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OPINION LETTER NO. 35-2019

February 1, 2019

Elizabeth Ziegler
Executive Director
Missouri Ethics Commission
P.O. Box 1370
Jefferson City, Missouri 65102

Dear Director Ziegler:

I write in response to the Missouri Ethics Commission's ("MEC's") January 15, 2019 request for an opinion of the Attorney General. By way of background, in the November 2018 general election, the voters of Missouri approved Amendment 1, which amended certain portions of Article III of the Missouri Constitution. Amendment 1 included two provisions relevant to this opinion. First, under Amendment 1's "waiting-period" provision:

no person serving as a member of or employed by the general assembly shall act or serve as a paid lobbyist, register as a paid lobbyist, or solicit prospective employers or clients to represent as a paid lobbyist during the time of such service until the expiration of two calendar years after the conclusion of the session of the general assembly in which the member or employee last served.

Mo. Const. Art. III, § 2(a). Second, under Amendment 1's "gift-limitation" provision:

[n]o person serving as a member of or employed by the general assembly shall accept directly or indirectly a gift of any tangible or intangible item, service, or thing of value from any paid lobbyist or lobbyist principal in excess of five dollars per occurrence.

Mo. Const. Art. III, § 2(b).

The MEC has requested the Attorney General's opinion on whether § 105.957.1(6), RSMo, authorizes the MEC to receive complaints of violations of Amendment 1's waiting-period and gift-limitation provisions. The MEC has also requested the Attorney General's opinion on whether the

MEC has authority to issue advisory opinions regarding the waiting-period and gift-limitation provisions.

Section 105.957.1 provides that the MEC:

shall receive any complaints alleging violation of the provisions of:

- (1) The requirements imposed on lobbyists by sections 105.470 to 105.478;
- (2) The financial interest disclosure requirements contained in sections 105.483 to 105.492;
- (3) The campaign finance disclosure requirements contained in chapter 130;
- (4) Any code of conduct promulgated by any department, division or agency of state government, or by state institutions of higher education, or by executive order;
- (5) The conflict of interest laws contained in sections 105.450 to 105.468 and section 171.181; and
- (6) The provisions of the constitution or state statute or order, ordinance or resolution of any political subdivision relating to the official conduct of officials or employees of the state and political subdivisions.

§ 105.957.1, RSMo. The MEC may issue advisory opinions, upon written request from affected parties, “regarding any issue that the commission can receive a complaint on pursuant to section 105.957.” § 105.955.16, RSMo.

For the reasons stated below, we conclude that § 105.957.1(6) authorizes the MEC to receive complaints of violations of Amendment 1’s waiting-period and gift-limitation provisions, and to issue advisory opinions regarding those provisions.

ANALYSIS

The “primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue.” *Peters v. Wady Indus., Inc.*, 489 S.W.3d 784, 789 (Mo. banc 2016) (quotation omitted). Section 105.957 provides that the MEC may “receive any complaints alleging violation of . . . [t]he provisions of the constitution . . . relating to the official conduct of officials or employees of the state.” § 105.957.1(6), RSMo. Thus, whether the MEC may receive complaints of violations of Amendment 1’s gift-limitation and waiting-period provisions depends on whether those constitutional provisions “relate[] to the official conduct of officials or employees of the state.” *Id.*

Courts have consistently characterized the plain and ordinary meaning of the phrase “relating to” as expansive. “The ordinary meaning of [the phrase ‘relating to’] is a broad one— ‘to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.’” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)

(quoting BLACK'S LAW DICTIONARY (5th ed. 1979)); *see also, e.g., Mizrahi v. Gonzales*, 492 F.3d 156, 159 (2d Cir. 2007) (explaining that the "use of the phrase 'relating to' in [statutes] generally signals [an] expansive [legislative] intent"). Missouri courts have similarly interpreted the words "relate" and "related" broadly to mean the existence of some relationship or connection. *See Brown v. Carnahan*, 370 S.W.3d 637, 652 (Mo. banc 2012) ("'Related' is defined as 'having a relationship; connected by reason of an established or discoverable relation.'" (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY, UNABRIDGED 1916 (2002))); *State v. Myers*, 248 S.W.3d 19, 26 (Mo. App. E.D. 2008) ("According to the dictionary, 'relate' means 'to have relationship or connection.'"). Thus, a constitutional provision falls within the scope of § 105.957.1(6) if the provision has some relationship or connection to the "official conduct of officials or employees of the state." For the reasons stated below, we find that both the waiting-period and the gift-limitation provisions have such a relationship and connection and thus fall within the scope of § 105.957.1(6).¹

I. The Waiting-Period Provision (Mo. Const. Art. III, § 2(a)) Relates to the Official Conduct of State Officials and Employees.

