

LEGISLATORS:
GENERAL ASSEMBLY:
CONSTITUTIONAL LAW:
CONFLICT OF INTEREST:

A member of the General Assembly is not prohibited by the Constitution or state law from renting real estate which he owns to a state agency.

Caveat
Chapter 105 sections repealed
and new sections now in force.

OPINION NO. 332

November 16, 1973

Honorable Margaret Miller
Representative, District 145
Post Office Box 72
Marshfield, Missouri 65706



Dear Representative Miller:

This is in response to your request for an opinion from this office as follows:

"Is there a violation of the Missouri Constitution or any statute when a member of the General Assembly rents real estate to a state agency?"

It is our understanding that the request involves only a rental of real estate and that the member of the General Assembly is not to receive payment for any personal services under the rental agreement.

Sections 105.490 and 105.495 of the "conflict of interest law" are the only criminal statutes that might be applicable to a rental of real estate by a state officer or employee to a state agency. Section 105.490, RSMo, provides as follows:

"1. No officer or employee of an agency shall transact any business in his official capacity with any business entity of which he is an officer, agent or member or in which he owns a substantial interest; nor shall he make any personal investments in any enterprise which will create a substantial conflict between his private interest and the public interest; nor shall he or any firm or business entity of which he is an officer, agent or member, or the owner of substantial interest, sell any goods or services to any business entity which is licensed by or regulated in any manner by the agency in which the officer or employee serves.

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"2. Any person who violates the provisions of this section shall be adjudged guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five hundred dollars or by confinement for not more than one year, or both."

Section 105.495, RSMo, provides as follows:

"No officer or employee of an agency shall enter into any private business transaction with any person or entity that has a matter pending or to be pending upon which the officer or employee is or will be called upon to render a decision or pass judgment. If any officer or employee is already engaged in the business transaction at the time that a matter arises, he shall be disqualified from rendering any decision or passing any judgment upon the same. Any person who violates the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than five hundred dollars or confinement for not more than one year, or both."

However, Section 105.450, RSMo, provides the following terms as used in these statutes have the following meanings:

"(1) 'Agency', any department, office, board, commission, bureau, institution or any other agency, except the legislative and judicial branches of the state or any political subdivision thereof including counties, cities, towns, villages, school, road, drainage, sewer, levee and other special purpose districts;"
(Emphasis added)

Under the above-statutory provision of Section 105.450, Sections 105.490 and 105.495, supra, do not apply to the legislative branch of the state.

It is, therefore, the opinion of this department that there is no violation of Sections 105.490 or 105.495, RSMo, when a member of the General Assembly rents real estate he owns to a state agency.

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You also inquire whether there is a violation of the Missouri Constitution when a member of the General Assembly rents real estate to a state agency.

Article III, Section 12 of the Constitution of Missouri, provides as follows:

"No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected no senator or representative shall accept any appointive office or employment under this state which is created or the emoluments of which are increased during such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public."

The above-constitutional provision prohibits any senator or representative from accepting any office or employment under the United States, this state or any municipality thereof, a violation of which results in the forfeiture of his office. It also prohibits him from accepting any appointive office or employment under this state which is created or emoluments increased during his term.

It is our opinion that a representative who merely rents real estate which he owns to a state agency does not come within this provision of the Constitution prohibiting the acceptance of any office or employment of the state.

CONCLUSION

It is the opinion of this office that a member of the General Assembly is not prohibited by the Constitution or state law from renting real estate which he owns to a state agency.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General