

**MISSOURI ETHICS COMMISSION**

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NOTICE RELATED TO MEC OPINION NO. 2018.01.L.002

On January 16, 2018, the Missouri Ethics Commission issued Advisory Opinion No. 2018.01.L.002, which provided guidance related to compliance with Executive Order 17-02. Executive Order 17-02, prohibiting executive branch employees from taking lobbyist gifts, was issued by Governor Eric Greitens on January 9, 2017. On November 20, 2018, Governor Mike Parson issued Executive Order 18-10, which revised and improved certain provisions of Executive order 17-02. Notably, Executive Order 18-10 specifies that the term "gift" has the same meaning as the term "expenditure" as it is defined in § 105.470(3), RSMo. The term "expenditure" excludes informational material. Accordingly, to the extent Advisory Opinion No. 2018.01.L.002 advises that some informational publications fall within the definition of "gifts," that advice is limited to the time Executive Order 17-02 was in effect: January 9, 2017 to November 20, 2018.



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James Klahr  
Executive Director

January 16, 2018

## NOTICE

Anyone examining this advisory opinion should be careful to note that an opinion of the Missouri Ethics Commission deals only with the specific request to which the opinion responded and only as to the law as it existed at the date of the response and cannot be relied upon for any other purpose or in any other manner.

Re: Advisory Opinion No. 2018.01.L.002

Dear

At the January 16, 2018 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 has the authority to receive complaints concerning lobbyist reporting under Chapter 105 as well as codes of conduct set forth by Executive Order. 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:

*A 501c3 nonprofit public interest law firm serves as a lobbyist principal in Missouri, with active lobbyists registered on its behalf. Employees have written a book (Publication 1), described as "discussing the problem of politically powerful groups using government power to limit competition and thereby reap monopoly profits and other benefits." This book is commercially available with a list price of \$27.00, although the principal can purchase the book for less than \$17.00.*

*A second publication (Publication 2) is described as "a report that examines the burdens of occupational licensing laws in all 50 states and the District of Columbia." The publication is available as a free download from the principal's website, and may be available for download on other mediums for approximately \$2.00. The cost per unit for printing is approximately \$6-\$10.*

*Although the per-unit purchase or printing costs for these publications is less than \$100 each, both publications are the result of hundreds or thousands of hours of work by the principal's employees. The total cost of staff time spent producing these publications has not been calculated.*

1. Are Publication 1 and 2 "gifts" for purposes of Missouri lobbying laws or Executive Order 17-02?
2. If Publication 1 and 2 are gifts, are they subject to reporting under §105.473, RSMo?
3. If Publication 1 and 2 are reportable gifts, does the cost of staff time spent preparing either count towards their value as gifts for purposes of reporting.

### State Statutes under Chapter 105

Chapter 105 of the Missouri Revised Code provides the lobbyist registration and reporting laws for the State of Missouri. §105.470 (3), RSMo provides relevant definitions including the definition of an "expenditure" as follows:

[a]ny payment made or charge, expense, cost, debt or bill incurred; any gift, honorarium or item of value bestowed including any food or beverage; any price, charge or fee which is waived, forgiven, reduced or indefinitely delayed; any loan or debt which is cancelled, reduced or otherwise forgiven; the transfer of any item with a reasonably discernible cost or fair market value from one person to another or provision of any service or granting of any opportunity for which a charge is customarily made, without charge or for a reduced charge; except that the term "expenditure" shall not include the following:

....

(b) Informational material such as books, reports, pamphlets, calendars or periodicals informing a public official regarding such person's official duties, or souvenirs or mementos valued at less than ten dollars;

The state statutes require reporting of an item meeting the definition of an expenditure, with specific exemptions from the definition of an expenditure. While the definition of expenditure references gifts, the code does not contain a specific definition of gift. However, the definition specifically exempts informational material such as books, reports, pamphlets, calendars or periodicals informing a public official regarding that official's duties. Assuming that the books at issue qualify as informing the public official about that official's duties, they are not a lobbyist expenditure under state statute and would not be reported.

If they do not qualify under this exception, they would be reported at their fair market value. The opinion is seeking input on materials that are being sold on the open market. Applying the ordinary meaning, the fair market value of each item does not include staff time in preparation of the material, but the value on the open market. For example, Publication 1 has a fair market value of \$27.00, and therefore would be a reportable expenditure under §105.473, RSMo. The fair market value for publication 2 depends on the method of publication.

### Executive Order 17-02

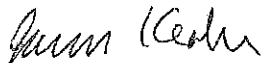
Executive Order 17-02, effective January 9, 2017 governs state employees of the executive branch, through the Governor's authority, including §105.969, RSMo which directs the Governor to adopt by executive order a code of conduct for relevant employees. The Executive Order prohibits executive branch employees from knowingly soliciting or receiving gifts from a lobbyist.

Executive Order 17-02 provides a definition of "gift" as follows:

"Gift" means anything of value, including, but not limited to, food, lodging, transportation, personal services, gratuities, subscriptions, memberships, trips, loans, extensions of credit, forgiveness of debts, or advances or deposits of money. "Gift" does not include (i) unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items, provided that any such item shall not be in a form which can be readily converted to cash; (ii) sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers, or potential customers or suppliers in the ordinary course of business; (iii) gifts, devises, or inheritances from family members; (iv) gifts from other state employees; (v) gifts from personal friends where it is clear that the gift is motivated by personal friendship and not by the employee's position; or (vi) meals, lodging, transportation or other benefits resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's position.

Separate and apart from the statutes, the executive order prohibits the knowing solicitation or receipt of lobbyist gifts by employees of the executive branch subject to the executive order. It appears that these publications fall within the definition of gift because these publications constitute items of value.

Sincerely,



James Klahr  
Executive Director