

Missouri Ethics Commission

CONFLICT OF INTEREST

FOR ELECTED &
PUBLIC OFFICIALS



www.mec.mo.gov

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MISSOURI ETHICS COMMISSION

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Information about the Missouri Ethics Commission (MEC), including forms, publications & other resources, can be found on the Commission's website at www.mec.mo.gov.

THIS BOOKLET IS INTENDED ONLY AS A GUIDE TO AID UNDERSTANDING OF THE MISSOURI ETHICS LAWS. FOR THE LAW'S COMPLETE REQUIREMENTS, CONSULT THE LAW ITSELF (PARTICULARLY CHAPTER 105 OF THE REVISED STATUTES OF MISSOURI).

ABOUT THE COMMISSION

MEET THE COMMISSION...

At the Commission, we **serve** the public interest. We **assist and educate** our customers, we **create transparency and accountability**, and we **consistently enforce** Missouri's ethics laws. Transparency and public information is a priority. We hope you find our website, searches, and resources useful.

We are a 22-person, professional, and non-partisan staff. The Commissioners are appointed to four-year terms by the Governor, from the Congressional Districts.

Candidates, lobbyists, and public officials register and file with the Commission (on an annual basis approximately 2,500 campaign finance committees are registered resulting in 11,000 campaign finance disclosure reports filed, 1,000 lobbyists are registered and file monthly reports, and 10,000 personal financial disclosure statements are filed). We **assist** this community.

Our responsibility includes enforcing the laws. We conduct investigations related to those filing reports with us and from received complaints. The Commission's authority and jurisdiction are defined in Missouri law. A case is investigated factually and the Commissioners' decisions are based on the investigative facts and law.

As we administer the ethics laws, we are a resource to the Legislature as it looks to improve financial transparency, accountability, and fairness in the election process. The Commission is committed to strengthening Missouri's ethics laws and the Commission's integrity.

 VISIT OUR WEBSITE AT WWW.MEC.MO.GOV

ADVISORY OPINIONS

WHAT IS AN ADVISORY OPINION?

An **advisory opinion** is an opinion issued by the Commission that advises on the interpretation of a law. The Commission may render advisory opinions as provided by §105.955.14 - §105.955.16 of the Revised Statutes of Missouri (RSMo.).

To **request** an advisory opinion from the Commission, the person requesting must:

1. Submit the request in writing; and
2. Be directly affected by the application of law to the facts presented

The Commission will **issue** a written opinion regarding any issue that the Commission can receive a complaint on pursuant to §105.957 RSMo. The opinion will advise the person who made the request and will be specific to the particular request and the facts presented.

The Commission may **decline** to issue a written opinion by a vote of four members and must provide to the requesting person the reason for the **refusal in writing**. (The Commission encourages anyone considering requesting an advisory opinion to contact the MEC in advance to ensure that the request fits within the Commission's guidelines.)

The Commission shall give an approximate time frame as to when the written opinion shall be issued. Such advisory opinions may be issued no later than ninety days from the date of receipt by the Commission.

Such requests and advisory opinions, deleting the name and identity of the requesting person, are compiled and published by the commission on at least an annual basis. Advisory opinions issued by the Commission must be maintained and made available for public inspection and copying at the office of the Commission during normal business hours.

ADVISORY OPINIONS

WHAT IS AN ADVISORY OPINION? (CONT)

Any advisory opinion issued by the Commission may act as **legal direction** to the person requesting such opinion and said requesting person shall not be liable for relying on the opinion and it may act as a defense of justification against prosecution. (Anyone examining an advisory opinion should be careful to note that the opinion pertains to the specific facts therein and as to the law as it existed on the date of the response.)

Advisory opinions are available on the Commission's website:

1. **Go** to www.mec.mo.gov
2. **Select** Advisory Opinions
(<http://mec.mo.gov/EthicsWeb/Opinions/Opinions.aspx>)

Opinions may be searched by Topic or by Topic and Keyword:

- All Topics
- Campaign Finance
- Conflict of Interest
- Lobbying
- Personal Financial Disclosure

Full PDF versions of the opinion are also available.



CONFLICT OF INTEREST

WHAT IS CONFLICT OF INTEREST?

A conflict of interest is generally defined as a conflict between the private interests and the official responsibilities of a person in a position of trust. The Commission enforces specific laws that define conflict of interests by public officials and employees. The following is a list of Missouri laws that specifically define these conflict of interest laws.

