



Missouri Highways and Transportation Commission Policies

Category: COMMISSION
Subcategory: Members
Sub-Subcategory: Reporting Potential Conflicts of Interest

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REPORTING POTENTIAL CONFLICTS OF INTEREST

(1) General provisions:

- (A) **Responsibility of MHTC members:** Conflict of interest may take many forms. The correct analysis of a potential conflict depends upon the facts disclosed. The applicable statutes are inconsistent and difficult to reasonably apply in some situations. Each commission member must be alert to any potential conflict of interest prohibited by statute. The responsibility for avoiding conflict of interest and complying with applicable statutes rests with individual commission members.
- (B) **Policy purpose:** The purpose of this voluntary policy is to assist commission members in complying with existing conflict of interest statutes, to avoid a potential conflict of interest, and, thus, avoid a potential violation of any statute and embarrassment for the affected individual, MoDOT and MHTC.
- (C) **Informal advisory opinions:** Upon request, the chief counsel will provide any commission member with an informal advisory opinion regarding any potential conflict of interest about which the commission member may have any question or concern.
- (D) **Governor's director of boards and commissions:** The commission secretary shall provide the governor's director of boards and commissions a copy of this policy six months prior to the scheduled expiration of any commission member's term of office, or immediately upon the inability of any commission member to complete his/her scheduled term of office for any reason. The purpose of this requirement is to assist the governor's staff in advising prospective commission members of: (1) the relevant conflict of interest statutes; (2) the application of some of the relevant statutes could cost prospective members money because MoDOT refrains from making purchases from any business in which a Commission member has a financial interest during the member's term of office (e.g., section 105.454(1) and (2) RSMo 2005 and/or section 226.090 RSMo 2000); and (3) MHTC's policy for commission members to disclose potential conflicts of interest.
- (E) **State Financial Interest Statements:** In addition to the required filing with the State Ethics Commission, commission members should file copies of their State Financial Interest Statements (also titled Personal Financial Disclosure Statement) required by Section 105.485 RSMo. 2000 with the commission secretary who will provide copies of such statements to the members of the conflicts committee and the chief counsel to aid the committee in assisting commission members in identifying potential conflicts of interest.
- (F) **Conflicts committee membership:** The standing conflicts committee of MoDOT will consist of the chief engineer, chief financial ~~and administrative~~ officer, commission secretary, and director of audits and investigations. The chief counsel, or his/her designated representative, shall serve as counsel to the committee.
- (G) **Reminder notices:** The commission secretary will provide an annual reminder notice to each commission member to update, if appropriate due to a changed

circumstance, his/her Commission Member Disclosure Report described under paragraph (2)(A) below.

- (H) **Annual review:** After each legislative session, the chief counsel will review the applicable statutes and, if appropriate, prepare a report for MHTC with recommendations regarding any proposed changes to this policy.
- (2) **Procedure for disclosure by all commission members of potential conflicts of interest (except attorney representation):**
- (A) **Commission Member Disclosure Report:** When a commission member is first appointed to MHTC and/or becomes aware that any of his/her activity and/or financial interest creates a potential conflict of interest, the member should file a written Commission Member Disclosure Report with the commission secretary that at a minimum includes: (1) the nature of the interest or activity; (2) the member's current employer(s), if any, and a list of all business entities, if any, in which the member is an officer and/or has any ownership or financial interest that may directly or indirectly do business with MHTC/MoDOT including the nature of the business or activity; (3) a list of all real estate located in Missouri in which the member individually or a business entity in which the member is an officer has any ownership, leasehold, or other possessory or financial interest including the nature of such interest and the location (street address) of such real estate. Also, see paragraph (1)(E) above regarding State Financial Interest Report.
 - (B) **Distribution of Commission Member Disclosure Report:** The commission secretary will distribute the Commission Member Disclosure Report to the director, the chief counsel, all members of the conflicts committee, all MoDOT division directors and all district engineers.
 - (C) **Division and district review:** The MoDOT division directors and the district engineers shall review the Commission Member's Disclosure Report and provide written comments to the commission secretary regarding: (1) the effect of any potential conflict of interest on his/her area of responsibility; and (2) any additional information known by the staff that may have been overlooked by the Commission member in preparing the report.
 - (D) **Conflicts committee review and advice to director:** After reviewing the Commission Member's Disclosure Report and the staff comments, the conflicts committee shall advise the director of potential conflicts and the recommended course of action to be taken by MoDOT and the Commission member.
 - (E) **Discussion with member:** With director concurrence of the course of action, the chief counsel will discuss the matter with the affected commission member.
 - (F) **Notice to member:** To assist the Commission members in identifying potential conflicts of interest, the director, commission secretary, chief counsel, and MoDOT division directors and district engineers will make every effort to alert the commission member if a disclosed item is related in any way to an agenda item before the commission for action. This alert will include projects located within one mile of any real property in which a Commission member

