



Ethics for Finance Officers

GREG DOHRMAN &
LYNDEE RODAMAKER

CUNNINGHAM, VOGEL & ROST, P.C.
legal counselors to local government



Today's Topics

GFOA CODE OF ETHICS

STATUTORY
RESTRICTIONS

CONFLICTS OF
INTEREST

USE OF
PUBLIC FUNDS

GFOA – Code of Ethics

Integrity and
Honesty

Producing
Results for *My*
Community

Treating
People Fairly

Diversity and
Inclusion

Reliability and
Consistency



Statutory Restrictions

CHAPTER 105 STATUTORY
ETHICS MANDATES

General Provisions of Chapter 105 RSMo.

Use or disclose confidential information with intent to result in financial gain for themselves, their spouse, their dependent child, or any business which they

Use decision making authority for the purpose of obtaining financial gain which materially enriches themselves, their spouse or dependent children

Perform any service, act or refrain from acting or attempt to influence a decision by reason of any payment, offer to pay, promise to pay or receipt of anything of actual pecuniary value

Favorably act on any matter that is so specifically designed so as to provide a special monetary benefit

Sell, rent or lease any property, or provide services, to the City in excess of \$500 per transaction or \$5,000 per year unless competitively bid and provided the bid is the lowest received

Perform 1 year after termination any service for compensation to influence the decision

Main Ethics Statutes – Prohibited Transactions

§ 105.452-.454 – elected and
appointed public officials and employees

§ 105.458 – members of governing
bodies and political subdivisions

§ 105.462 – persons with rule making
authority

§ 105.461 – disclosure

Statutory Disclosure

- § 105.461 – “... Any member of the governing body of a political subdivision who has a substantial personal or private interest in any measure, bill, order or ordinance proposed or pending... shall, before such official passes on the measure, bill, order or ordinance, file a written report of the nature of interest with... Clerk... .”
- This requirement is deemed met if the member filed a financial interest statement pursuant to § 105 483 & § 105.492 which discloses the basis for such substantial personal or private interest
- Consistent with §§ 105.452-.58??

City's Financial Disclosure Policy

§ 105.483 sets forth who is required to file financial interest statements

- (11) Each elected official, candidate for elective office, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of **each political subdivision with an annual operating budget in excess of one million dollars**, and each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules and regulations with the force of law; unless the political subdivision adopts an ordinance, order or resolution pursuant to subsection 4 of section 105.485;

§105.485 Exception Requirements

Biennially adopt by ordinance or resolution

By September 15th the preceding year

Establishing and making public its own method of disclosing potential conflicts or interest and substantial interests

A certified copy of the ordinance or resolution must be mailed to the Missouri Ethics Commission within 10 days of adopting

Containing minimum requirements – contained in the handout

Additional Notes

City Code & City Policies – many cities adopt additional ethical rules for their elected officials and employees. **Before acting, ensure that you review and know these prohibitions as well**

Appearance of Impropriety – just because the action does not violate Chapter 105 prohibitions (or other prohibitions), it does not mean that there is not an appearance of conflict to where it may be better to recuse

- TIP: When in doubt, safest course is to recuse

Another Statute: § 576.040 RSMo, Official Misconduct

It is a class A misdemeanor for a public servant in Missouri to knowingly:

- Discriminate against any employee or any applicant for employment
- Demand or receive any fee for an official act not otherwise due
- Collect taxes when none are due, or demand more than is due

Also prohibited: “a city or county treasurer...or other municipal or county officer...knowingly order[ing] the payment of any money...for any purpose other than the specific purpose for which the same was assessed, levied and collected....”

In other words, it is unlawful to use restricted funds outside of their designated purpose.

This statute relates to all five parts of the GFOA Code of Ethics



Conflict of Interest

General Conflict of Interest Categories

Nepotism

Quid Pro
Quo

Employment

Conducting
Business

Voting

What is nepotism?

- Naming or appointing (hiring) a relative within the 4th degree by blood or marriage to public office or employment
- If relative is an existing employee, do not reappoint or vote on their appointment or employment

The penalty for a nepotism violation is **automatic forfeiture of office or employment.**

Self-executing v. self-enforcing?

What is within the 4th degree?

First Degree

Child

Parents

Second Degree

Grandchild

Brother/Sister

Grandparents

Third Degree

Great Grandchild

Niece/Nephew

Great Grandparents

Aunt/Uncle

Fourth Degree

Great, Great Grandchild

Grand Niece/Nephew

First Cousin

Great Aunt/Uncle

Great, Great Grandparents

A husband is related by marriage (affinity) to his wife's relatives in the same way that she is related to them by blood (consanguinity), and she to his family in the same way

The kindred of the spouses are not related to one another

Half=whole; Step=blood

Relationship by affinity terminates if death or divorce occurs

Relationships by Affinity

What is quid pro quo?

