



MISSOURI ETHICS COMMISSION

PO Box 1370
Jefferson City, MO 65102
www.mec.mo.gov
(573) 751-2020 / (800) 392-8660

James Klahr
Executive Director

June 14, 2018

Josh Hawley
Hawley for Missouri
PO Box 1073
Columbia MO 65205

Re: File No. 18-0017-I

Dear Mr. Hawley:

The Missouri Ethics Commission considered the complaint filed against you and Josh Hawley for Missouri at its June 13, 2018 meeting. The complaint alleged you and Hawley for Missouri received free legal representation and the value of that representation should have either been reported as an in-kind campaign contribution to Hawley for Missouri or as a gift on your Personal Finance Disclosure (PFD).

Staff investigation of the complaint determined the following:

In May 2016, a lawsuit filed against you and others alleged violations of the Missouri Sunshine Law while you were employed as a law professor at the University of Missouri School of Law. The complaint alleged that the University of Missouri and individually named defendants violated the state's open records laws and attempted to conceal certain political activities. Your candidate committee, Hawley for Missouri, was not named in the lawsuit.¹

In August 2016, you were represented by legal counsel to defend you in the lawsuit. That law firm, Cooper & Kirk PLLC, represented you pro bono.

Allegation that Pro Bono Legal Services Are an In-Kind Contribution to Hawley for Missouri and Therefore Required to be Reported on a Campaign Finance Disclosure

The complaint asserts that, because the lawsuit alleged you had, while employed at the University of Missouri, conducted activities which related to your candidacy for Attorney General, the pro bono legal services provided to you in defending the Sunshine lawsuit amounted to an in-kind contribution to Hawley for Missouri.

As your attorney noted in his response to the complaint, the Commission has previously issued opinions regarding when a committee would be authorized to use committee funds. In those opinions, the Commission reviewed Section 130.034.2, RSMo, which provides in relevant part:

¹ In September 2016, the plaintiff dismissed the lawsuit (16BA-CV01843) without prejudice.



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2. Contributions may be used for any purpose allowed by law including, but not limited to:

- (1) Any ordinary expenses incurred relating to a campaign;
- (2) Any ordinary and necessary expenses incurred in connection with the duties of a holder of elective office;
- (3) Any expenses associated with the duties of candidacy or of elective office pertaining to the entertaining of or providing social courtesies to constituents, professional associations, or other holders of elective office; . . .²

Complainant argues the lawsuit was related to your declared candidacy for the Office of Attorney General. However, your decision to retain counsel in your defense of the Sunshine lawsuit cannot be conclusively understood to be campaign-related because you were sued in your capacity as an employee of the University of Missouri and the committee, Hawley for Missouri, was not a party to the lawsuit. Whether or not campaign funds could have been used to assist in your defense, there is nothing about the circumstances of the pro bono services provided that makes those services an in-kind contribution from the law firm to Hawley for Missouri. Therefore, Hawley for Missouri did not receive an in-kind contribution when you received pro bono representation in defense of the Sunshine lawsuit.

Allegation that Pro Bono Legal Services Are a Gift and Therefore Required to be Reported on a Personal Financial Disclosure

The complaint asserts that, if Hawley for Missouri is not required to report the pro bono legal services as an in-kind contribution from the attorneys providing those services, then you would instead be required to report those services as a gift under Section 105.485.2(8), RSMo. That provision requires that a person required to file a financial interest statement or PFD is required to report certain financial information, including:

- (8) The name and address of each source from which such person received a gift or gifts, or honorarium or honoraria in excess of two hundred dollars in value per source during the year covered by the statement other than gifts from persons within the third degree of consanguinity or affinity of the person filing the financial interest statement. 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;

Prior to its consideration of this complaint, the Commission considered a similar complaint in a matter involving State Senator Paul Wieland. That complaint alleged that Senator Wieland's pro

² There are 5 additional situations where a committee is authorized to use contributions, none of which are relevant to this complaint.



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bono representation in a case in which he was the named plaintiff required him to file a PFD with the Missouri Ethics Commission to reflect the receipt of the pro bono legal services. Senator Wieland appealed that decision and the Cole County Circuit Court held that his receipt of legal services did not require him to file a PFD.³

Given the prior decision of the court in a similar case and the lack of any specific reference to pro bono legal services as falling within the definition of "gift" as set out in Section 105.485.2(8), RSMo, there is not sufficient evidence to lead the Commission to conclude that you were obligated to file a PFD for receiving legal services of a similar nature to those received by Senator Wieland.

From the facts presented, the Commission finds no reasonable grounds exist to support a violation of chapters 105 or 130, RSMo, and is dismissing the complaint.

Sincerely,

A handwritten signature in cursive script that reads "James Klahr".

James Klahr
Executive Director

³ In that decision, 15AC-CC00407, the court held that, in the case of litigation where the attorney agrees to represent an individual and seek to recover attorney fees under a fee shifting statute, that is a business relationship rather than a "donator-donee" relationship. Therefore, the court concluded, the fronting of the party's legal costs does not constitute a gift.