



# Missouri Ethics Commission

Elizabeth L. Ziegler  
EXECUTIVE DIRECTOR

## **Final Action: MEC No. 21-0029-I, Missouri Clean Energy District, Missouri Clean Energy Funding LLC, David Pickerill, and John Harris**

**Date: August 23, 2021**

The Missouri Ethics Commission took final consideration of the complaint filed against the Missouri Clean Energy District (a clean energy development board), Missouri Clean Energy Funding LLC (a Missouri company), David Pickerill, and John Harris at its August 19, 2021 meeting.

Clean energy development boards are authorized by Chapter 67 of the Revised Statutes of Missouri, and they are political subdivisions pursuant to the provisions of Section 67.2810, RSMo. Because the Missouri Clean Energy District (MCED) is a political subdivision, its board members are subject to the conflict of interest prohibitions in Chapter 105, RSMo. See MEC Advisory Opinion 2021.02.CI.003 for more information. However, those prohibitions do not apply directly to political subdivisions or to privately held companies. Accordingly, the MEC's investigation did not encompass possible violations by MCED or Missouri Clean Energy Funding LLC (MoCEF).

Section 67.2810.2(6), RSMo, provides a clean energy development board may "employ or contract for such managerial, legal, technical, clerical, accounting, or other assistance it deems advisable."

In 2015, the MCED entered into a Professional Services Agreement with MoCEF, engaging it to administer MCED's program. This Agreement authorized MoCEF to provide MCED with one or more services including: development of program documents and website, project administration and administrative services. Duties and obligations under administrative services included providing the positions of Executive Director and Director of Finance. The Agreement was amended in 2020 to allow MoCEF to monitor and supervise an additional program administrator. Additionally, the Amended Agreement no longer includes the position of Director of Finance under administrative services.

The complaint that was filed with the Commission alleged that Mr. Pickerill and Mr. Harris are officers of the District who also have controlling interests in MoCEF. Accordingly, the complaint alleges, Mr. Pickerill and Mr. Harris improperly acted to influence the District to enter into this contract, and the Professional Services Agreement was executed without the benefit of public notice and competitive bidding. None of the current members of the MCED's board have a controlling interest in MoCEF.

Section 105.454.1(3), RSMo, prohibits elected or appointed officials and employees of a political subdivision from:

Participat[ing] in any matter, directly or indirectly, in which he or she attempts to influence any decision of any agency of the state, or political subdivision thereof in which he or she is an officer of employee or over which he or she has supervisory power, when he or she knows the result of such decision may be the acceptance of the performance of a service of the sale, rental, or lease of any property to that agency for consideration in excess of five hundred dollars' value per transaction or five thousand dollars' value per annum to him or her, to his or her spouse, to a dependent child in his or her custody or to any business with which he or she is associated unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received.

The Commission discussed the definition of "public office" or "public officer" in Advisory Opinion 2020.11.CI.008, noting that those definitions are:

"[D]etermined from the particular facts" in a given case upon consideration of a wide variety of factors. *State ex inf. McKittrick v. Bode*, 113 S.W.2d 805,806 (Mo. 1938). Even so, Missouri's courts have generally accepted that "A public officer is an individual who has been elected or appointed in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the office assigned to him by law." *State ex rel. Zevely, v. Hackmann*, 254 S.W. 53, 55-56 (Mo. banc 1923).

"Whether an individual is an employee or independent contractor is a question of fact to be determined by the fact-finder. Where a worker has received remuneration from an employer, there is a presumption of an employer-employee relationship." *E.P.M. Inc. v. Buckman*, 300 S.W.3d 510, 513 (Mo. App. 2009) (internal citations omitted). When the presumption is challenged, the common law right to control test asks whether "the alleged employer retains the right to control the manner and means by which the results are to be accomplished" and if so, "the individual who performs the service is an employee. If only the results are controlled, the individual performing the service is an independent contractor." *Id.*

The MEC investigation confirmed the existence of an agreement between the MCED and MoCEF. Mr. Pickerill and Mr. Harris are employees of MoCEF and provide services to the MCED pursuant to the agreement. In conjunction with the performance of those services, Mr. Pickerill and Mr. Harris have titles (Executive Director and Director of Finance, respectively) given to them by the MCED. The District's bylaws authorize these titles, but expressly state that these individuals are not officers of the MCED, nor are they agents or employees. Similarly, the Professional Services Agreement states that MoCEF retains the right to exercise full control and supervision of the persons providing services to the MCED. Through interviews and a thorough review of the Board's minutes and documentation, the investigation confirmed that the services provided by Mr. Pickerill and Mr. Harris are delivered in a manner that is consistent with the MCED's bylaws and the terms of the agreement with MoCEF.

The MEC investigation concluded that the conflict of interest statutes do not apply to Mr. Pickerill and Mr. Harris because they are not elected or appointed officials of the MCED and they are not employees of the MCED. The Professional Services Agreement expressly defines

the roles of the Executive Director and the Director of Finance, as does the MCED bylaws. While Mr. Pickerill and Mr. Harris have District titles, the investigation concluded that they are independent contractors, based on interviews and a careful review of the Board's records.

From the facts presented, the Commission found no reasonable grounds exist to support a violation of Chapter 105, RSMo, and dismissed the complaint.

Elizabeth L. Ziegler  
Executive Director