



MISSOURI ETHICS COMMISSION
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Elizabeth L. Ziegler
Executive Director

March 11, 2020

Re: Advisory Opinion 2020.03.CI.003

Dear

At the March 11, 2020 meeting of the Missouri Ethics Commission, your request for an advisory opinion was taken up by the Commission.

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." 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 question presented and the Commission's opinion appear below.

I am a retired county employee currently serving the county as an elected official. A county ordinance prohibits me from drawing my retirement benefits because, as an elected official, I am also a salaried county employee. It has been suggested that the ordinance could be amended to allow retired county employees to opt out of participating in the pension plan afforded to elected officials. Am I prohibited from introducing such an amendment to the county council? Am I prohibited from participating in subsequent discussions or votes related to such an amendment?

As the Commission noted in MEC Opinion No. 2008.06.CI.005:

[T]he question of whether a conflict of interest exists by its very nature may involve two issues: a) whether the statutes require that the public official recuse and/or disclose interest; and b) whether a public official should recuse or disclose interests when an appearance of impropriety exists. The answer to the first is governed by the language of the statutes and may be determined on a case-by-case basis. The answer to the second will depend on the judgment and discretion of the public official.

Missouri's conflict of interest law is codified at §§ 105.452-105.464, RSMo. As the Commission recently noted, not all of those statutory provisions are applicable to elected officials at the county level. MEC Opinion 2020.02.CI.002. With that caveat in mind, the Commission notes that there are several specific statutory provisions implicated by your questions.

Section 105.452.1(4), RSMo

This statute provides that no elected official of any political subdivision shall:

Favorably act on any matter that is so specifically designed so as to provide a special monetary benefit to such official or his spouse or dependent children, including but not limited to increases in retirement benefits, whether received from the state of Missouri or by any third party by reason of such act.

Accordingly, and based upon the facts in your letter, the key question then is whether your participation in the amendment of the county's ordinance would result in a "special monetary benefit" to you.

For the purposes of this subdivision, "special monetary benefit" means being materially affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected.

Section 105.452.1(4), RSMo. If your participation would result in a "special monetary benefit," then you must recuse yourself from acting.

The general public is not affected by this county ordinance and would not be affected by its amendment. An amendment consistent with the objective posed by your question would only affect a special class of persons: to wit, county retirees who are subsequently elected to a salaried position with the county. To be sure, that class may not be very large. However, for the purposes of this opinion, it is clear that you would not be receiving a special monetary benefit because you would not be affected in a manner or degree that is substantially different from the other members of the class. Accordingly, you would not be prohibited by § 105.452.1(4), RSMo, from introducing, discussing, or voting on this type of amendment.

That said, the Commission cautions you to remain cognizant of the prohibition in § 105.452.1(4), RSMo, to the extent a different amendment is proposed. As the Commission has previously observed, "whether a councilmember would stand to gain a special monetary benefit . . . must be determined on a case-by-case basis." MEC Opinion 1997.11.121. In other words, this opinion is based upon the facts presented in your letter. Alternative approaches to an amendment of the county's ordinance at issue here could result in a different conclusion that might lead to an impermissible conflict of interest. Additionally, you are advised to consult with the county's

legal advisors to be sure there are no locally adopted conflict of interest ordinances that would impact your ability to participate in the amendment of a county ordinance.

Section 105.454.1(1), RSMo, and Section 105.458.1(1), RSMo

The first of these statutes is applicable to elected officials, serving in an executive or administrative capacity, and the second is applicable to members of a governing body of a political subdivision. Both prohibit these officials from performing a service for their political subdivision for any consideration or compensation beyond that provided for the performance of official duties.

Your letter does not contain details related to your retirement benefits, so the Commission offers no opinion on the question of whether you are providing a service in exchange for those benefits. The Commission's guidance in MEC Opinion 2000.03.014 may assist you in evaluating your compliance with these particular statutes.

Section 105.461.1, RSMo.

This statute requires members of governing bodies of political subdivisions to disclose a "substantial personal or private interest in any [proposed or pending] measure, bill, or ordinance" before passing on said measure, bill, or ordinance.

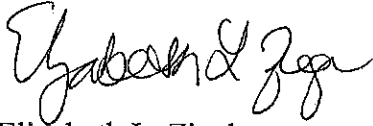
Such interest is defined as "any interest in a measure, bill, order or ordinance which results from a substantial interest in a business entity." § 105.450(12), RSMo. That substantial interest, in turn, is statutorily defined as ownership, "directly or indirectly, of ten percent or more of any business entity, or of an interest having a value of ten thousand dollars or more." § 105.450(11), RSMo. Notably, § 105.461.2, RSMo, provides that disclosure of such a business interest on the financial interest statement required by §§ 105.483-105.492, RSMo, is sufficient to satisfy this requirement. Here, your interest is in your pension benefit, which is not an interest in a business entity. Therefore, you would not be required to make a disclosure under § 105.461.1, RSMo.

Finally, the Commission suggests you give due consideration to the advice given to an alderman in MEC Opinion No. 2008.06.CI.005:

[T]he question of whether an appearance of impropriety exists and whether discretion should be used must be considered by the public official. As stated in MEC Opinion No. 1994.06.115 "It is very hard to distinguish the difference between the appearance of an impropriety and, in fact, a technical violation in the eyes of the public. The intent of the law is that conflicts of interest be avoided. . ."

In other words, while you may not be required to abstain from participating in or required to disclose an interest in a particular matter, there is certainly no harm in you choosing to do so in order to avoid the appearance of a conflict of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth L. Ziegler". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth L. Ziegler
Executive Director