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Elizabeth L. Ziegler
Executive Director

May 31, 2019

Re: Advisory Opinion No. 2019.05.L.003

Dear

At the May 31, 2019 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to section 105.955.16, RSMo, the Missouri Ethics Commission (MEC or Commission) may issue a written opinion regarding any issue on which the Commission may receive a complaint as identified in section 105.957, RSMo. The Commission receives complaints alleging violations of “the requirements imposed on lobbyists by sections 105.470 to 105.478” and “the provisions of the constitution or state statute or order, ordinance or resolution of any political subdivision relating to the official conduct of officials or employees of the state and political subdivisions.” Section 105.957.1, RSMo. These opinions are issued within the context of Missouri’s laws governing such issues and assume only the narrow and specific facts presented by you in your letter.

The questions presented and the Commission’s opinions appear below.

Background – Amendment 1

On November 6, 2018, Missouri voters approved an amendment to Article III, Section 2 of Missouri’s Constitution.¹ This amendment imposes a two-year limitation before members and employees of the General Assembly can register as a lobbyist, adjusts campaign contribution limits on candidates for the Missouri Senate and the House of Representatives, establishes rules for Missouri committees receiving contributions from federal political action committees, and restricts the value of lobbyist gifts accepted by members and employees of the General Assembly. The amendment went into effect on December 6, 2018.

The gift-limitation provision reads as follows:

No person serving as a member of or employed by the General Assembly shall accept directly or indirectly a gift of any tangible or intangible item, service, or thing of value from any paid lobbyist or lobbyist principal in excess of five dollars per occurrence. This Article shall not prevent Candidates for the General Assembly, including candidates for reelection, or candidates

¹ The proposition referred to as “Amendment 1” on the November 2018 ballot amended Sections 2, 5, 7, and 19 of Article III and adopted three new Sections in Article III: 3, 20(c), and 20(d). This opinion addresses only the changes to Article III, Section 2.

for offices within the senate or house from accepting campaign contributions consistent with this Article and applicable campaign finance law. Nothing in this section shall prevent individuals from receiving gifts, family support or anything of value from those related to them within the fourth degree by blood or marriage. The dollar limitations of this section shall be increased or decreased each year by the percentage of increase or decrease from the end of the previous calendar year of the Consumer Price Index, or successor index as published by the U.S. Department of Labor, or its successor agency and rounded to the nearest dollar amount.

Article III, Section 2(a).

Relative to this opinion request, the State of Missouri has statutes that require lobbyists to register with the MEC and file regular expenditure reports. *See generally* Sections 105.470-105.478, RSMo. Notably, the constitutional amendment made no changes to the way in which lobbyist expenditures are reported. Further, the Commission is expressly authorized to receive complaints and issue advisory opinions with respect to these statutes, and the Commission has in fact provided such guidance.

Supporting Analysis

The general rule, as taken from the plain language in Article III, Section 2, prohibits members and employees of the General Assembly from accepting – directly or indirectly – anything with a value greater than \$5.00 from a paid lobbyist or lobbyist principal. This advisory opinion request includes a number of specific scenarios which may or may not be interpreted to fall into the general rule depending on context and with consideration of the relevant statutory definitions in Chapter 105, RSMo.

The prohibition inherent in the Constitution’s general rule is markedly different from the established statutory scheme in Chapter 105, RSMo, which focuses on lobbyist reporting for disclosure purposes but without express prohibitions. However, these statutes define expenditures in such a way that some scenarios do not fall within the definition of expenditure and therefore are not required to be reported or disclosed to the public. “Legislative acts and constitutional provisions must be read together and so harmonized as to give effect to both when this can consistently be done.” *State v. Shelby*, 64 S.W.2d 269, 271 (Mo. 1933). While, “[i]t is commonly understood that constitutional amendments will supersede statutes that are in contravention with the amended constitutional provision,” *Hill v. Ashcroft*, 526 S.W.3d 299, 314 (Mo. App. 2017), the provisions of Chapter 105, RSMo, that provide definitions and relate to lobbyist expenditures and reporting are not in conflict with Article III, Section 2.²