WHAT LAWS GOVERN CONFLICT OF INTEREST?

- 1. Missouri Constitution**
- 2. Missouri Revised Statutes (§105.450-105.467)**

The statutes generally address financial gain by an official, employee, spouse, dependent child(ren), or business of the official or employee. *NOTE: Because the statutes are very specific, the statutory language should always be read.*

Conflict of interest laws may also be contained in the statutes which address the agency or political subdivision, including:

Statute	Agency/Political Subdivision
Chapters 26-30:	Executive Branch
Chapter 46-70	Counties, Townships, Political Subdivisions
Chapters 71-100	Cities, Towns, Villages
Chapter 190	Emergency Services
Chapters 347-360	Corporations, Associations, Partnerships, Public Bodies (e.g. Industrial Development Corporations under Ch. 349)
Chapters 620-680	Other executive departments

- 3. Local ordinances, charters, policies and procedures**

State departments, officials and boards and commission may have specific conflict of interest policies or orders in addition to the statutes. Cities, counties, school districts, and other political subdivisions may also have adopted local ordinances, charters, laws, policies, and procedures regulating conflict of interest.

CONFLICT OF INTEREST

WHO IS REQUIRED TO FOLLOW CONFLICT OF INTEREST LAWS?

Pursuant to the Missouri Constitution and Chapter 105 RSMo., the following individuals must follow conflict of interest laws:

- Any public officer or employee in this state [specific to nepotism clause] (Art. VII, Sect 6—MO Constitution)
- Elected or appointed public officials & employees (§105.452)
- Certain elected or appointed public officials and employees serving in an executive or administrative capacity (§105.454)
- Members of the general assembly and statewide elected officials (State Senator, State Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer & State Auditor) (§105.456)
- Members of governing bodies of political subdivisions (§105.458)
- Officials with a substantial personal or private interest in any measure, bill, order or ordinance proposed or pending (§105.461)
- Persons with rulemaking authority (§105.462)
- Persons in judicial or quasi-judicial positions (§105.464)

Exceptions:
(§105.466)

- Person performing any ministerial act or any act required by order of a court or by law to be performed
- Person communicating with the office of the attorney general or any prosecuting attorney or any attorney for any political subdivision concerning any prospective claim or complaint then under consideration not otherwise prohibited by law
- Person, firm or corporation receiving compensation for property taken by the state or any political subdivision thereof under the power of eminent domain

CONFLICT OF INTEREST

WHAT CONDUCT DO CONFLICT OF INTEREST LAWS COVER?

Generally:

- Employment and compensation in other capacities
- Financial gain/influencing decisions
- Hiring or voting to hire individuals related by blood or marriage (nepotism)
- Performing a service or conducting a business transaction with the political subdivision

IN THIS SECTION...

- Nepotism
- Ch. 105 General Provisions
 - Employment
 - Providing Services/Conducting Business
 - Interest in Proposed Ordinance
 - Purchasing/Bidding Requirements
 - Bid Acceptance
 - Quid Pro Quo
 - Voting
 - Penalties for Violations
- Legislators & Statewide Elected Officials FAQs



CONFLICT OF INTEREST NEPOTISM

WHAT IS NEPOTISM?

Nepotism is when any public officer or employee in this state who by virtue of his office or employment **names or appoints to public office or employment any relative within the 4th degree** by consanguinity or affinity. (Art. VII, Sect 6—MO Constitution). In addition, the political subdivision's own policies and procedures should be consulted.

Consanguinity means related by blood or descended from a common ancestor. Affinity means a relationship by marriage or adoption, not a blood relationship. A relationship by affinity (marriage) terminates if death or divorce occurs.

There are many charts available that outline degrees of family relationships or you may use the **Relationship Chart** found on the next page or on the Commission's website. The 4th degree includes a great-great-grandparent, great-aunt or uncle, 1st cousin, great-niece or nephew and great-great-grandchild.

WHAT IS THE PENALTY FOR NEPOTISM?

