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Elizabeth L. Ziegler  
Executive Director

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**Re: Advisory Opinion No. 2019.05.L.004**

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.<sup>1</sup> 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

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<sup>1</sup> 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.

prevent Candidates for the General Assembly, including candidates for reelection, or candidates 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.<sup>2</sup>

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

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<sup>2</sup> 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 in section 105.455, RSMo.

want the transparency inherent in our established lobbyist reporting system to be consistent with the 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

*I am an employee of the General Assembly. Since the passage of Amendment 1, numerous questions have arisen regarding compliance with its provisions. I am hereby asking for an advisory opinion on the following issues:*

- 1. I am a dues-paying member of a professional organization, which happens to be a lobbyist principal. The organization is holding a function to which its membership is invited. May I attend and participate in this function which includes food and drink sponsored by this organization, if the cost of food and beverage exceeds \$5.00?*

Provided your attendance at the function relates to your membership in the organization, and does not relate directly or indirectly to your official capacity as an employee of the General Assembly, the meal provided at this function would not be subject to the limitations in Article III, Section 2.

In the event your attendance does relate to your capacity as an employee of the General Assembly, then the attendance likely falls within the restriction unless your presence at this function is a necessary part of your official duties. If your presence at the function is both official and necessary, then the meal is incidental to the function and not prohibited by the Constitution. (See the discussion following Questions 4, 5, and 6 in MEC Advisory Opinion 2019.05.L.003)

This analysis is consistent with the definitions and reporting requirements in Chapter 105, RSMo. Section 105.470(3), RSMo defines a lobbyist "expenditure" as:

[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. . . .

However, that 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.

2. *I have been invited to be a speaker at a seminar conducted by a professional organization. I have been told that I may attend other portions of the seminar and that I will not be charged a registration fee due to being a speaker for one of the portions of the event. Other speakers receive the same invitation. I may claim continuing education credits necessary for my license by attending such seminars. May I attend without paying a registration fee and claim the corresponding credits?*

In MEC Advisory Opinion 1999.07.100, the Commission addressed a related question: Do the lobbyist reporting statutes require the Missouri Bar to place a value on registration and books provided to lawyer-legislators at Missouri Bar sponsored CLE programs? The Commission opined as follows:

[T]he word “expenditure” as defined in section 105.470(2), RSMo, includes the transfer of any item with a reasonable discernible cost or fair market value. In this case, the Missouri Bar has programs for which it charges attorneys a fee. These same programs are given to members of the General Assembly. The program has a reasonable discernible cost and that cost should be reported on your monthly lobbyist expenditure report.

That opinion as written presumes that attendance at the CLE program was provided to lawyer-legislators without charge and not on the basis that the lawyer-legislator was also serving as a speaker at the program. As the opinion states, in the event the sponsor also serves as a lobbyist principal, the general acceptance of continuing education credits is a reportable lobbyist expenditure on a lobbyist’s monthly expenditure report as follows:

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 105.473.2(2)(c), RSMo.

As a general rule, acceptance of continuing education credits without charge are likely to be prohibited under Article III, Section 2.

The current question poses the narrow situation in which the employee of the General Assembly is actually serving as a speaker and presumably volunteering time to prepare the presentation. The question states that the employee is serving in the same capacity as other speakers and it appears that the opportunity to attend the remaining seminar is in exchange for the service of speaking. In that event, the employee is not solely receiving a gift or thing of value without providing a service to the professional association.

It is also noteworthy that section 105.470(3)(g), RSMo, exempts the following from the definition of expenditure:

Any payment, gift, compensation, fee, expenditure or anything of value which is bestowed upon or given to any public official or a staff member, employee, spouse or dependent child of a public

official when it is compensation for employment or given as an employment benefit and when such employment is in addition to their employment as a public official.

While the statute references an "employment" situation, it also suggests that when an item of value is given as compensation for employment, it is not considered an "expenditure" for reporting purposes. (see the definition of "expenditure" provided in response to Question 1)

Thus, in the event the employee is providing a service by speaking to the professional organization, which also serves as a lobbyist principal, the opportunity to attend the remainder of the program without payment is not a "gift, service or item of value" restricted to \$5.00 under Article III, Section 2 of the Missouri Constitution. However, providing this opportunity to an employee or member in general terms without serving as a speaker does fall within the restriction.

3. *I am attending a public event such as a home show. A lobbyist principal has a booth at the event and is offering trinkets to the general public. May I accept the item?*
4. *A sports team who is a lobbyist principal distributes items to attendees of the game. I have purchased a ticket to the game. May I accept the item?*
5. *I have purchased a ticket and am attending a sporting event for a team which is a lobbyist principal. During the game, a random fan is selected to win a prize basket. My seat location is chosen as the winner. May I accept the items?*

While your questions do not set forth the value of the items, it is the Commission's opinion that you may accept these trinkets and prizes under the narrow and specific circumstances you describe. These items are not being given to you because of your status as an employee of the General Assembly. This analysis is consistent with the reporting requirements in Chapter 105, RSMo. The statutory definition of lobbyist expenditure excludes:

Any item, service or thing of de minimis value offered to the general public, whether or not the recipient is a public official or a staff member, employee, spouse or dependent child of a public official and only if the grant of the items, service or thing of de minimis value is not motivated in any way by the recipient's status as a public official or staff member, employee, spouse or dependent child of a public official.

Section 105.470(3)(e), RSMo. (see the definition of "expenditure" provided in response to Question 1)

6. *I am an appointed member of a state board or commission. During a meeting, presentations are made and educational materials are provided to members of the board or commission that have a value in excess of \$5. Is that a gift?*

This question does not address whether the state board or commission is a lobbyist principal. Assuming that such is the case, it is the Commission's opinion that you may accept these educational materials, because they relate to your official duties as a member of a state board or commission. The statutory definition of "public official" includes "any member of any state board or commission." Section 105.470(8), RSMo. Many boards and commissions are required by statute to provide per diems, expenses, and/or educational support to their board members. The Commission advises you to consult legal counsel for the state board or commission to ascertain the capacity in which you are receiving these materials.

This analysis is consistent with the definitions and reporting requirements in Chapter 105, RSMo. The statutory definition of lobbyist expenditure excludes: "Informational material such as books, reports, pamphlets, calendars or periodicals informing a public official regarding such person's official duties." Section 105.470(3)(b), RSMo. (see the definition of "expenditure" provided in response to Question 1)

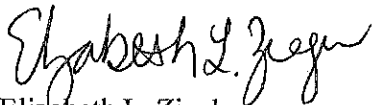
7. *I am offered an item by a lobbyist or lobbyist principal. I am unsure of the value of the item and ask the lobbyist/lobbyist principal the value. May I rely on the representation of the lobbyist as to the value of the item offered?*

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 an employee of the General Assembly.

8. *What are the consequences of accepting an item with a value over \$5.00?*

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 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