individually or a business entity in which the member is an officer, has any ownership, leasehold, or other possessory or financial interest.

(G) **Member's determination regarding participation in commission action:** If a commission member determines an agenda item to be a potential conflict of interest, the member should refrain from any MHTC discussion and/or vote regarding matters such as, but not limited to, award of a procurement contract, request for approval of route alignment, authority to contract with a design consultant, approval of detailed design plans, approval of detailed right of way plans, award of a construction contract, and the like.

(3) **Procedure for disclosure by attorney MHTC members regarding legal representation by their law firms.**

(A) **Commission member disclosure:**

1. **Representation by another attorney in the member's law firm.** When a commission member who is an attorney becomes aware that another member of his or her law firm represents an interest that is or may be adverse to MHTC, MoDOT and/or a MoDOT employee acting in his/her official capacity, the commission member should disclose the representation in a letter to the chief counsel stating that he or she is not and will not become personally familiar with the facts or legal strategy of this representation by the member's law firm and will not personally participate in any future discussion by or decision of MHTC regarding the matter under representation.

2. **Representation by the member.** When a commission member who is an attorney becomes aware that he/she personally represents an interest that is, or may be, adverse to MHTC, MoDOT and/or a MoDOT employee acting in his/her official capacity, the commission member should disclose the representation in a letter to the chief counsel stating why the member believes the continued representation of the adverse or potentially adverse interest is permissible, or in the alternative, what action the member has taken or will take to withdraw from the representation.

(B) **Chief Counsel's report:** The chief counsel will review the matter and advise the MHTC member of his or her opinion regarding the representation, and then place the matter on the MHTC meeting agenda as a disclosure report.

(C) **Pecuniary gain:** The commission member should avoid participating in any pecuniary gain realized by his or her law firm from the representation to avoid any potential or appearance of conflict of interest.

(4) **Real property acquisition procedure:** When a member individually or a business entity in which the member is an officer has any ownership, leasehold or other possessory or financial interest in real property for which an offer of just compensation will be made so that it may be acquired by MHTC for a project, the following procedure should be used by the commission member and shall be followed by MoDOT staff and special conflicts counsel.

