



Missouri Ethics Commission

Elizabeth L. Ziegler
EXECUTIVE DIRECTOR

January 6, 2021

Re: Advisory Opinion No. 2021.01.L.001

At the January 6, 2021 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, RSMo, authorizes the MEC to receive complaints alleging violations of the provisions of the “requirements imposed on lobbyists by sections 105.470 to 105.478” and the “campaign disclosure requirements contained in chapter 130[.]” 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 registered lobbyist. I am also scheduled to become treasurer of a political action committee in 2021. The PAC has a board of directors who vote to determine whether certain political candidates are worthy of the PAC’s support. The treasurer is an ex-officio member of the board but does not vote. As treasurer, I would solicit for contributions, keep track of the funds, maintain a membership list, and make contributions as directed by the board. Please provide guidance as to whether this constitutes “control” as that term is used in Section 130.097.2, RSMo?

Section 130.097.2, RSMo¹, states:

No person who registers as a lobbyist, as defined under section 105.470, shall transfer funds from any candidate committee, exploratory committee, debt service committee, or continuing committee under his or her control to any such committee controlled by a candidate or public official, as defined under section 105.470.

In Advisory Opinion 2016.08.L.001, this Commission addressed questions about the application of this statute as it relates to lobbyist registration. That opinion mentioned previous discussions of the meaning of the word “control” as it is used in Chapter 130, RSMo. For example, Advisory Opinion 2012.03.CF.002 concluded that the president of a political luncheon club did not control or direct that continuing committee² where expenditures were approved by a majority vote of the membership, and the president’s role was specified and limited by the by-laws. Furthermore, in reaching that conclusion, that opinion observed that the president was “not serving in any capacity as treasurer or deputy treasurer of the continuing committee.”

The duties and powers of a committee treasurer are detailed throughout Chapter 130, RSMo. Notably:

- Section 130.021, RSMo – Treasurer for candidates and committees, when required – duties – official depository account to be established – statement of organization for committees, contents, when filed – termination of committee, procedure;
- Section 130.036, RSMo – Treasurer, deputy treasurer or candidate to maintain records, contents;
- Section 130.041, RSMo – Disclosure reports – who files – when required – contents;
- Section 130.058, RSMo – Responsibility for reporting requirements.

Perhaps the most significant of these is Section 130.058, RSMo, which states:

The candidate or the committee treasurer of any committee except a candidate committee is ultimately responsible for all reporting requirements pursuant to this chapter.

While the statute that prescribes committee registration requirements, Section 130.021.5, RSMo, recognizes that committees may have officers and may be affiliated with connected organizations, Section 130.058, RSMo, makes it clear that candidates are responsible for candidate committees and treasurers are responsible for all other committee types.

¹ See also, Section 105.465, RSMo, a similar provision that was enacted at the same time. This statute requires registered lobbyists who have candidate committees to dissolve those committees and limits the manner of distribution of committee funds.

² The Commission has previously recognized that a continuing committee and a political action committee are one in the same, so these terms can and will be used interchangeably in this opinion.

This interpretation was endorsed by the Supreme Court of Missouri in *Geier v. Missouri Ethics Commission*, 474 S.W.3d 560 (Mo banc 2015). In that appeal, Geier had “challenge[d] the MEC’s authority to attribute violations of the law to a PAC’s treasurer.” *Id.* at 571. However, the court concluded: “The MEC had authority pursuant to section 130.058, RSMo 2000, to investigate Geier individually for these violations on account of his responsibility as treasurer.”

It follows, logically, that the treasurer of a political action committee should only have this responsibility if the committee is under his or her control.

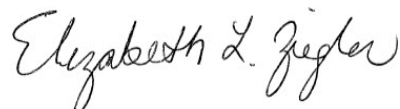
Applying this conclusion to your situation, the Commission notes that registered lobbyists are not expressly prohibited from serving as committee treasurers. However, if you take over as treasurer for the political action committee referenced in your question, there are strict contribution restrictions imposed upon the committee by the provisions in Section 130.097.2, RSMo. Specifically, no contributions can be made to any candidate committees, and that includes exploratory committees and debt service committees as these are also considered candidate committees.

Additionally, no contributions can be made to any continuing committee that is controlled by a public official; that is, a continuing committee whose treasurer is a public official as that term is defined in Section 105.470(8), RSMo. That statutory definition is quite broad:

[A]ny member or member-elect of the general assembly, judge or judicial officer, or any other person holding an elective office of state government or any agency head, department director or division director of state government or any member of any state board or commission and any designated decision-making public servant[.]

In light of the forgoing, the Commission concludes that, as treasurer of a political action committee, you would be in control of the PAC, as the term control is used in Section 130.097.2, RSMo. If you go ahead with this plan, the Commission advises you to proceed cautiously because of the contribution restrictions imposed by that statute.

Sincerely,



Elizabeth L Ziegler
Executive Director