidence that you knew that Mr. Mouton's conduct had triggered a requirement that he register as a lobbyist with the Commission and file regular reports.

From its review of the facts, the Commission finds no reasonable grounds exist to support a violation of Chapter 105, RSMo, and is dismissing the complaint.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Klahr".

James Klahr
Executive Director