



MISSOURI ETHICS COMMISSION
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Elizabeth L. Ziegler
Executive Director

August 2, 2019

Re: Advisory Opinion No. 2019.08.CI.006

Dear

At the August 2, 2019 meeting of the Missouri Ethics Commission, your request for an advisory 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. That statute authorizes the Commission to receive complaints alleging violations of "the conflict of interest laws contained in sections 105.450 to 105.468 and section 171.181." Section 105.957.1(5), RSMo. This opinion is issued within the context of Missouri's laws governing such issues and assumes only the facts presented by you in your letter.

The question presented and the Commission's opinion appears below.

Prior to being elected mayor, I was employed by a construction company that was working on a project for the city. This project is financed by USDA Rural Development and received a grant from USDA Rural Development.

At the time of being elected mayor, the construction project had developed to a point that a final "punch list" was needed to be prepared by the city in coordination with its engineer. The "punch list" will also be coordinated with USDA Rural Development prior to the issuance. The contractor has asked me to act as foreman to oversee all work necessary to complete the final "punch list." I will actually do some of the work and supervise the activity of a few additional employees of the contractor. I do not presently work on other jobs for this contractor.

I propose to remove myself from any meeting of the Board of Alderpersons in which any aspect of the construction project is addressed. I would absolutely not participate in the creation of the "punch list" and would restrict myself to make no comment and provide no input whatsoever to the Board of Alderpersons.

USDA Rural Development has participated in a final inspection and the comments of USDA's engineer were forwarded to the City Clerk. The Board of Alderpersons, at the recommendation

of the project attorney, will meet independently in open session in a regular meeting open to the public to create the final "punch list." The release of the contractor's retainage will be conditioned upon completion of the work in the "punch list." That work will be inspected by the city's civil engineering firm prior to final approval. Payment will be made to the contractor only after approval by USDA Rural Development.

The Mayor Pro-Tem will, in the opinion of the Board of Alderpersons, assist them and quite competently address the project conclusion.

Will an ethics violation occur should I remain to hold the office of mayor while working for the project contractor?

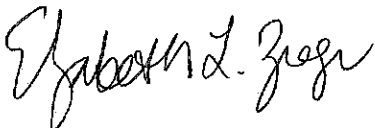
The Commission premises this opinion upon the assumption that your reference to "punch list" is consistent with the commonly accepted meaning of that term. For example, the online version of the Merriam-Webster dictionary defines punch list as, "a list of usually minor tasks to be completed at the end of a project."

Section 105.454.1(4), RSMo, prohibits elected or appointed officials or employees of any political subdivision from:

Perform[ing] any services during the time of his or her office or employment for any consideration from any person, firm or corporation, other than the compensation provided for the performance of his or her official duties, by which service her or she attempts to influence a decision . . . of any political subdivision in which he or she is an officer or employee. . .

The Commission notes that because the construction company is completing a project for the city for which you are the mayor, it would ordinarily be a conflict of interest for you to work for the construction company and represent the city in its dealings with the construction company. However, you propose to remove yourself completely from any related decision-making by the city, such as the creation of the punch list. Additionally, you have appointed a Mayor Pro-Tem to assume responsibility for any tasks or responsibilities that might otherwise belong to you as the mayor. Finally, as your letter explains, the city's engineering firm *and* USDA Rural Development must independently approve final release of the contractor's retainage. Accordingly, the Commission opines that no conflict of interest would exist should you perform this work for the construction company.

Sincerely,



Elizabeth L. Ziegler
Executive Director