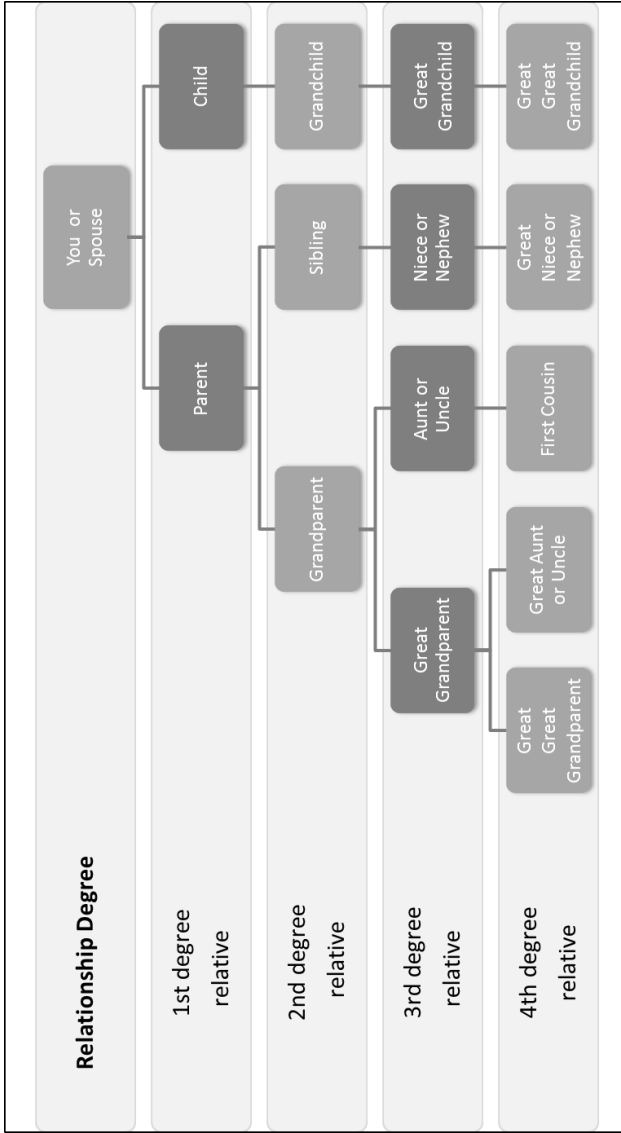
The penalty for nepotism is **automatic forfeiture of office**. Legal action may be pursued (by the appropriate prosecuting attorney or disciplinary authority) to remove the individual from office or employment. (Art. VII, Sect 6—MO Constitution).

 [SEE FAQs ON OUR WEBSITE](#)

(www.mec.mo.gov/WebDocs/PDF/Complaint/ConflictofInterestFAQ.pdf)

CONFLICT OF INTEREST NEPOTISM

RELATIONSHIP CHART



Consanguinity relationships are relatives by blood. Affinity relationships are relatives by marriage or adoption.

CONFLICT OF INTEREST

CHAPTER 105 RSMo.

WHAT CONDUCT DOES CH. 105 RSMo. ADDRESS?

Chapter 105 RSMo., generally **prohibits financial gain** for oneself (public or elected official), one's spouse and/or dependent child(ren).

It also addresses the issue of receiving additional compensation via employment, providing services/conducting business and other activities or actions.

FINANCIAL GAIN

A public official or employee **cannot** take part in:

- **Making** decisions that may financially impact themselves or their family when the vote would provide them, their spouse, or dependent child(ren) a special monetary benefit which is not provided to everyone in the same class (ie retirement benefits). The term special monetary benefit is defined in the statute as being materially affected in a substantially different manner or degree than the public in general or members of a special class will be affected. (§105.452(4) RSMo.)
- **Using** their decision-making authority for the purpose of obtaining a financial gain which materially enriches themselves or their spouse or dependent child(ren) for the purpose of coercing or extorting from another anything of actual monetary value (§105.452(5) RSMo.)
- **Participating** (those serving in an executive or administrative capacity) in any manner where they attempt to influence any decision of any agency of the state or political subdivision when they know the result of the decision may be the acceptance of the performance of a service or the sale, rental, or lease of any property to that agency for



CONFLICT OF INTEREST

CHAPTER 105 RSMo.

FINANCIAL GAIN: (CONT)

consideration in excess of \$500 per transaction or \$5,000* annually to:

- Themselves, their spouse or dependent child(ren) in custody UNLESS the transaction is made after public notice, competitive bidding (other than real property), and the bid accepted is the lowest bid; OR
- Any business** with which they are associated unless the transaction is made after public notice for real property and public notice or competitive bidding for other property. The official or employee's bid must be the lowest received. This includes officers and members of a Board of Directors doing business with the state or any political subdivision of the state (§105.454 RSMo.)

*Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum..."

