



December 20, 2019

Re: Advisory Opinion No. 2019.12.L.008

Dear

At the December 20, 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." Section 105.957.1, RSMo. These opinions are issued within the context of Missouri's laws governing such issues and assume only the specific facts presented by you in your letter.

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

- 1. Are members of the University of Missouri Board of Curators, by virtue of their appointment pursuant to Mo. Rev. Stat. § 172.030, required to register as legislative lobbyists under Mo. Rev. Stat. § 105.473?*
- 2. Is registration as a lobbyist required if the actions of a member of the Board of Curators are limited to responses to inquiries from a member of the General Assembly or staff employed by the General Assembly by phone, in written form or through testimony?*
- 3. Is registration as a lobbyist required if the actions of a Curator are limited to support of positions taken by the registered lobbyist designated by the Board? In this situation, members would be acting as subject matter experts as discussed at page 6 of MEC Advisory Opinion 2015.04.L.001.*
- 4. If members of the Board of Curators are not required to register by virtue of their appointment, would registration be limited to those circumstances when a member acts on behalf of the Board to influence a matter pending or proposed in the General Assembly?*

Section 105.470(5), RSMo, defines a legislative lobbyist as “any natural person who acts for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by the general assembly.”

Importantly, to meet the statutory definition of a legislative lobbyist, the “person who acts for the purpose of attempting to influence” must *also* satisfy one of the following requirements:

- (a) Is acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or
- (b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or
- (c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or
- (d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the legislative branch of state government in connection with such activity.

As your first question points out, members of the Board of Curators are appointed pursuant to the provisions of § 172.030, RSMo, which states:

The board of curators of the University of the state of Missouri shall hereafter consist of nine members, who shall be appointed by the governor, by and with the advice and consent of the senate; provided, that at least one but no more than two shall be appointed upon said board from each congressional district, and no person shall be appointed a curator who shall not be a citizen of the United States, and who shall not have been a resident of the state of Missouri two years next prior to his appointment. Not more than five curators shall belong to any one political party. Notwithstanding any provision of law to the contrary, nothing in this section relating to a change in the composition and configuration of congressional districts in this state shall prohibit a member who is serving a term on August 28, 2011, from completing his or her term.

Their authority is outlined in § 172.020, RSMo:

Pursuant to Sections 9(a) and 9(b) of Article IX of the Missouri Constitution, the state university is hereby incorporated and created as a body politic and shall be known by the name of "The Curators of the University of Missouri", and by that name shall have perpetual succession, power to sue and be sued, complain and defend in all courts; to

make and use a common seal, and to alter the same at pleasure; to take, purchase and to sell, convey and otherwise dispose of lands and chattels, except that the curators shall not have the power to subdivide, sell or convey title to any land contained within a university campus or to subdivide, sell or convey title to any portion of any parcel of land containing in excess of twenty-five hundred contiguous acres unless such transaction is approved by the general assembly by passage of a concurrent resolution signed by the governor. The curators shall not sell, trade or otherwise convey or permit the severance of timber, minerals or other natural resources, unless the curators comply with bidding procedures established by rule that mandate notice of the transaction be provided in a manner reasonably calculated to apprise prospective purchasers. Such rule or rules must at a minimum require at least one notice of the transaction be published in a newspaper of general circulation where the resources are located. The curators may act as trustee in all cases in which there be a gift of property or property left by will to the university or for its benefit or for the benefit of students of the university; to condemn an appropriate real estate or other property, or any interest therein, for any public purpose within the scope of its organization, in the same manner and with like effect as is provided in chapter 523 relating to the appropriation and valuation of lands taken for telegraph, telephone, gravel and plank or railroad purposes; provided, that if the curators so elect, no assessment of damages or compensation under this law shall be payable and no execution shall issue before the expiration of sixty days after the adjournment of the next regular session of the legislature held after such assessment is made, but the same shall bear interest at the rate of six percent per annum from its date until paid; and provided further, that the curators may, at any time, elect to abandon the proposed appropriation of property by an instrument of writing to that effect, to be filed with the clerk of the court and entered on the minutes of the court, and as to so much as is thus abandoned, the assessment of damages or compensation shall be void.

In answer to your first question, nothing contained in either of these statutes suggests that the official duties of the individual members of the Board of Curators, in and of itself, would require those individuals to register as legislative lobbyists.

With respect to your second and third questions, we note that excluded from the statutory definition of legislative lobbyist is “any member of the general assembly, an elected state official, or any other person solely due to such person’s participation in any of the following activities:

- a. Responding to any request for information made by any public official or employee of the legislative branch of government;
- b. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;
- c. Acting within the scope of employment of the legislative branch of government when acting with respect to the general assembly or any member thereof;
- d. Testifying as a witness before the general assembly or any committee thereof[.]

§ 105.470(5), RSMo.

Because responding to inquiries from the legislative branch of government is activity that is expressly exempted from the statutory definition of legislative lobbyist, members of the Board of Curators would not be required to register as legislative lobbyists in order to respond to inquiries from members or employees of the General Assembly. Further, your question includes a reference to the guidance found in MEC Opinion 2015.04.L.001. There, the MEC opined that employees of the Missouri State Public Defender Commission (MSPD) serving in a limited capacity as “subject matter experts” or tracking or testifying on pending legislation of interest to the MSPD would not be specifically required to register as legislative lobbyists. This guidance provided to employees of the MSPD is equally applicable to the members of the University of Missouri Board of Curators.

Finally, with respect to your fourth question, if a member of the Board of Curators has been designated to act as a lobbyist on behalf of the University of Missouri with respect to a particular matter pending or proposed in the General Assembly, that member may be required to register as a legislative lobbyist. However, as the MEC advised the MSPD in MEC Opinion 2015.04.L.001, “that registration requirement would only apply so long as the employee is so designated and acting in that capacity.”

Sincerely,



Elizabeth L. Ziegler
Executive Director

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12/22/2019