- (A) **Fee appraisal(s):** The district will have a preliminary estimate of damages in a fee study. If in the fee study, the apparent compensation is estimated to be \$500 or more, the district's right of way unit will have one or more fee appraiser(s) determine just compensation for the property to be acquired and the damage, if any, to the property's remainder. If the apparent compensation in the fee study is less than \$500, the appraisal will be prepared by district staff appraiser(s) and approved by district chief appraiser or right of way manager who is a certified appraiser.
- (B) **Central office review and approval:** If the approved offer is \$500 or more, a central office right of way reviewing appraiser or field liaison officer who is also a certified appraiser will review the appraisal(s) and determine the approved offer of just compensation.
- (C) **FHWA review and approval:** MoDOT staff will secure review and approval of the appraisal(s) and the approved offer of just compensation from the Federal Highway Administration.
- (D) **MHTC review and approval:** When the approved offer exceeds \$500, Section 105.454 (2), (3) RSMo. requires public notice before the sale of real property. Therefore, the right of way director shall place the matter on MHTC's open session meeting agenda for the Commission to review and finally approve the offer of just compensation (with the affected member abstaining from discussion and voting) prior to the offer being made to the commission member. To provide adequate public notice, the agenda item shall be styled: "Purchase of Real Property Interest from Commissioner _____ ." However, if the approved offer does not exceed \$500, MHTC review and approval is unnecessary.
- (E) **Offer of just compensation to MHTC member:** The approved offer will then be made by the district's right of way department to the member, or the corporation or entity for which the member is an officer, or his/her/its authorized representative. However, the member/corporation/entity will be encouraged to refuse the offer and go through condemnation to avoid any appearance of impropriety if the offer is more than \$10,000. Provided further, however, if the offer is \$10,000 or less, the member/corporation/entity need not be encouraged to go through condemnation and may execute a deed for the real property in exchange for the approved offer.
- (F) **Condemnation:** If the MHTC member agrees to the condemnation, the parcel will be condemned at the first opportunity by special conflicts counsel approved by MHTC (with the affected member abstaining from discussion and voting).
- (G) **Settlement:** Once the condemnation commissioners appointed by the circuit court have set a value for the property, if that value is acceptable to all parties, a proposed settlement in the amount of the condemnation commissioners' award should be presented to the court for its review, approval, and entry of a judgment, but the court shall be requested by the special conflicts counsel to delay its action until after the member's term ends to avoid any appearance of impropriety.
- (H) **Jury trial:** Should either party not agree with the value established by the

condemnation commissioners and file exceptions to the condemnation commissioners award, the special conflicts counsel should prepare the case for trial, but shall request the circuit court to delay the jury trial until after the commission member's term expires to avoid any appearance of impropriety. The final price for the property will be that determined by jury verdict and the court's final judgment after appeal, if any.

- (I) **Rule 17:** Should the circuit court refuse under section (4)(G) or (4)(H) above to delay the action under Missouri Supreme Court Operating Rule 17, the special conflicts counsel shall consult with MHTC in closed meeting regarding the appropriate course of action (with the affected member being excluded from the meeting).

Effective Date: November 7, 2013
Supersedes Policy Dated: November 9, 2005
Last Reaffirmed:
Date of Origin: November 4, 1994

Related Commission Actions: November 4, 1994; December 1, 1995; April 3, 1997; March 12, 1999; May 5, 2000; November 8, 2000; September 4, 2003; November 9, 2005; November 7, 2013 – Comprehensive Policy Review.

EXHIBIT 1

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¹ A copy of the actual statutes consists of 24 pages and is available upon request from the Chief Counsel.

Commission members should be familiar with the relevant and applicable ethics statutes:

- (1) **General financial interest statement statutes:** Sections 105.483 to 105.492 and 105.963 RSMo. 2005, as amended, are applicable to certain state officials and decision making public servants including MHTC members and MoDOT management require MHTC members to file annual financial interest statements with the Missouri Ethics Commission which are then public records.
- o Section 105.485 RSMo 2005 requires commission members in their annual statements to disclose specified information for the member, their spouse, and the member's dependent children, including, but not limited to:
 - o annual income of \$1,000 or more from an employer (§105.485.2(1));
 - o the identity of any business entity² in which the member has an ownership interest;
 - o except that for closely held corporations or limited partnerships, no disclosure is required if the member owns less than 10% of any outstanding stock or limited partnership units; and
 - o further except that for any publicly traded corporation or limited partnership which is listed on a regulated stock exchange or automated quotation system, no disclosure is required where the member owns less than 2% of any class of outstanding stock, limited partnership units or other equity interests unless the member receives \$1,000 or more income per year from such business entity which would then require disclosure (§105.485.2(2), (3));
 - o the name and address of each business entity in which the member owns stock, bonds, or other equity interest with a value in excess of \$10,000 except that such member does not need to report interests in publicly traded corporations or limited partnerships listed on a regulated stock exchange or automated quotation system nor interests in any qualified plan/annuity pursuant to the Employees' Retirement Income Security Act (§105.485.2(5));
 - o the location and property tax classification of any real property in Missouri owned (or leased for more than 10 years) other than the member's residence, having a fair market value of \$10,000 or more (§105.485.2(4));
 - o the identity of each corporation for which the member served in the capacity of a director, officer or receiver (§105.485.2(6));
 - o the name and address of each not-for-profit corporation, organization or union, whether incorporated or not, except for not-for-profit corporations formed to provide church services, fraternal organizations, or service clubs in which such person was an officer, director, employee or trustee but which the member draws no remuneration, as well as a general description of the nature and purpose of the organization (§105.485.2(7));
 - o the name and address of each source from which the member received a gift or gifts, or honoraria or honorarium in excess of \$200 in value per source during the year covered by the statement other than gifts from family members within the third degree of consanguinity or affinity and gifts construed to mean political

² Business entity means any corporation, association, firm, partnership, proprietorship, or business entity of any kind or character (§105.450(2) RSMo).

contributions otherwise required to be reported, or gifts of hospitality such as food, beverages, or

admissions to social, art, or sporting events. For purposes of this section, a gift would include gifts to or by creditors of the member for the purpose of canceling, reducing or otherwise forgiving the indebtedness of the member to that creditor (§105.485.2(8));

- o the lodging and travel expenses provided by any third person for expenses incurred outside the state of Missouri whether by gift or in relation to the duties of the member's office with exceptions for travel for which the official may be reimbursed, paid by family members, and the like (§105.485.2(9));
 - o the assets in a revocable trust (§105.485.2(10)); and
 - o the name, position, and relationship of any relative within the first degree of consanguinity or affinity to the member who: (1) is employed by the state of Missouri, by a political subdivision of the state; (2) is a lobbyist; or (3) is a fee agent of the Department of Revenue (§105.485.2(11)).
- o Violation of these sections may result in a member's loss of compensation, suspension, removal from office, and/or a daily late filing fee (\$10/day) §105.492 and 105.963.

(2) General conflict of interest and lobbying statutes:

- o Section 105.452 RSMo 2000 and Section 105.454 RSMo. 2005 are general conflict of interest statutes applicable to all state officials and employees including MHTC members and MoDOT employees. These statutes prohibit actual conflicts of interest including, but not limited to:
 - o favorably acting or refraining from acting on any matter or using decision making authority to obtain financial gain (§105.452(1), (4) and (5) RSMo. 2000);
 - o disclosing and/or using confidential information obtained in his/her official capacity in any matter with the intent to result in financial gain (§105.452(2) and (3) RSMo. 2000);
 - o performing any service for an agency in which he/she is an officer or employee or has supervisory authority for payment in excess of \$500 per transaction or \$5000 per year without competitive bidding (§105.454(1), (3) RSMo. 2005); and
 - o selling or leasing any property³ to an agency in which he/she is an officer or employee or has supervisory authority over for payment in excess of \$500 per transaction or \$5000 per year without competitive bidding (§105.454(2), (3) RSMo. 2005). However, this provision does not apply to property that is condemned by the agency from its officer or employee (§105.466.3 RSMo. 2005).
- Sections 105.470 RSMo 2000 defines an “executive lobbyist” as a person who attempts to influence the actions of the executive branch of government, including a commission like MHTC. The conduct of executive lobbyists is regulated and for things like food and beverages,

³ Property includes both real property and personal property. Real property includes land or real estate including whatever is erected on, growing on, or affixed to the land. Personal property includes all property that is not real property, including corporeal personal property such as products, equipment, machinery, tools, autos, merchandise, animals, etc., and incorporeal personal property such as stocks, bonds, annuities, patents, copyrights, etc.

fees that are waived or reduced, gifts, and transportation costs, expenditures made by an executive lobbyist in lobbying appointed officials, like MHTC members, must be reported to the Missouri Ethics Commission and are available for public inspection.