**Business includes sole proprietorships; partnerships or joint ventures, other than as a limited partner of a limited partnership; corporations or limited partnerships in which the person is an officer or director, or owns more than 10% of the outstanding shares of any class of stock or partnership units; or trusts. The business relationship provision includes spouses and any dependent child(ren). (§105.450(3) RSMo.)

Confidential information:

Public officials and employees of the state or any political subdivision of the state **may not use or disclose confidential information** obtained in their official capacity or during employment with the intent of financial gain for themselves, their spouse, any dependent child(ren), or any business with which they are associated. (§105.452 RSMo.)

CONFLICT OF INTEREST

CHAPTER 105 RSMo.

EMPLOYMENT—(§105.454, 105.456, 105.458 RSMo.)

As a general rule, an elected or appointed public official **cannot be employed in another capacity or position** in the same political subdivision in which they serve. This provision applies to:

- Elected or appointed public officials, in an executive or administrative capacity
- Members of the general assembly and statewide elected officials
- Members of any legislative or governing body of any political subdivision

Examples:

1. A county official cannot also be a county employee
2. A city mayor cannot also serve as an employee in another capacity
3. A school board member cannot also serve as school district employee (i.e. paid substitute teacher, bus driver, etc.)

Former Officials & Employees—1-year rule:

Elected and appointed officials and employees serving in an executive or administrative capacity may not be paid to perform any service for **one (1) year** after they leave public employment by which they **attempt to influence** a decision of any agency of the state or political subdivision in which they were an officer, employee, or over which they had supervisory authority. Exceptions include appearance in an adversary proceeding, preparation of a public document, speaking regarding processes or to educate. (§105.454(5) RSMo.)

CONFLICT OF INTEREST

CHAPTER 105 RSMo.

PROVIDING SERVICES/CONDUCTING BUSINESS

Generally, an official may **provide/perform services** for, or sell, rent or lease property to, the subdivision in an amount **over \$500 per transaction or \$5,000* per year, ONLY IF, public notice and competitive bidding** occurred AND the awarded bid (if to the official) is the **lowest bid received**.

Example:

An elected or appointed official (i.e. city administrator or city alderman) can perform services for the subdivision (i.e. grounds keeping), as long as the services is:

- Not over \$500/transaction or \$5,000* annually; OR
- Awarded under contract after public notice, competitive bidding, and the official's bid was the lowest received. (The official must not participate in the vote to award the contract, request for bidding process, or receive any confidential information related to the bid for services).

This service provided is not to be confused with employment, as the administrator or alderman cannot be otherwise employed by the political subdivision.

NOTE: If an official does have a transaction, it must be disclosed on the official's Personal Financial Disclosure (PFD) statement, if required by political subdivision's conflict of interest ordinance/resolution.

*Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum..."

CONFLICT OF INTEREST

CHAPTER 105 RSMo.

INTEREST IN PROPOSED ORDINANCE—(§105.461 RSMo.)

If an official has a **substantial personal or private interest** (see §105.450 for definition) in an **ordinance pending**, he or she must file a written **report of the nature of the interest** with the clerk/secretary of the governing body **before passing** upon said ordinance.

The official is deemed to have complied with this requirement if he or she filed (or amended) their Personal Financial Disclosure (PFD) statement [see section on PFD for more information] disclosing said interest before passing on the ordinance.

PURCHASING/BIDDING REQUIREMENTS:

The political subdivision should refer and **follow their adopted purchasing ordinances and policies** for specific requirements as well as Chapter 50 RSMo. (county purchasing), Chapters 71-81 RSMo. (cities, towns, villages) and Chapter 105 RSMo. (public officials).

In the absence of a specific statute or rule, the Commission recommends that notice be given either through a newspaper advertisement, public notice placed in areas designated for such, or notice given during an official meeting. **It is important that the public be made aware of the notice.**

Most purchasing policies require:

- Bid requirement dollar threshold
- Public notice of the bid specification & bid consideration criteria
- Sealing of bids
- Acceptance of lowest or lowest and best bid

CONFLICT OF INTEREST

CHAPTER 105 RSMo.

BID ACCEPTANCE:

Chapter 105 RSMo., requires that a **public official's bid be the lowest**, if accepted, EVEN if the political subdivision adopted an ordinance or policy allowing acceptance of lowest and best bid.

NOTE: If over \$500/transaction or \$5,000 per year (\$1,500/year for legislators and statewide elected officials), the public official must disclose same on their PFD statement, if required by political subdivisions' conflict of interest ordinance/ resolution.

QUID PRO QUO—(§105.452.1(1) & 105.452.2 RSMo.)