Amendment 1's waiting-period provision has a direct relationship with and connection to the official conduct of state officials and employees, and thus that provision falls within the scope of § 105.957.1(6). Amendment 1 prohibits any member or employee of the General Assembly from serving, registering, or soliciting business as a "paid lobbyist" during the two years following the end of the last legislative session in which the member or employee served. Mo. Const. Art. III, § 2(a). "When interpreting a constitutional provision, [courts] consider the words used in their plain and ordinary meaning." *In re Finnegan*, 327 S.W.3d 524, 526 (Mo. banc 2010). "If a word used is not defined, [courts apply] the plain and ordinary meaning of the word as found in the dictionary." A "lobbyist" is "one who lobbies" or "a person employed and compensated for lobbying." WEBSTER'S THIRD NEW INT'L DICTIONARY, UNABRIDGED 1326 (2002). To "lobby," in turn, means "to conduct activities . . . with the objective of influencing public officials," and "to advance or otherwise secure favorable treatment of [an initiative] by influencing public officials." *Id.* Thus, the plain and ordinary meaning of Amendment 1's text demonstrates that the waiting-period provision applies only to one who seeks to influence public officials. *Id.* Moreover, under existing Missouri statutes, the term "lobbyist" applies only to those who seek to influence official action of the Executive, Legislative, or Judicial Branches of government. *See* § 105.470(1), (3), (4), (5). By definition, then, a paid lobbyist seeks to influence the official conduct of government actors. As a result, regulation of paid lobbyists necessarily has a direct relationship to and connection with the "official conduct of officials or employees of the state." § 105.957.1(6), RSMo. Thus, Amendment 1's waiting-period provision falls within the scope of § 105.957.1(6). *Id.*

¹ This opinion takes no position on the advisability of Amendment 1's underlying policies, nor does it take any position on whether Amendment 1 will in practice advance those policies. This opinion also does not address whether Amendment 1 violates any portion of the United States Constitution, such as the First Amendment or Fourteenth Amendment. Instead, this opinion addresses only the narrow question of whether the MEC may receive complaints and issue advisory opinions regarding the waiting-period and gift-limitation provisions of Amendment 1.

The relevant statutory context confirms this conclusion. “In determining the meaning of a word in a statute, [courts] will not look at any one portion of the statute in isolation. Rather, [they] will look at the word’s usage in the context of the entire statute” *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 122 (Mo. banc 2014). Statutory language “is known by the company it keeps.” *Id.* In addition to the catch-all “official conduct” category set forth in § 105.957.1(6), § 105.957.1 provides that the MEC can receive complaints of violations of several expressly enumerated statutory provisions. *See* § 105.957.1(1)-(5), RSMo. These other categories of violations provide guidance on the meaning of § 105.957.1(6)’s “official conduct” provision. *See Union Elec.*, 425 S.W.3d at 122.

Several of the statutory prohibitions expressly enumerated in § 105.957.1(1)-(5) closely resemble Amendment 1’s waiting-period provision. Perhaps most notably, § 105.455 prohibits many state officials—including members of the General Assembly—from engaging in lobbying during the six months following their departure from office. § 105.455.1, .2, RSMo. Similarly, § 105.454 prohibits an Executive Branch elected or appointed official from “[p]erform[ing] any services for consideration, during one year after termination of his or her office or employment, by which performance he or she attempts to influence a decision of any agency of the state.” § 105.454.1(5), RSMo. And § 105.462 prohibits certain state officials with rulemaking authority from “[p]erform[ing] for one year after termination of his or her employment any service for compensation for any person, firm or corporation to influence the decision or action of the agency with which he or she served as a member.” § 105.462.1(3), RSMo. Each of these provisions closely resembles Amendment 1’s waiting-period provision. *See* Mo. Const. Art. III, § 2(a). And § 105.957.1 expressly authorizes the MEC to receive complaints of violations of each of those statutory provisions. *See* § 105.957.1(5), RSMo. This statutory context strongly supports the conclusion that Amendment 1’s waiting-period provision falls within the scope of § 105.957.1(6). *See Union Elec.*, 425 S.W.3d at 122. Thus, we conclude that the MEC may receive complaints of violations of Amendment 1’s waiting-period provision. And because it can receive complaints of violations of that provision, the MEC also has authority to issue advisory opinions relating to that provision. § 105.955.16, RSMo.

II. The Gift-Limitation Provision (Mo. Const. Art. III, § 2(b)) Relates to the Official Conduct of State Officials and Employees.

Amendment 1’s gift-limitation provision also has a clear relationship with and connection to the official conduct of state officials and employees, because it seeks to limit the possibility that lobbyist gifts could influence a government actor’s official conduct. Courts have consistently recognized that gifts from lobbyists raise the possibility that those gifts might influence how legislators or staffers exercise their official powers. *See, e.g., United States v. Sawyer*, 85 F.3d 713, 728 (1st Cir. 1996); *cf. Ritter v. Ashcroft*, 561 S.W.3d 74, 86 (Mo. App. W.D. 2018). Because the gift-limitation provision seeks to regulate the influence of lobbyist gifts on the official conduct of legislators and their staff, the provision has a clear relationship with and connection to the official conduct of state officials and employees. Thus, the gift-limitation provision falls within the scope of § 105.957.1(6), RSMo. And because it can receive complaints of violations of that provision, the MEC also has authority to issue advisory opinions relating to that provision. § 105.955.16, RSMo.

CONCLUSION

For the reasons stated above, we conclude that the MEC has authority to receive complaints of alleged violations of Amendment 1's waiting-period and gift-limitation provisions, and to issue advisory opinions relating to those provisions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Martinich-Sauter", with a long horizontal flourish extending to the right.

MICHAEL MARTINICH-SAUTER
Deputy Attorney General