



MISSOURI ETHICS COMMISSION  
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Elizabeth L. Ziegler  
Executive Director

February 13, 2020

**Re: Advisory Opinion No. 2020.02.CI.002**

Dear

At the February 13, 2020 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. Section 105.957.1(5), RSMo, authorizes the MEC to receive complaints alleging violations of "the conflict of interest laws contained in sections 105.450 to 105.468 and section 171.181." Additionally, the MEC is authorized by that same statute to receive complaints alleging violations of "the provisions of the constitution . . . relating to the official conduct of officials or employees of the state and political subdivisions." The Commission issues this opinion within the context of Missouri's laws governing such issues, assuming only the facts presented by you in your letter and other such facts that are generally available to the public.

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

*My spouse is a county employee and works at the jail as a nurse. If I were to be elected sheriff, and my spouse continues to be employed by the county, would that be a nepotism violation? Under those same circumstances, would there be in impermissible conflict of interest?*

### Nepotism

Article VII, Section 6, of the Missouri Constitution provides the following penalty for nepotism: "Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

The Commission has previously opined, on more than one occasion, that so long as the newly elected official is not required by law to reappoint employees, their relative may continue in an existing position. For example, in MEC Opinion No. 2000.06.106, the Commission was asked,

“If I am elected to the position of sheriff, would I be required to fire my first cousin who is a deputy sheriff?” The Commission responded:

In this case, your cousin is already employed by the sheriff’s department. If you are elected and all of the employees are “carried over” and you as the new sheriff do not have to re-appoint any of these employees, there is no violation of [Article VII, Section 6 of the Missouri Constitution.]

This response is consistent with established legal precedent. *See, e.g., State ex inf. Attorney Gen. v. Shull*, 887 S.W.2d 397, 400 (Mo. banc 1994) (“a public officer violates the constitution when he or she appoints, by participating in the appointment process, a relative who is within the forbidden degree of relationship to public office”); *State ex inf. Graham v. Hurley*, 540 S.W.2d 20, 25 (Mo. banc 1976) (finding that the selection of an existing employee for a new position with a pay increase and greater duties was “naming or appointing within the meaning of Art. VII, s 6”); *see also, State v. Rhoads*, 389 S.W.3d 905, (Mo. App. 2013) (observing that to determine “the meaning of a constitutional provision, the court must first undertake to ascribe to the words the meaning which the people understood them to have when the provision was adopted” and “the pertinent definition of ‘employ’ from the dictionary as used in 1945 is: ‘To make use of the services of; to give employment to; to entrust with some duty or behest. . . .’”).

Accordingly, there would be no nepotism violation so long as you do not reappoint your spouse to their current position or hire them for or appoint them to a new position.

#### Conflict of Interest

Missouri’s conflict of interest law is codified at §§ 105.452-105.464, RSMo. Those statutes generally prohibit elected officials, appointed officials, as well as employees of the state and political subdivisions from:

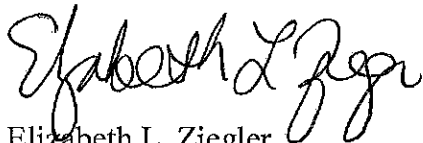
- Being employed in another position or capacity within the same political subdivision;
- Accepting compensation from a third party to influence a decision of any state agency or political subdivision in which they serve;
- Taking employment that would have them attempting to influence their former agency or political subdivision within one year of termination;
- Ever taking employment in relation to any case, decision, or proceeding that they were directly concerned with or personally participated in;
- Providing goods or services to their political subdivision unless there is public notice, competitive bidding, and they submit the lowest bid;
- Selling, renting, or leasing property to their political subdivision unless there is public notice, competitive bidding, and they submit the lowest bid;
- Attempting to influence, directly or indirectly, any decision of their political subdivision when they know the result will benefit them, their spouse, or their dependent children;
- Voting on a matter that would result in a special monetary benefit to themselves, their spouse, or their dependent children;
- Using decision-making authority to obtain a financial gain for themselves, their spouse, or their dependent children;

- Acting or not acting because of a payment, offer to pay, promise to pay, or receipt of anything of value to themselves or any third person;
- Offering, promoting, or advocating for a political appointment in exchange for anything of value to any political subdivision;
- Using or disclosing confidential information with the intent of financial gain for themselves, their spouse, or their dependent children.

This list is very broad, very general, and there are a few exceptions. Notably, not all of the conflict of interest provisions in §§ 105.452-105.464, RSMo, are applicable to elected officials at the county level. However, if elected, you should familiarize yourself with the ones that would be applicable to you, as well as any that may be applicable to your spouse and your dependent children.

From the facts presented in your letter, there does not appear to be a violation of the conflict of interest law. The Commission advises you to consult with county officials to be sure there are no local ordinances that would prevent you from continuing to employ your spouse as a nurse at the jail should you be elected sheriff.

Sincerely,



Elizabeth L. Ziegler  
Executive Director