However, Article III, Section 2 is silent in many significant aspects. While it prohibits members and employees of the General Assembly from accepting “directly or indirectly a gift of any tangible or intangible item, service, or thing of value from any paid lobbyist or lobbyist principal,” it fails to define any of those terms. By comparison, Chapter 105, RSMo, includes definitions of key terms; notably, the term “expenditure,” and these definitions are not in conflict with the Constitution. Moreover, unless the restriction in Article III, Section 2 is applied in a manner that corresponds with the transparency and disclosure objectives in Chapter 105, RSMo, both provisions could be frustrated by the result. We should want the transparency inherent in our established lobbyist reporting system to be consistent with the

² The ballot initiative known as Amendment 1 was preceded by the following disclaimer: “NOTICE: You are advised that the proposed constitutional amendment may change, repeal, or modify by implication or may be construed by some persons to change, repeal or modify by implication, the following Articles and Sections of the Constitution of Missouri: Article I, Section 8 and the following Sections of the Missouri Revised Statutes: Sections 105.450 through 105.496 and Sections 130.011 through 130.160.” One example is the two-year waiting period in Article III, Section 2, which supersedes the six-month waiting period found section 105.455, RSMo.

Constitution's new gift-limitation prohibition.

So while the Chapter 105 definitions do not directly apply, and do not automatically govern the interpretation of the prohibition in Article III, Section 2, they are nevertheless instructive. Accordingly, the Commission's opinions regarding the application of Article III, Section 2 are informed by the relevant definitions in Chapter 105, RSMo, as those provisions apply to lobbying activities in the State of Missouri. However, comparisons to the statutory definitions of and exceptions to lobbyist expenditures are expressly limited to the narrow and specific facts presented by these questions.

While some of these responses opine on whether the gift-limitation provision applies to certain scenarios, nothing prevents members and employees of the General Assembly from declining to accept items or paying for the items themselves.

Questions

Legislators are being faced with numerous situations as a result of the passage of Amendment 1. On behalf of myself and other legislators, I am asking for an advisory opinion on the following fact scenarios so that we can remain compliant with these new Constitutional requirements.

- 1. I have been invited to attend an evening function in Jefferson City sponsored by a lobbyist principal where appetizers and beverages are provided. Can I attend and not eat or drink?*

Article III, Section 2 governs the receipt of gifts, services, or items of value from paid lobbyists or lobbyist principals and prohibits members and employees of the General Assembly from accepting any with a value of more than \$5.00. Notably, it does not prevent interactions between legislators and their constituents, which may include organizations and groups that are lobbyist principals. Furthermore, Article III, Section 2 does not prohibit attendance at functions sponsored by lobbyist principals.

So, your attendance is not prohibited by Article III, Section 2; however, any food or drink consumed by you, and provided by the lobbyist or lobbyist principal without cost to you, cannot exceed a fair market value of \$5.00.

- 2. I have been invited to attend a function by a lobbyist or lobbyist principal and I will be paying for the cost of my meal. Must I pay for the event prior to attendance or can the lobbyist or lobbyist principal invoice me after the event?*

Article III, Section 2 forbids acceptance of "a gift of any tangible or intangible item, service, or thing of value from any paid lobbyist or lobbyist principal in excess of five dollars per occurrence." Even if you later reimburse the lobbyist or lobbyist principal, the expenditure must be reported by the lobbyist.

Lobbyists are required to file monthly expenditure reports that include:

An itemized listing of the name of the recipient and the nature and amount of each expenditure by the lobbyist or his or her lobbyist principal, including a service or anything of value, for all expenditures made during any reporting period, **paid or provided to** or for a public official or elected local government official, such official's staff, employees, spouse or dependent children.

