



Missouri Ethics Commission

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EXECUTIVE DIRECTOR

Advisory Opinion: MEC No. 2023.02.L.001

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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. Sections 105.957.1(1) and 105.472, RSMo, authorizes the MEC to receive complaints alleging violations of the requirements imposed on lobbyists by sections 105.450 to 105.478. The Commission issues this opinion within the context of Missouri's laws governing such issues, assuming only the facts presented and other such facts that are generally available to the public.

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

1. *Are [Missouri State Public Defender (MSPD)]'s director, deputy director and division directors exempt from registering as "legislative lobbyists" because they qualify as exempt "legislative liaisons" under Sec. 105.470(5)?*
 - a. *If yes, under what provision of the "legislative liaison" definition are they exempt from registering?*
2. *Would an official MSPD "legislative liaison" be required to register as a "legislative lobbyist" under Sec. 105.470(5)?*
3. *If MSPD does create an official "legislative liaison" position, would MSPD's director, deputy director and other division directors who still may deal with the General Assembly be required to register as "legislative lobbyists"?*
4. *Do MSPD's director, deputy director and relevant division directors have to register as "executive lobbyists" under Sec. 105.470(2)?*
5. *Do MSPD's director, deputy director, or other directors who have dealings with county commissions on the issue of office space have to register as "elected local government official lobbyists" under Sec. 105.470(1)?*
6. *Does MSPD's director have to register as an "executive lobbyist" under Sec. 105.470(2) due to writing letters to the Governor supporting clemency from the Governor for current or past MSPD clients, or other criminal defendants who may be seeking clemency?*

Missouri Lobbyist Definitions

Section 105.470(6), RSMo, defines a "lobbyist" as any natural person defined as an executive lobbyist, judicial lobbyist, elected local government official lobbyist, or a legislative lobbyist.

Section 105.470(7), RSMo, defines a "lobbyist principal" as any person, business entity, governmental entity, religious organization, nonprofit corporation, or association who employs, contracts for pay or otherwise compensates a lobbyist.

Pursuant to Section 105.473.1, RSMo, each lobbyist shall, not later than January fifth of each year or five days after beginning any activities as a lobbyist, file standardized registration forms, verified by a written declaration that it is made under the penalties of perjury, along with a filing fee of ten dollars, with the Missouri Ethics Commission.

The responses to these questions are separated according to the lobbyist designations:

Questions Pertaining to Legislative Lobbying

1. *Are MSPD's director, deputy director and division directors exempt from registering as "legislative lobbyists" because they qualify as exempt "legislative liaisons" under Sec. 105.470(5)?*
 - a. *If yes, under what provision of the "legislative liaison" definition are they exempt from registering?*
2. *Would an official MSPD "legislative liaison" be required to register as a "legislative lobbyist" under Sec. 105.470(5)?*
3. *If MSPD does create an official "legislative liaison" position, would MSPD's director, deputy director and other division directors who still may deal with the General Assembly be required to register as "legislative lobbyists"?*

Legislative Lobbyist

Pursuant to Section 105.470(5), RSMo, an "legislative lobbyist" is:

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 and in connection with such activity, meets the requirements of any one or more of the following:

- (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.

Legislative Liaison

Pursuant to Section 105.470(5), RSMo, an “legislative liaison” is:

A "legislative lobbyist" shall not include any legislative liaison. For purposes of this subdivision, "legislative liaison" means any state employee hired to communicate with members of the general assembly on behalf of any elected official of the state; the judicial branch of state government; or any department, agency, board, or commission of the state, provided such entity is a part of the executive branch of state government. Any state employee employed as a legislative liaison who performs lobbying services for any other entity shall register as a lobbyist with respect to such lobbying services. A "legislative lobbyist" shall also not include 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.

Analysis

To meet the definition of legislative liaison, one must satisfy two elements:

1. A state employee hired to communicate with members of the general assembly.
2. On behalf of any elected official of the state, the judicial branch of state government; or any department, agency, board, or commission of the state, provided such entity is a part of the executive branch of state government.

The second element is easily satisfied as MSPD is a department of the judicial branch of state government.

As for the first element, to qualify as a legislative liaison, one must be hired to communicate with members of the general assembly. A legislative liaison can be a job title or a job duty. If MSPD

employees' duties include and require them to communicate with members of the general assembly, then they can qualify as legislative liaisons. The statutes do not require agencies to hire an individual for the sole and only purpose of legislative liaison, but any MSPD employee whose duties regularly require them to communicate with members of the general assembly can be designated as a legislative liaison in addition to their other role.

Therefore, as a legislative liaison is not a lobbyist, MSPD employees who fit this category in their job duties will not be required to register as a lobbyist with the Missouri Ethics Commission.

Questions Pertaining to Executive Lobbying

4. *Do MSPD's director, deputy director and relevant division directors have to register as "executive lobbyists" under Sec. 105.470(2)?*

6. *Does MSPD's director have to register as an "executive lobbyist" under Sec. 105.470(2) due to writing letters to the Governor supporting clemency from the Governor for current or past MSPD clients, or other criminal defendants who may be seeking clemency?*

Executive Lobbyist

Pursuant to Section 105.470(2), RSMo, an "executive lobbyist" is:

Any natural person who acts for the purpose of attempting to influence any action by the executive branch of government or by any elected or appointed official, employee, department, division, agency or board or commission thereof and in connection with such activity, meets the requirements of any one or more of the following:

- (a) Is acting in the ordinary course of employment on behalf of or for the benefit of such person's employer; 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 executive branch of state government in connection with such activity.

