



MEC
OPINION NO.

2007.03.L.008--7

STATE OF MISSOURI

MISSOURI ETHICS COMMISSION
P. O. BOX 1254
JEFFERSON CITY, MISSOURI 65102

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March 13, 2007

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At the March 13, 2007 meeting of the Missouri Ethics Commission, your request for an opinion was discussed. The following is the Commission's response to your questions:

I represent organizations formed to do education and grassroots lobbying campaigns regarding an initiative measure expected to be on the ballot in the November 2008 general election. This effort may include some direct lobbying of legislators. I am seeking to assist these organizations to be sure that their planned actions will be in compliance with Missouri campaign finance laws.

The organizations are considering whether to contract with a sitting Missouri legislator for the purpose of doing fund-raising.

We request an opinion from the MEC as to whether there are legal or ethical restrictions on such employment for fund-raising activities, and if so, what steps may be taken by the organization or the legislator to insure compliance with the law.

As the question does not specify the type of fundraising activities involved, the Commission advises you to be aware of the provisions of both Chapters 105 (conflict of interest, lobbying, and personal financial disclosure reporting) and Chapter 130 (campaign finance disclosure) of the Missouri Revised Code.

The member of the General Assembly should be aware of the provisions in Section 105.456, RSMo and should be aware of the responsibilities to report a substantial interest in any measure that appears before the General Assembly. While seeking funds from the State of Missouri and/or any agency of the state, would be violation of conflict of interest statutes contained in Chapter 105, it may not be a violation of these statutes to solicit funds from other entities. The member should be especially cognizant of any appearance of impropriety which might exist due to the member's fundraising, making it clear that the fundraising is not being conducted in the

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member's official elected capacity. Such distinctions are not always obvious to members of the general public.

The Commission advises you to be familiar with all of the Conflict of Interest statutes in Sections 105.452, 105.454, 105.456 and 105.461 RSMo. For example, subsections (2) and (3) of Section 105.452, RSMo prohibit the elected official from using or disclosing confidential information with the intent to obtain financial gain, and "confidential information" is defined in Section 105.450(5), RSMo as "all information whether transmitted orally or in writing which is of such a nature that it is not, at the time, a matter of public record or knowledge." Therefore, no payment for employment could be received by an elected official or a business with which he is associated if, in the course of rendering those services, the elected official used or disclosed confidential information. In addition, if the amount of payments paid for employment exceed the fair market value of the services provided and the payor subsequently asked the member to act in his or her official capacity in a specific way, a question could exist about whether the excess amount had been paid or received for that purpose.

The official and lobbyists would also need to be cognizant of any reportable lobbying expenditures on behalf of the member of the General Assembly. The Commission directs you to the definition of lobbyist expenditure under Section 105.470(3) RSMo and the reporting requirements contained in Section 105.473 RSMo. For example, if the member solicits funds from a registered lobbyist, any funds may qualify as a reportable lobbyist expenditure. In general, the lobbyist and member would need to be cognizant of any reportable food, beverage and travel expenditures.

In addition, if the member of the General Assembly were a candidate for office and such payments were made directly to the member, questions about whether they were payments for services or were contributions in support of candidacy would have to be answered by ascertaining the value of those services relative to the amounts of those payments and the intentions of the parties at that time. The employment arrangement would need to be handled in a way which would not be a breach of any of the provisions cited above.

The member of the General Assembly should also contact the Chief Clerk of the House of Representatives or the Secretary to the Senate to determine if that regulating body has any rules concerning such activity

The Commission has serious concerns about the ability of the elected official to avoid violation of these laws while employed for fundraising by entities on issues that may come before the General Assembly.

Sincerely,


R.F. Connor,
Executive Director

RFC: ez

NOTICE

Anyone examining this advisory opinion should be careful to note that an opinion of the Missouri Ethics Commission deals only with the specific request to which the opinion responded and only as to the law as it existed at the date of the response and cannot be relied upon for any other purpose or in any other manner.