Section 105.473.3(2)(c), RSMo (emphasis added). If the lobbyist or lobbyist principal pays for or provides the meal, and assuming the value is greater than \$5.00, it will appear you have accepted the meal in violation of the Constitution's prohibition. Therefore, the Commission advises you to pay for the event in advance rather than reimbursing the lobbyist or lobbyist principal after the fact.

3. *I have been invited to attend a reception. I have asked who is sponsoring and/or paying for the reception and have performed a search on the MEC website to determine whether the persons and entities indicated are listed as lobbyists or lobbyist principals. If they are not listed on the MEC database, may I attend the reception? Must I perform the search on multiple dates? Must I perform the search on the day of the event?*

The Commission advises you to use common sense and reasonableness. As stated above, Article III, Section 2 does not prohibit attendance at events, but restricts the value of gifts, services, or items of value received from a paid lobbyist or lobbyist principal. All lobbyists are required to register with the MEC within five days after beginning any activities as a lobbyist, and they are required to disclose the names and addresses of "each lobbyist principal by whom such lobbyist is employed or in whose interest such lobbyist appears or works." Section 105.473.1, RSMo. If doubts remain after consulting the MEC website, you may choose to check with the host or event sponsor.

4. *I have been invited to serve as the main speaker in my capacity as an elected official at a dinner function. The function is sponsored by a lobbyist principal. May I accept and eat the meal?*
5. *I have been invited to an event in my district where I have been asked to provide a legislative report. The event, which typically meets at meal time, is sponsored by a lobbyist principal. May I accept and eat the meal?*
6. *I have been invited to an event where I am to be honored for my work as a state legislator (specifically Legislator of the Year). A meal will be served. The function is sponsored by a lobbyist principal. May I accept and eat the meal? May I accept a plaque as part of the award? How is the value of the award determined? Is it the cost to produce the item awarded or the value of the item as given? Does a plaque with an engraved name have a value?*

Meals

All three of these questions provide scenarios in which a member may be invited to an event for a specific official purpose, and the event includes a meal. Many groups meet at mealtimes for the convenience of their members. If your presence at the event is a necessary part of your official duties, and you are performing a service in your official capacity, then the meal that complements the event is incidental to the event and not subject to the limitations in Article III, Section 2. This opinion is based upon the specific and narrow examples provided: serving as the main speaker at an event; providing a legislative report by presentation to a constituent group in conjunction with a meeting; or receiving a specific award or recognition that relates directly to your official capacity as a member of the General Assembly.

This analysis is consistent with the reporting requirements in Chapter 105, RSMo, which recognize that there will be some interactions between legislators and constituents that are not reportable expenditures by the nature of the interaction. Article III, Section 2 was not intended to discourage this kind of interaction.

A lobbyist "expenditure" is:

[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 discernable 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. . . .

Section 105.470(3), RSMo. However, the statutory definition of “expenditure” excludes:

The transfer of any item, provision of any service or granting of any opportunity with a reasonably discernible cost or fair market value when such item, service or opportunity is necessary for a public official or employee to perform his or her duty in his or her official capacity, including but not limited to entrance fees to any sporting event, museum, or other venue when the official or employee is participating in a ceremony, public presentation or official meeting therein.

Section 105.470(3)(f), RSMo.

Tangible Awards

A personally engraved plaque would likely be prohibited under Article III, Section 2. Unlike accepting a meal that is provided in conjunction with an official event or meeting, accepting a personally engraved plaque is not a necessary part of your official duties. The value of a plaque includes its acquisition cost plus the cost of the engraving. Accordingly, the plaque has a tangible value above and beyond the cost of a meal that is provided in conjunction with recognition. You should not accept an engraved plaque if this value exceeds \$5.00.

