



Missouri Ethics Commission

Elizabeth L. Ziegler
EXECUTIVE DIRECTOR

November 2, 2020

Re: Advisory Opinion No. 2020.11.CI.007

At the November 2, 2020 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. 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 presently serving in the Missouri House of Representatives. Additionally, I have a 50 percent interest in a family corporation. The corporation has entered into a joint venture with a limited liability company that was recently established by one of my parents.

This new limited liability company desires to participate in the Show Me Strong Personal Protective Equipment (PPE) Retooling Program. That Program is administered by the Department of Economic Development. According to the DED website, the purpose of the Program “is to provide grant funding to manufacturers, nonprofit organizations, and other entities to reimburse certain costs for retooling existing facilities by purchasing necessary equipment and services to manufacture critically needed PPE for use in Missouri.”

If my parent’s recently established limited liability company goes ahead with its plans to accept the grant funding and to participate in the Program, would the existence of the joint venture present an improper conflict of interest for me as prohibited by Section 105.456, RSMo?

Section 105.456.2, RSMo, discusses conflicts for businesses associated with or controlled by certain elected officials:

No sole proprietorship, partnership, joint venture, or corporation in which a member of the general assembly, governor, lieutenant governor, attorney general, secretary of state, state treasurer, state auditor or spouse of such official is the sole proprietor, a partner having more than a ten percent partnership interest, or a coparticipant or owner of in excess of ten percent of the outstanding shares of any class of stock, shall:

- (1) Perform any service for the state or any political subdivision thereof or any agency of the state or political subdivision for any consideration in excess of five hundred dollars per transaction or one thousand five hundred dollars per annum unless the transaction is made pursuant to an award on contract let or sale made after public notice and competitive bidding, provided that the bid or offer accepted is the lowest received; or
- (2) Sell, rent, or lease any property to the state or any political subdivision thereof or any agency of the state or political subdivision thereof for consideration in excess of five hundred dollars per transaction or one thousand five hundred dollars per annum unless the transaction is made pursuant to an award on a contract let or a sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest and best received.

To determine the applicability of this statute to the circumstances presented by your question, the Commission has reviewed a number of related documents that are available from the Department of Economic Development (DED) website. After conducting that review, and considering the law pertaining to business organizations, the Commission has concluded that there would be no conflict of interest for you should your parent's limited liability company (LLC) elect to participate in the Show Me Strong Personal Protective Equipment (PPE) Retooling Program (the Grant Program). The Commission's analysis and reasoning follow.

Applicability of Section 105.456.2, RSMo

The prohibitions in Section 105.456.2, RSMo, would appear to be inapplicable to any person or entity simply participating in the Grant Program. Subsection (1) prohibits the provision of services to the State of Missouri or an agency of the state or a political subdivision. Similarly, subsection (2) prohibits a business entity from selling, renting, or leasing property to the State of Missouri or an agency of the state or a political subdivision. But, mere participation in the Grant Program results in neither.

Dictionary.com defines "grant" as "a sum of money given by a government or other organization for a particular purpose." Investopedia.com describes a government grant this way:

A government grant is a financial award given by a federal, state or local government authority for a beneficial project. It is effectively a gift. A grant does not include technical assistance or other financial assistance such as a loan or loan guarantee, an

interest rate subsidy, direct appropriation or revenue sharing. The grantee is not expected to repay the money.

According to the DED's Grant Program agreement,

[T]he state received CARES Act funding and has authorized and empowered DED to provide grants to manufacturers, non-profit organizations, and other entities, for the public purpose of reimbursing necessary business expenses for retooling existing facilities by purchasing equipment and services necessary to manufacture critically needed PPE for use and sale in Missouri, addressing increased and unmet demand for PPE, as well as assisting entities with creating new business to respond simultaneously to the health and economic aspects of the COVID-19 public health emergency.

Among the requirements imposed on Grant Program applicants: "The applicant must agree to make good faith efforts to sell in Missouri the PPE produced as a result of this grant program. At a minimum, the applicant must register and post its product on Missouri's PPE Marketplace, an online platform designed to match healthcare providers to suppliers of PPE and other medical supplies, before seeking buyers outside of the state.

To summarize: Through the Grant Program, the DED gives CARES Act money to qualified applicants to facilitate the production of PPE during the COVID-19 pandemic. Grant Program applicants agree to sell PPE to Missouri healthcare providers and to others in the State of Missouri. In accepting the grant, Grant Program applicants are not providing services to, or selling, renting or leasing property to, the State of Missouri or one of its agencies or to any political subdivision.

As an aside, the Commission notes that a subsequent sale of PPE to the State of Missouri, one of its agencies, or another political subdivision could raise conflict of interest questions, but those questions are beyond the scope of this advisory opinion.

Joint Ventures

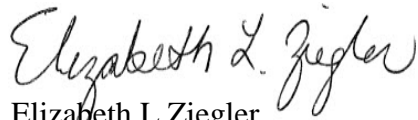
Notwithstanding the conclusions reached with respect to the applicability of Section 105.456, RSMo, your ownership interest in the family corporation is too attenuated from your parent's LLC to trigger a conflict of interest. You have stated that neither you nor the family corporation have any ownership interest in your parent's LLC. However, the family corporation and the LLC have established a joint venture, so the question is whether that joint venture creates a relationship that could result in a conflict of interest for you.

"A joint venture is a species of partnership and is governed by the same legal rules." *Sarasohn & Co., Inc. v. Prestige Hotels Corp.*, 945 S.W.2d 13, 16 (Mo. banc 1997). In other words, "a joint venture is treated legally as a partnership." *Id.* And, it is long-established that one partner cannot bind the other by entering into a contract that is outside of the scope of the partnership. *See e.g., Tutt v. Cloney*, 62 Mo. 116 (1876); *Cayton v. Hardy*, 27 Mo. 536 (1858).

You have represented that it is your parent's LLC that has applied for and wishes to accept a grant under the Grant Program. It follows that your parent will sign the Grant Program agreement on behalf of the LLC. Assuming that is the case, neither the joint venture nor the family corporation will be a party to the Grant Program agreement and cannot be bound by its terms. More to the point, under these conditions, the LLC's participation in the Grant program would not result in a conflict of interest for you.

For the forgoing reasons, the Commission concludes that your interest in a corporation, which is a coparticipant in a joint venture with an LLC, does not result in a conflict of interest pursuant to Section 105.456.2, RSMo, when the LLC participates in a state-administered grant program.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth L. Ziegler". The signature is written in black ink and is positioned above the printed name and title.

Elizabeth L Ziegler
Executive Director