An "executive lobbyist" shall not include a 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. Appearing or inquiring in regard to a complaint, citation, summons, adversary proceeding, or contested case before a state board, commission, department, division or agency of the executive branch of government or any elected or appointed officer or employee thereof;

- b. Preparing, filing or inquiring, or responding to any audit, regarding any tax return, any public document, permit or contract, any application for any permit or license or certificate, or any document required or requested to be filed with the state or a political subdivision;
- c. Selling of goods or services to be paid for by public funds, provided that such person is attempting to influence only the person authorized to authorize or enter into a contract to purchase the goods or services being offered for sale;
- d. Participating in public hearings or public proceedings on rules, grants, or other matters;
- e. Responding to any request for information made by any public official or employee of the executive branch of government;
- f. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;
- g. Acting within the scope of employment by the general assembly, or acting within the scope of employment by the executive branch of government when acting with respect to the department, division, board, commission, agency or elected state officer by which such person is employed, or with respect to any duty or authority imposed by law to perform any action in conjunction with any other public official or state employee; or
- h. Testifying as a witness before a state board, commission or agency of the executive branch.

Analysis

Unlike the legislative liaison exemption from lobbyist registration, there is no such exemption for other forms of lobbying. Therefore, MSPD must first determine whether MSPD directors' duties fall within the definition of an executive lobbyist under Section 105.470(2), RSMo cited above. They might also consider who the individuals are who fall within the statutory requirements.

Regarding "*writing letters to the Governor supporting clemency from the Governor,*" we must first look at the functions of commutation. Pursuant to the MO Const. Art. IV Sec. 7, "[t]he governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to provisions of law as to the manner of applying for pardons. The power to pardon shall not include the power to parole." Therefore, commutation is the sole function of the executive branch, specifically the Governor of the State of Missouri.

All applications for pardon, commutation of sentence or reprieve are referred to the Missouri Parole Board for investigation and recommendation to the Governor. (217.800 RSMo). The Missouri Parole Board is governed by Chapter 217, RSMo and is a function of the Missouri Department of Corrections.

MSPD does not have a statutory function in the executive clemency process. Therefore, MSPD should take into consideration the extent to which it is initiating contact with the intent to influence. MSPD must determine if the functions they are initiating with the executive branch a necessary function of the agency or is it simply an attempt to influence the decision-making process.

As the statute instructs, while performance of a specific task by itself may not trigger a requirement to register, a combination of activities or tasks designed to influence members of the executive branch may require the designation of a lobbyist by the MSPD. If MSPD is writing letters to the Governor with the intent to influence the Governor's decision-making process and to the extent that MSPD is taking a specific position to support or oppose the Governor's decisions, MSPD should consider designating an executive lobbyist.

Question Pertaining to Elected Local Government Official Lobbying

5. *Do MSPD's director, deputy director, or other directors who have dealings with county commissions on the issue of office space have to register as "elected local government official lobbyists" under Sec. 105.470(1)?*

Elected Local Government Official Lobbyist

Section 105.470(1), RSMo, defines "elected local government official lobbyist", any natural person employed specifically for the purpose of attempting to influence any action by a local government official elected in a county, city, town, or village with an annual operating budget of over ten million dollars.

Analysis

Pursuant to Section 600.040, RSMo, "The city or county shall provide office space and utility services, other than telephone service, for the district public defender and his or her personnel."

As the city or county for which the district public defender's offices sit, are required by statute to provide office space, a request or recommendation by MSPD for office space is a part of the necessary function of their job. Therefore, it is necessary and appropriate that MSPD will interact with local government officials and their staff on an ongoing basis concerning their office space needs. Therefore, this function in and of itself does not trigger the need to register as a lobbyist.

Conclusion

The lobbying statutes provide general guidance to state agencies like MSPD as to which employees, if any, may be required to register as a lobbyist.

If the MSPD employees' duties include and require them to communicate with members of the general assembly, then they should qualify as legislative liaisons and should be designated as such. The statutes do not required agencies to hire an individual for the sole purpose of legislative liaison. Therefore, a MSPD employee whom duties regularly require them to communicate with members of the general assembly can be designated as a legislative liaison. As a legislative liaison is not a lobbyist, the MSPD employees will not be required to register as a lobbyist with the Missouri Ethics Commission.

To the extent MSPD employees are initiating contact with the intent to influence members of the executive branch, the department needs to assess whether designating an executive lobbyist is appropriate. A MSPD employee whose duties regularly require them to communicate with members of the executive branch to influence their decision-making process should register as a lobbyist with the Missouri Ethics Commission.

Lastly, as the city or county for which the district public defender's offices sit, are required by statute to provide office space, a request or recommendation by MSPD for office space is a part of the necessary function of their job. Therefore, this function in and of itself does not trigger the need to register as a lobbyist.

If MSPD decides to designate a particular employee or employees as lobbyists, MSPD needs to be aware of both the lobbyist registration and reporting requirements (Sec. 105.473.1 and 105.473.3, RSMo) as well as the lobbyist principal reporting requirements (Sec. 105.473.12, RSMo.)