For example, gifts of baseball tickets, meals and greens fees fall within the definition of “expenditure” and must be reported by the lobbyist; not the MHTC member, unless the ticket, meal, or green fee is necessary for the MHTC member to perform his/her duty as a MHTC member when participating in a ceremony, public presentation or official commission meeting.

- o A first violation of these sections is a Class B misdemeanor, but subsequent violations are Class D felonies. Section 105.478 RSMo. 2000.

(3) Specific conflict of interest statutes applicable to MHTC members:

(A) **Motor carrier and railroad regulation**--Sections 622.120 and 622.130 RSMo. 2000, and Section 226.008.3 RSMo 2002, as amended, apply to MoDOT and its employees as a result of the 2002 One Stop merger and prohibit certain conflicting acts and financial interests.

- o Section 226.008.4 abolished the division of motor carrier and railroad safety within the department of economic development.
- o Pursuant to Section 226.008.3, all the powers, duties and functions of the division of motor carrier and railroad safety under state law, including Chapter 622 RSMo, were transferred to MoDOT, which is governed by MHTC.
- o In the opinion of the chief counsel, section 622.120 prohibits MHTC from appointing anyone to an office or MoDOT from employing anyone in a position involved in the regulation of motor carriers or railroads who holds any official relation to, owns stocks or bonds therein or has any pecuniary interest in any common carrier, railroad corporation, street railroad corporation, transportation of freight or property company, carrier, corporation or person subject to any of the provisions of chapters 387, 388, 389, 390, 391 or 622 RSMo.
- o Section 622.130, in the opinion of the chief counsel, prohibits any person appointed by MHTC to an office or employed by MoDOT in a position involved in the regulation of motor carriers or railroads from recommending, directly or indirectly, to any common carrier or other person subject to regulation, any person for employment. Also, any regulated person or entity is forbidden from providing any MHTC appointee or MoDOT employee any transportation that is free or at a reduced rate, or any present, gift, entertainment, or gratuity of any kind.
- o Any MHTC appointee or MoDOT employee who violates section 622.130 is subject to removal from office or employment and further is guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and imprisonment. Section 622.130.2 and .4 RSMo.

(B) **Political fund raising**--Section 226.033, RSMo 2003 provides that any MHTC member appointed or reappointed after March 1, 2004 shall not: (1) host or manage a political fund-raiser or solicit funds for any candidate who is seeking a

statewide or nationally elected office; or (2) serve on the board or chair any political action committee or political party committee.

(C) **Highway construction, maintenance, funding and insurance--**

- o Section 226.090 RSMo. 2000 prohibits actual conflicts of interest and provides, in part, that no MHTC member or MoDOT employee shall, directly or indirectly, have any pecuniary interest in, or act as agent for, the sale of road or bridge building material, equipment, tools, machinery or supplies, or in any contract for the construction or maintenance of state highways or bridges, or the financing thereof, or in any performance bond or workers' compensation or any other insurance furnished to MHTC, or insurance furnished to any person, firm or corporation contracting with MHTC.
- o 226.090 states that a violation of its provisions is an unspecified misdemeanor. Pursuant to section 557.021 RSMo. 2000, unspecified misdemeanors carry the penalty of a class A misdemeanor.

- (4) **Specific removal statute applicable only to MHTC members:** Section 226.030 RSMo. 2004, as amended, provides that any commission member may be removed by the governor if the governor is fully satisfied of the commission member's inefficiency, neglect of duty, or misconduct in office