7. *I have been invited to a dinner by the local affiliate of a statewide association. My local affiliate is not a lobbyist principal, but the statewide association is a lobbyist principal. May I accept the invitation?*
8. *A constituent is visiting Jefferson City and has asked me to dinner. The constituent is also a licensed professional and a member of a statewide association who is having their annual “lobby day” at the Capitol. The constituent is not a registered lobbyist, but the statewide association is a lobbyist principal. May I accept dinner?*
9. *A county official is visiting Jefferson City and has asked me to dinner. The official is in town for annual meetings of the statewide association for county officials. My county official is not a registered lobbyist. May I accept the dinner?*

The restriction in Article III, Section 2 applies to both the direct and indirect receipt of a gift of any tangible or intangible item, service, or thing of value from a paid lobbyist or lobbyist principal. It is the Commission’s opinion that you may accept these meals provided the lobbyist principals are not sponsoring the dinner or paying for the meal, either directly or indirectly. If the meals are being provided to you by your local branch, your constituent, or the county official, then you would not be receiving an item of value from a paid lobbyist or lobbyist principal. If, however, a lobbyist principal is an event sponsor, or pays or reimburses for the meal, and if the value of the meal exceeds \$5.00, then the meal would be prohibited by Article III, Section 2. Such a payment would be an example of an *indirect* gift, item, or thing of value that is expressly prohibited by Article III, Section 2. This analysis is consistent with the reporting requirements in Chapter 105, RSMo. (see the detailed analysis of the definition of “expenditure” provided in response to the Questions 4, 5, and 6)

10. *As a member of the General Assembly, I have been invited to an event at the Governor’s Mansion, where food and drink will be offered. The event is sponsored and paid for by the Office*

of the Governor or another state agency. Is the consumption of food and drink at the event subject to the \$5 limit in Amendment 1?

It is the Commission's opinion that the food and drink provided at such an event would not be subject to the limitations in Article III, Section 2. The State of Missouri is not operating as a lobbyist principal, for the purposes of Article III, Section 2, in the event the Office of the Governor or another state agency is the sponsor of the event being hosted at the Mansion. While the Office of the Governor – and other state entities - have registered with the MEC as lobbyist principals, that fact does not necessarily bring state-sponsored or official events within the purview of Article III, Section 2.

The Commission has previously opined on the question of whether state entities and those similarly situated are required to register with the MEC as lobbyist principals. In Advisory Opinion 2015.04.L.001, the Commission provided guidance to the Missouri State Public Defender System on this very question, noting that government entities have various roles and functions with the General Assembly, many of which do not require registration. The lobbying statutes provide general guidance as to when state government employees might consider registering. For example, legislative liaisons employed by state agencies may be registered as lobbyists for the purpose of conducting state business with the General Assembly. While they are obviously paid employees of the state, they can be distinguished from other "paid lobbyists" referenced in Article III, Section 2.

Additionally, it is worthwhile to note that the Governor's Mansion is both a state historic building and the Governor's residence. Further, the Mansion may be reserved by private parties for private functions. All such events are scheduled through the Mansion Director who operates outside of the Governor's budget and control. If, for example, the Mansion was reserved by a non-governmental lobbyist principal who invited members of the General Assembly to a function, any food or drink with a value greater than \$5.00 that is served at the function would be subject to the prohibition in Article III, Section 2 of the Constitution. The member or employee, however, could always avoid the prohibition by paying their own way in advance. (see the discussion following Question 2)

11. I have been invited to participate in a ticketed sporting event in my official capacity to throw out the first pitch. The sports team is a lobbyist principal. Can the ticket be accepted?

Like a meal that is incidental to an event you attend in your official capacity, the ticket to a sporting event that allows your participation in the ceremonial first pitch is also incidental to your appearance in your official capacity. This opinion assumes that the ticket is only provided to the member who is actually throwing out that first pitch. This analysis is consistent with the definitions and reporting requirements in Chapter 105, RSMo, which state that entrance fees to sporting events when the official or employee is participating in a ceremony are not reportable expenditures. Section 105.470(3)(f), RSMo. (see the definition of "expenditure" provided in response to Questions 4, 5, and 6)

12. I have been invited to use a conference room for a private or political meeting. The conference room is owned by a lobbyist principal. The lobbyist principal's policy is to allow groups to use the room without charge. May I use the room for free? Do I have to pay for the use of the room?