- A public official or employee CANNOT:
 - Act or refrain from acting in exchange for a payment or promise to pay money or anything of value (including gifts or campaign contributions)
 - Offer, promote or advocate for a political appointment in exchange for anything of value to a subdivision

Employment

- Members of any legislative or governing body of any political subdivision cannot be employed in another capacity by the subdivision
- **Incompatible offices** is a common law prohibition one person holding two public offices that are held to be incompatible.
 - Case by case determination looking at job descriptions and duties of both offices.

Incompatible Offices – 2-Prong Test

1. ARE THEY BOTH PUBLIC OFFICES?

- Office must have some degree of permanency and continuity;
- Officeholder must take an official oath of office;
- Created by constitution, legislature, or by a municipality or other body through authority conferred by the legislature;
- Must possess a delegation of a portion of the sovereign power of government, exercised for the benefit of the public

2. ARE THE OFFICES INCOMPATIBLE?

- Turns on whether duties are “inconsistent, antagonistic, repugnant or conflicting”
- **Primary test:** whether one office is subordinate to the other in some aspect of performing its duties – supervision authority, hiring, firing, setting salary, etc.



If the offices are incompatible, taking oath of the 2nd office acts as an implied resignation from the first

Conducting Business

Generally, an official may not provide/perform services for, or sell, rent, or lease property to the subdivision in an amount over \$500/transaction or \$5,000/year, **UNLESS:**



Public notice and competitive bidding occurred



AND the awarded bid, if to the official, is the lowest bid received



If you have such a transaction, must disclose on PFD (if a required filer)

Voting

If a measure would result in

- Performance of a services
- Sale/rental/lease of property

in an amount over

- >\$500/transaction or
- >\$5,000/year

to a

- State/local official/employee in an executive/administrative capacity,
- Their spouse
- Their dependent child, or associated business...

The official/employee may vote on the measure **IF**:

- Public notice and competitive bidding occurred
- AND the bid accepted is the lowest bid received.

Disclosing a
substantial
interest in a
pending
measure, bill,
order, or
ordinance:

File a written report of the nature of the interest with clerk or secretary of governing body before passing upon same.

Requirement met if disclosed on PFD before passing on same.

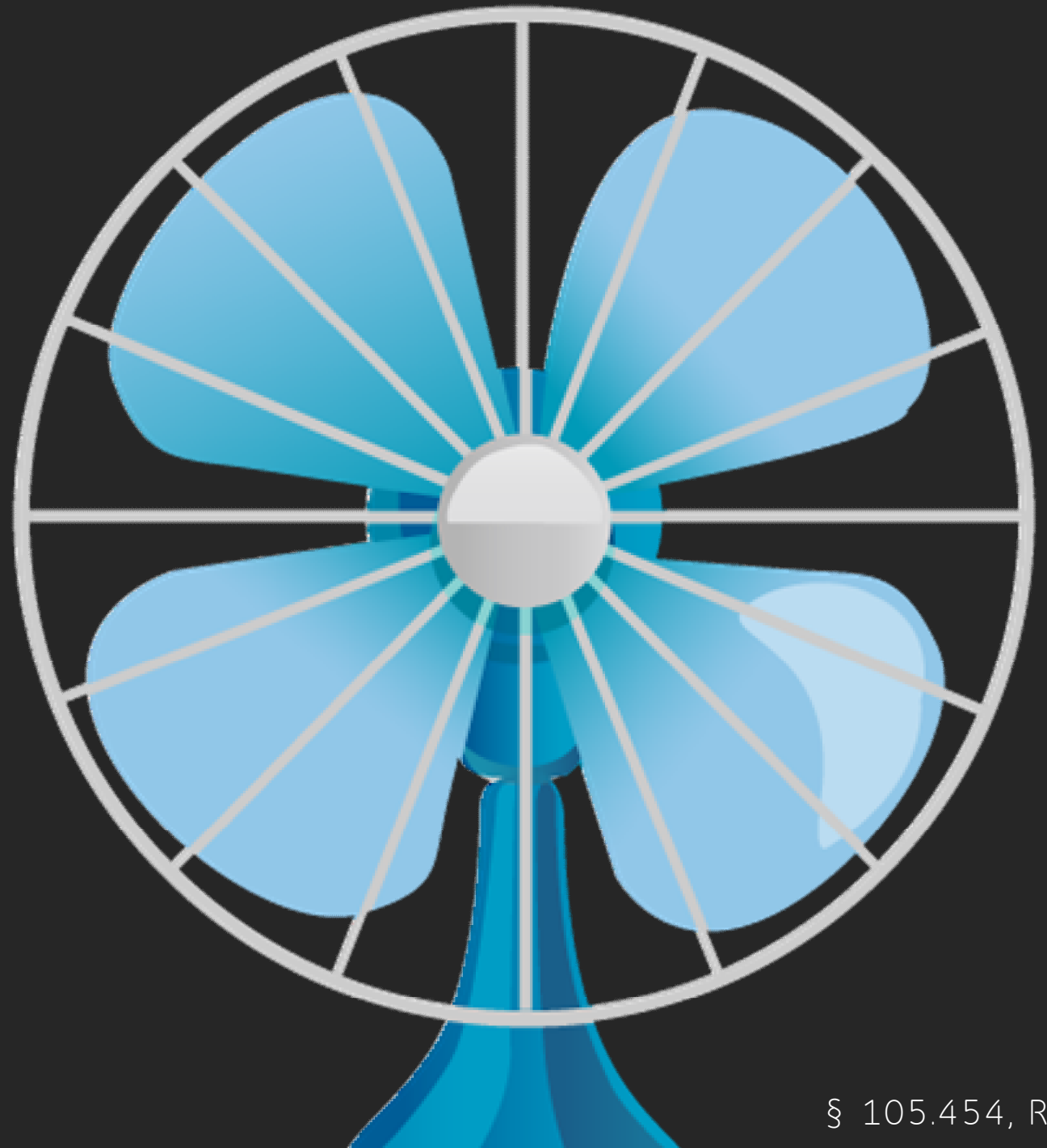
What is substantial interest?