An elected or appointed official or any employee of the state or any political subdivision of the state **may not act or refrain from acting** by reason of any payment, offer to pay, promise to pay, or receipt of anything of value to himself or any third person. This includes any gift or campaign contribution, made or received in relationship to or as a condition of the performance of an official act.

In addition, an elected or appointed official or employee of any political subdivision **may not offer, promote, or advocate for a political appointment** in exchange for anything of value to any political subdivision. This law applies to existing officials and employees and only addresses anything of value to the political subdivision.

VOTING—(§105.454 RSMo.)

Any elected or appointed official or employee who serves in an executive or administrative capacity **may not participate in any matter**, directly or indirectly, in which he or she **attempts to influence any decision** of any agency of the state or political subdivision thereof in which he or she is an officer or employee or over which he or she



CONFLICT OF INTEREST

CHAPTER 105 RSMo.

VOTING—(§105.454 RSMo.) - (CONT)

has supervisory power, when he or she knows the result of such decision may be the acceptance of the performance of a service or the sale, rental, or lease of any property to that agency for consideration in excess of \$500 per transaction or \$5,000* per annum to him or her, to his or her spouse, to a dependent child in his or her custody or to any business with which he or she is associated **unless** the transaction is made pursuant to an **award** on contract let or 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 received.

*Pursuant to §105.456, consideration for legislators & statewide elected officials states "...in excess of \$500 per transaction or \$1,500 per annum..."

PENALTIES FOR VIOLATIONS:

A complaint can be filed with the Missouri Ethics Commission against the public official or employee who violates a Chapter 105 conflict of interest law and/or their political subdivision's ordinances/policies. The Commission may assess penalties, including financial penalties, against the official or employee.



🔗 SEE [FAQS](#) ON OUR WEBSITE

(www.mec.mo.gov/WebDocs/PDF/Complaint/ConflictofInterestFAQ.pdf)

CONFLICT OF INTEREST

LEGISLATORS & STATEWIDE ELECTED OFFICIALS FAQS:

- Q: Can legislators be employed by the State or the political subdivision they represent?
- A: No, members of the General Assembly may not be employed by any agency of the state or a political subdivision while serving in the House or Senate. (§105.456 RSMo.)
- Q: Can legislators or statewide elected officials conduct business with the political subdivision?
- A: Yes, under the following circumstances (§105.456 RSMo.):
- If the business was awarded to the legislator, official, or business of the legislator or official, after public notice, competitive bidding AND the award was to the lowest bidder; OR
 - The service, sale/rent/lease of a property, or business transaction conducted was not more than \$500 per transaction or \$1,500 per year.
- Q: Can legislators be employed by companies that do business with the state?
- A: Yes, but legislators should not vote on any measure which would give preferential treatment to the company or special monetary benefit to the legislator, spouse or dependent child(ren). The legislator must disclose any substantial interest in a bill before voting. (MEC Adv. Opin. 2009.04.CI.002, 2008.09.CI.007)
- Q: Can legislators or statewide elected officials purchase, rent or lease property from the state or their district?
- A: Yes, the conflict of interest statutes do not directly address the purchase, rent, or lease of property from a political subdivision. The official should ensure that they have not acted to give themselves a special monetary benefit or that they are not treated any differently than any member of the general public. They cannot use or disclose confidential information related to the transaction. (MEC Adv. Opin. 2007.02.CI.003)

PERSONAL FINANCIAL DISCLOSURE (PFD)

WHAT IS PERSONAL FINANCIAL DISCLOSURE?

The **purpose** of filing a Personal Financial Disclosure (PFD) statement is to provide to the public information about a public official's, an employee's or a candidate's financial interest. Historically, the PFD statement has been used to disclose any potential conflicts of interest by a public official or employee.

PFD requirements are governed by §105.483 through §105.492 of the Revised Statutes of Missouri. (Also, see [Guide to Personal Financial Disclosure](http://www.mec.mo.gov/EthicsWeb/PFD/PFD_Publications.aspx) on our website (www.mec.mo.gov/EthicsWeb/PFD/PFD_Publications.aspx) for more information).

WHO HAS TO FILE A PFD?

Certain public officials and candidates, in political subdivisions* with an annual operating budget (AOB) over \$1 million dollars are **required by law** to file based upon the position they hold or the office they are running for. These positions include each elected official, candidate for elected office, Chief Administrative Officer, Chief Purchasing Officer, General Counsel (if employed full-time), and any official or employee authorized to promulgate or adopt rules and regulations. **NOTE:** Filers are required to file for each year, or portion of a year, for which they hold/held office.

