



# Missouri Ethics Commission

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EXECUTIVE DIRECTOR

## **Final Action: MEC No. 23-0004-I, City of Ballwin**

**Date: 3/30/2023**

The Missouri Ethics Commission took final consideration of the complaint filed against the City of Ballwin at its March 30, 2023, meeting.

The complaint alleged two violations within the jurisdiction of the Commission. First, that the City of Ballwin improperly spent public funds in opposition of Brennan Redinger's (Redinger) candidacy for Alderman, Ward 1, when it spent public funds on litigation in his name, seeking his removal from the ballot, allegedly in violation of § 115.646, RSMo. Second, it alleged the city improperly failed to report the cost of the litigation as a non-committee expenditure under § 130.047, RSMo. Much of the issues surrounding the litigation on behalf of the candidate is outside the authority of the Commission and the investigation was limited to these two issues.

On December 28, 2021, Redinger filed his declaration of candidacy for City of Ballwin Ward 1 Alderman in the April 2022 election. While Redinger's declaration of candidacy reported his address as within Ballwin, Chapter 79, RSMo, requires candidates for aldermen to reside in the city for one year prior to the date of their election, which Redinger did not meet. Upon learning of this issue, he attempted to withdraw his candidacy with the clerk after the statutory deadline for withdrawal.

Robert Jones of the firm of Curtis, Heinz, Garret and O'Keefe, PC serves as city attorney for the City of Ballwin. On February 2, 2022, at the direction of city officials, the firm filed a petition in Redinger's name, seeking to withdraw him as a candidate. The petition was filed under § 115.127(6), RSMo which authorizes candidates to seek a court order to have their name removed from the ballot after the filing deadline. The court issued an order removing Redinger from the ballot through a consent judgment.

On February 7, 2022, and March 3, 2022, Curtis, Heinz, Garret and O'Keefe, PC invoiced the City of Ballwin for time/services rendered relating to the preparation and filing of the lawsuit at the city's direction. The City of Ballwin paid those invoices for a total of \$807.

### **Failure to Report a Non-Committee Expenditure**

Addressing the second allegation first, the Commission finds the allegations under § 130.047, RSMo, should be dismissed. Section 130.047, RSMo, requires non-committee expenditures to be reported when, among other requirements, they are made "in support of, or opposition to, one or more candidates..." In this instance, the expenditures were for legal proceedings regarding the qualifications of a candidate to appear on the ballot under Chapter 115, RSMo, Missouri's election laws, and did not qualify as express advocacy or its functional equivalent, as required under the campaign finance laws.

### **Improper Expenditure of Public Funds**

Regarding improper use of public monies, the Commission finds the allegations of a violation of § 115.646, RSMo similarly warrant dismissal. Section 115.646, RSMo, is limited to prohibiting expenditures “...to advocate, support, or oppose ... nomination or election of any candidate for public office.” Again, using public funds to pay for litigation regarding qualifications of a candidate to appear on the ballot does not rise to the level of advocacy, support, or opposition required by the statute under the facts of this matter.

While both statutes require a level of advocacy to support or oppose candidates, which was not present here, there is a strong indication public funds were spent for a private use, as prohibited by Article VI, Section 25 of the Constitution of Missouri. Specifically, the City of Ballwin paid for litigation in the name of a private individual, under § 115.127(6), RSMo, a statute giving *candidates* a right to seek a court order to remove their name from the ballot after the filing deadline. During the investigation of this complaint, the law firm returned the \$807 paid by the city for the litigation of the matter. While an after the fact return of public monies does not fully cure the issue, it is probative to a resolution of the matter, assuming the Commission could proceed under Article VI.

While much of the harm of inappropriate use of public monies has been abated through return of the money, the Commission cautions the City of Ballwin to be mindful of the prohibitions of Article VI, Section 25 of the Constitution of Missouri. Importantly, this dismissal takes no position on political subdivisions instituting litigation in their own name or under other provisions of law in ballot qualification cases or otherwise. The matter here is primarily concerned with doing so in the name of an individual in their private capacity as a candidate, under a statutory scheme designed for use by candidates.

As the Commission found no reasonable grounds for the allegations within its authority, specifically §§ 130.047 & 115.646, RSMo, the Commission voted to dismiss the complaint.