

OFFICERS:  
LEGISLATURE:  
LEGISLATORS:  
CONSTITUTIONAL LAW:  
CONFLICT OF INTEREST:

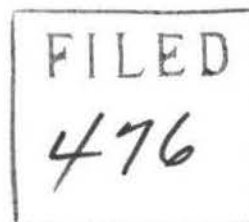
1. A state representative who has a permit to own and operate an official motor vehicle inspection station is not an officer or employee of the state and does not violate the provisions of Article

III, Section 12 of the Constitution of Missouri. 2. A state representative who has a permit to own and operate an official motor vehicle inspection station does not violate the provisions of Section 105.490, RSMo.

OPINION NO. 476

October 28, 1970

Honorable Alvin E. Waits  
State Representative  
District No. 20  
507 Brookside  
Independence, Missouri 64053



Dear Representative Waits:

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

"I request an official opinion on the question whether a state representative would violate the law if a filling station owned by such representative were designated as an official inspection station under the Motor Vehicle Safety Inspection Act by the Superintendent of the State Highway Patrol."

Article III, Section 12, 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

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such term. This section shall not apply to members of the organized militia, of the reserve corps and of school boards, and notaries public."

This constitutional provision prohibits a state representative from holding any other office or employment of this state or a municipality thereof. The question presented is whether a state representative who owns and operates a filling station designated as an official inspection station under the Motor Vehicle Safety Inspection Act by the State Superintendent of the Highway Patrol is an officer or employee of this state due to the fact he owns or operates such station.

Section 307.350, RSMo, requires all motor vehicles described therein to be inspected by the duly authorized official inspection station. Section 307.360, RSMo, provides the application for a permit for an official inspection station to be made to the Missouri State Highway Patrol and that the Superintendent of the Highway Patrol shall investigate such application and determine whether or not the premises, equipment, and personnel meet the requirements prescribed by him. It also provides the permit may be revoked by him for any violation of the rules established by the Superintendent.

Section 307.365, RSMo, provides for the official inspection station to charge a fee of \$2.50 for the inspection of each motor vehicle, the fee to be paid by the owner of the vehicle inspected at the inspection station.

The question is whether the owner and operator of such inspection station designated by the Superintendent of the State Highway Patrol is an officer or employee of the state.

Some of the elements necessary in determining whether a person is an officer of the state are stated in *State v. Truman*, 333 Mo. 1018, 64 S.W.2d 105, 1.c. 106 (en banc 1933) as follows:

"Numerous criteria, such as (1) the giving of a bond for faithful performance of the service required, (2) definite duties imposed by law involving the exercise of some portion of the sovereign power, (3) continuing and permanent nature of the duties enjoined, and (4) right of successor to the powers, duties, and emoluments, have been resorted to in determining whether a person is an officer, although no single one is in every case conclusive, 46 C. J. p. 928, § 19, n. 1; 53 A. L. R. p. 595.

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It is the duty of his office and the nature of the duty that makes one an officer and not the extent of the authority (Mechem on Public Officers, p. 7, § 9; Throop on Public Officers, pp. 2, 3 § 2), although designation by law has some significance. 46 C. J. p. 931, § 24; State ex rel. v. Gray, 91 Mo. App. 438, 445; State ex rel. Cannon v. May, 106 Mo. 488, 505, 17 S. W. 660; State ex rel. v. Shannon, 133 Mo. 139, 164, 33 S. W. 1137; Gracey v. St. Louis, 213 Mo. 384, 393, 394, 111 S. W. 1159.

"In Mechem on Public Officers, pp. 1 and 2, § 1, it is said: 'A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.' . . ."

In determining whether the owner or operator of such inspection station is an employee of the state, the court in Rider v. Julian, 365 Mo. 313, 282 S.W.2d 484, 1.c. 493 (en banc 1955) stated:

"None of the . . . employees were paid by the state. This is a strong factor indicating that they were not state employees . . . In 81 C.J.S., States, § 53, p. 973, with reference to state employees, it is stated: 'Payment of particular persons by the state is a very strong circumstance showing that they are state employees, and it has been held that one becomes a civil servant or employee only when he furnishes his services or labor for compensation directly paid to him by the state \* \* \*'"

Applying these principles of law to the facts at issue, it is our opinion that the holder of a permit to inspect motor vehicles is not an officer or employee of the state in the provision of Article III, Section 12 of the Constitution. He certainly is not an officer because he is not vested with any of the sovereign functions of the government to be exercised by him for the benefit of the public at large and neither does he meet the requirements necessary for him to become an employee of the state as his compensation is

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paid by the owner of the vehicle inspected. His relationship with the state is similar to that of any other person who is licensed by the state to operate a business or practice a profession.

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.

"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 105.450 provides that the following terms have the meanings indicated:

"(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)

As pointed out above, legislators are not officers or employees of the state insofar as owning or operating a motor vehicle inspection station; and, therefore, Section 105.490, supra, does not apply. Furthermore, Section 105.490, supra, does not apply to members of the legislature because they are specifically exempted from such section by the definition of "agency" in Section 105.450, supra.

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CONCLUSION

It is the opinion of this office that:

1. A state representative who has a permit to own and operate an official motor vehicle inspection station is not an officer or employee of the state and does not violate the provisions of Article III, Section 12 of the Constitution of Missouri.

2. A state representative who has a permit to own and operate an official motor vehicle inspection station does not violate the provisions of Section 105.490, RSMo.

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

Yours very truly,



JOHN C. DANFORTH  
Attorney General