13. Health and wellness screenings, such as eye exams, blood pressure screenings, and acupuncturist treatments, are offered in the Capitol rotunda as part of an awareness day at the Capitol. The services are offered to anyone in the Capitol on that day. The services are being provided by members of an organization that has a lobbyist principal. May the services be accepted?

To avoid being in violation of Article III, Section 2, you should not accept these services if the value exceeds \$5.00. Even though your question states that these services are provided for free under these

specific circumstances, they have a value which must be considered in this context. The value of these services is the fair market value, which is, generally, the price at which both buyers and sellers agree to do business. An objective fair market value is not the same as actual cost. If the value of these services provided by a lobbyist or lobbyist principal exceeds \$5.00, acceptance is prohibited by Article III, Section 2.

14. A lobbyist principal has offered to provide my office with a supply of publications to offer to my constituents in my office. These publications provide useful information to the public and are also provided by the lobbyist principal directly to the public. May I accept and offer these publications in my office?

You may make these publications available to constituents in your office, provided of course they are not altered or supplemented in any way. For example, you should not apply a stamp or sticker to these publications so as to suggest that the publications are being provided by you or your office as opposed to the lobbyist principal. As you state, these publications are generally made available to the public by a lobbyist principal. More to the point, you are not personally accepting the publications, you are only making them available to constituents. This analysis is consistent with the definitions and reporting requirements in Chapter 105, RSMo. The statutory definition of lobbyist expenditure excludes “[a]ny item, service or thing of de minimis value offered to the general public.” Section 105.470(3)(e), RSMo. (see the definition of “expenditure” provided in response to Questions 4, 5, and 6)

15. I am offered an item by a lobbyist or lobbyist principal. I am unsure of the value of the item and ask the lobbyist/lobbyist principal the value. May I rely upon the representation of the lobbyist as to the value of the item offered?

16. I have developed a disclaimer for individuals leaving items at my office. The disclaimer contains questions as to who has paid for the item; is either the individual leaving the item or paying for the item a lobbyist or lobbyist principal; and the value of the item. May I rely upon the responses to the questions on the disclaimer for purposes of Amendment 1?

17. I have asked a lobbyist/lobbyist principal the value of a dinner or reception to which I have been invited. May I rely upon the representation of the lobbyist as to the value of the event?

The Commission advises you to use common sense and reasonableness. While Article III, Section 2 imposes restrictions on the members and employees of the General Assembly, it is realistic to assume that lobbyists and lobbyist principals will assist with compliance. However, if you have doubts regarding the represented value of an item or service, you may choose to independently verify the fair market value by ascertaining the cost of a comparable item or service using reasonable means. Ultimately, Article III, Section 2 applies to you as a member of the General Assembly.

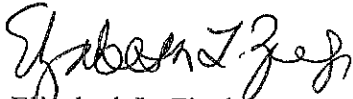
18. An item has been dropped off or mailed in to my office. I was not in my office at the time of delivery. I do not know the value and I do not wish to accept the item. I have contacted the giver via email that I am refusing the item and ask that it be retrieved. The giver has refused to retrieve the item, what should be done with the item? Alternatively, what if the giver will not return my message?

The Commission advises you to put the refusal in writing and to dispose of the item in such a way that is not otherwise available to members and employees of the General Assembly.

19. What are the consequences of accepting an item with a value over \$5.00 from a paid lobbyist or lobbyist principal?

If the MEC receives a complaint pursuant to section 105.957.1(6), RSMo, an investigation will be conducted in accordance with section 105.961.1, RSMo. If the Commission determines that there is probable cause to believe a violation has occurred, then the Commission may notify the appropriate disciplinary authority of the House or Senate, or the Commission may resolve the violation by applying one of the methods listed in section 105.961.4, RSMo.

Sincerely,



Elizabeth L. Ziegler
Executive Director