Consider self, spouse, & dependent child(ren)'s financial interests:

- Ownership (directly or indirectly) of $\geq 10\%$ of any business entity
- Ownership (directly or indirectly) of interest valued at $\geq \$10,000$
- The receipt of a salary, gratuity, or compensation or remuneration of $\geq \$5,000$ /calendar year from any individual, partnership, organization, or association

Post-employment cooling-off period

Applies to state/local public
officials and employees serving in
an executive or administrative
capacity



Post-employment cooling-off period

1 year after employment:

Cannot perform services for consideration, attempting to influence a decision of the state or subdivision in which they were an employee or had supervisory authority (some exceptions)

Post- employment cooling-off period

Never:

Cannot perform services for consideration in relation to any case, decision, proceeding, or application with which they were directly concerned or personally participated in during public employment

Use of Public Funds



How can public funds be used?



TO ADVOCATE, OR TO SUPPORT OR
OPPOSE, A CANDIDATE OR BALLOT
MEASURE?



TO MAKE PUBLIC APPEARANCES AND
ISSUE PRESS RELEASES CONCERNING
BALLOT MEASURES?

Employees
should not
engage in
political
activity...

While at work

With public funds

With public resources



Poll Question:

In Missouri, may a city spend public funds to advocate for a ballot proposition to enact a new tax?

- (a) yes
- (b) no
- (c) I would pass this question off to our lawyer
- (d) No one really knows

Answer:

(d) No one really knows

§ 115.646 RSMo. was declared unconstitutional and unenforceable in April, 2021, and the case is currently on appeal in the Missouri Supreme Court.

However, (c) is never a bad answer, and an argument can be made for (b) since it avoids all risk.

Other selected types of illegal expenditures

*Taxpayers may file suit to
challenge any of these*

Paying contractors that do
not have a valid contract
*For example: Riney v. City
of Hannibal*

Use of restricted funds
outside of their designated
purpose
§ 576.040 RSMo

Granting public money to
private parties
Mo. Const. Art. VI, § 25

Questions?

CUNNINGHAM, VOGEL & ROST, P.C.
legal counselors to local government

**For More Information
Visit Our Website:**

www.municipalfirm.com

or contact us at

333 S. Kirkwood Road, Suite 300

St. Louis, Missouri 63122

314.446.0800

greg@municipalfirm.com

lyndee@municipalfirm.com

These materials and the related presentation are intended for discussion purposes and to provide those attending the meeting with useful ideas and guidance on the topics and issues covered. The materials and the comments of the presenters do not constitute, and should not be treated as, legal advice regarding the use of any particular technique, device, or suggestion, or its legal advantages or disadvantages. Although we have made every effort to ensure the accuracy of these materials and the presentation, neither the attorneys presenting at this meeting nor Cunningham, Vogel & Rost, P.C. assume any responsibility for any individual's reliance on the written or oral information presented.