***What is a political subdivision?** It is a district, sub district or special district of the state with taxing authority. **Examples:** county, city, town, village, township, school district, public water supply district, fire protection district, hospital district, health center, nursing home district, ambulance district, library district, road district and other districts formed (pursuant to Missouri law) to provide limited, specific services.

PERSONAL FINANCIAL DISCLOSURE (PFD)

WHO HAS TO FILE A PFD? (CONT)

However, each political subdivision has the **option of adopting an ordinance or resolution** setting forth their own method of disclosing conflicts of interest and personal financial disclosure. If an ordinance/resolution is adopted then, at a minimum, only the Chief Administrative Officer and Chief Purchasing Officer are required to file along with any candidate, public official or their relative (within the 1st degree by blood or marriage) that has conducted business or owns a substantial interest in a business that has conducted business with the political subdivision in excess of **\$500 per transaction**.

The ordinance/resolution must be adopted biennially (every other year) by September 15, and a certified copy sent to the Missouri Ethics Commission with 10 days of its adoption. (See sample ordinance on our website at <http://www.mec.mo.gov/WebDocs/PDF/PFD/SampleOrdinance.pdf>)

WHAT DO I NEED TO FILE?

The long version (Personal Financial Disclosure Statement) is generally filed by all officials, **UNLESS** the subdivision has an ordinance or resolution on file, then the filer files the short version (Financial Disclosure Statement for Political Subdivisions).

NOTE: Many subdivision's ordinances only require a filer to file a PFD if they met one or both of the business transaction provisions as stated in the ordinance. If no such activity occurred, then that filer is not required to file a PFD.



USE OF PUBLIC FUNDS

USE OF PUBLIC FUNDS—(§115.646 RSMo.)

No contribution or expenditure of **public funds*** can be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office.

This does not prohibit any public official of a political subdivision from making public appearances or from issuing press releases concerning any such ballot measure.

*Public funds are moneys belonging to government or any department of it in the hands of public officials. (MEC Adv. Opin. 2003.07.105)

Examples:

1. Use of the office copier, fax, or paper
2. Use of office computers & printers

USE OF PUBLIC FUNDS—ADVISORY OPINIONS:

Opinion #	Description
1996.04.126	It is a violation of §115.646 for an individual to display campaign signs on a personal vehicle when mileage is reimbursed by county or state (while not clear from the opinion, the vehicle was used full-time for public business).
1996.03.123	School district may not use their postal permit to promote bond issue.

TRAINING/RESOURCES

Visit the [training](#) page on our website to view the training & webinar schedule, web tutorials and more!!

www.mec.mo.gov/training

FLYERS/BROCHURES

- Conflict of Interest Relationship Chart
- Guide to Personal Financial Disclosure
- Campaign Finance Candidates/Committees
 - After Election Requirements & Debt Service Committees
 - Campaign Materials Identification Requirements (Paid for by)
 - Fund-Raising Activity
 - Guide to Continuing Committees (PACS)
 - Guide to Record-Keeping
 - Statement of Limited Activity Requirements
 - Terminating a Committee
 - Treasurer's Guide for Campaign Finance
 - When to Form & Register a Committee
 - Upcoming Deadlines & Reminders (by election)

TUTORIALS

- Lobbyist (series of 4)
- Ethics Overview (series of 4)
- Campaign Finance—Candidates/Committees
 - Campaign Materials Identification Requirements (pd for by)
 - Candidate Reporting Requirements Tutorial
 - Forming a Campaign Finance Committee Tutorial
 - Supplemental Forms—paper filers
- Campaign Finance e-filing
 - Reporting for e-filers (series of 4)
 - Import Function Tutorial
 - Overview & Navigational Tutorial
 - Section Wizard Tutorial
- Political Subdivision—Duties and Responsibilities with MEC



WATCH OUR WEBSITE FOR NEW RESOURCES!

NOTES



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Missouri Ethics Commission

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Chair

Democrat

7th Congressional District

Term expires March 15, 2018

Bill Deeken

Vice Chair

Republican

3rd Congressional District

Term expires March 15, 2018

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4th Congressional District

Term expires March 15, 2020

George Ratermann

Republican

2nd Congressional District

Term expires March 15, 2020

Don Summers

Republican

6th Congressional District

Term expires March 15, 2020

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