

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

RON CALZONE,)	
)	
Petitioner,)	
)	Case 15-1450 EC
v.)	
)	
MISSOURI ETHICS COMMISSION,)	
)	
Respondent.)	

**Answer and Affirmative Defenses of Respondent
Missouri Ethics Commission**

Respondent, the Missouri Ethics Commission, states the following for its answer and affirmative defenses to the complaint:

**Facts Supporting
Missouri Ethics Commission's Action**

1. Missouri First, Inc., is a non-profit corporation formed in Missouri in 2006.
2. The purpose of Missouri First, Inc., is to, among other things, influence public policy. *Exhibit 1* (Charter).
3. Missouri First, Inc., states that it may use "legislative lobbying" to influence public policy. *Exhibit 1* (Charter).
4. Missouri First, Inc., recruits members, with the promise that "you may be certain that Missouri First is working hard to represent your values." *Exhibit 2* ("Join Missouri First!").

5. Missouri First, Inc., asks members to join to bolster our [your]¹ clout when fighting the war for sovereignty,” and that “The old saying, ‘there is strength in numbers’ holds true, especially when lobbying Missouri House and Senate members.” *Exhibit 2* (“Join Missouri First!”).

6. Petitioner Calzone was the President, Founder, Board Member, and Registered Agent for Missouri First, Inc., when he designated himself as the lobbyist for Missouri First, Inc.

7. In 2013 and 2014, Calzone, as the President and Founder of Missouri First, Inc., was authorized to, and did, designate himself as the lobbyist for Missouri First, Inc., and went to the Missouri Capitol to attempt to influence potential and pending legislation on behalf of Missouri First, Inc., and its members.

8. Petitioner Calzone spends “many hours ... virtually every week of the legislative session,” speaking with Missouri legislators on behalf of Missouri First, Inc. *Exhibit 3* (Petition filed by Calzone in *Calzone v. Koster et al.*, Cole County Case Number 15AC-CC00247).

9. For legislation pending in the Missouri General Assembly, Missouri First, Inc., permits individuals to fill out “witness forms” on its website, on which the individual identifies a particular piece of legislation,

¹ Brackets are original; not added by Respondent.

whether he or she supports or opposes it, and can comment on the legislation.

Missouri First, Inc., then delivers those forms to the Missouri General Assembly, usually delivered by Petitioner Calzone.

10. When Petitioner Calzone delivers those forms, he adds additional comments and information, such as the following cover page:

**Location of 400+ Witnesses In Favor of
HJR 19 - Health Care Freedom Amendment**

Missouri Constitution Article I:
In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare:

Section 2: That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that *to give security to these things is the principal office of government*, and that when government does not confer this security, it falls in its chief design. keep and bear Arms shall not be infringed.

11. Petitioner Calzone has never registered as a legislative lobbyist with the Missouri Ethics Commission. § 105.473.1, RSMo.

12. Because Petitioner Calzone did not register, he never identified any person or organization, either as a lobbyist principal or as a person in whose interest he appeared or worked. § 105.473.1, RSMo.

13. Petitioner Calzone has never filed a monthly lobbyist expenditure report with the Missouri Ethics Commission. § 105.473.3, RSMo.

14. Neither Petitioner Calzone nor Missouri First, Inc., have ever filed a lobbyist principal report with the Missouri Ethics Commission. § 105.473.12, RSMo.

15. The Missouri Ethics Commission received a complaint, conducted an investigation, found reasonable grounds that a violation of law had occurred, and held a hearing, after which it found that Petitioner Calzone had violated Section 105.473, RSMo. The Ethics Commission's Findings of Fact, Conclusions of Law, and Order are attached hereto as *Exhibit 4*.

Law Authorizing the Ethics Commission's Action

16. Missouri Law imposes three requirements on a lobbyist and his or her lobbyist principal:

- a. A lobbyist must register with the Missouri Ethics Commission and disclose the identity of lobbyist principals by whom such lobbyist is

employed or in whose interest such lobbyist appears or works. § 105.473.1, RSMo.

b. A lobbyists must file monthly lobbyist expenditure reports disclosing the amount of expenditures (even if none) on elected officials, their staff, and their family members. § 105.473.3, RSMo.

c. A lobbyist principal must file twice per year (either itself or through its lobbyist) a lobbyist principal report disclosing the general description of the proposed legislation or action which the lobbyist or lobbyist principal supported or opposed.

§ 105.473.12, RSMo.

17. A legislative lobbyist is any natural person who acts for the purpose of attempting to influence the taking, passage, amendment, delay or defeat of any official action on any bill, resolution, amendment, nomination, appointment, report or any other action or any other matter pending or proposed in a legislative committee in either house of the general assembly, or in any matter which may be the subject of action by

the general assembly and in connection with such activity, meets the requirements of any one or more of the following:

(a) Is acting in the ordinary course of employment, which primary purpose is to influence legislation on a regular basis, on behalf of or for the benefit of such person's employer, except that this shall not apply to any person who engages in lobbying on an occasional basis only and not as a regular pattern of conduct; or

...

(c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity;

§ 105.470(5), RSMo.

18. The definition of "legislative lobbyist" does not use, refer, or incorporate the term "lobbyist principal." § 105.470(5), RSMo.

19. A lobbyist principal is "any ... nonprofit corporation or association who employs, contracts for pay or otherwise compensates a lobbyist." § 105.470(7), RSMo.

20. The term “employ” means “To make use of the services of; to give employment to; to entrust with some duty or behest; as to *employ* an envoy.” *State v. Rhoads*, 399 S.W.3d 905, 907 (Mo. App. W.D. 2013) (quoting *Webster’s Third New International Dictionary*) (emphasis original).

21. The Missouri Supreme Court has found that the term “employ” in the nepotism clause of the Missouri Constitution (“any public officer or employee ... who ... names or appoints to public office or employment any relative...”) is “clear and unambiguous” and that whether an individual “received no compensation for her work is irrelevant.” *State ex inf. Atty. Gen. v. Shull*, 887 S.W.2d 397, 400 (Mo. 1994) (abrogated on other grounds relating to Missouri Supreme Court appellate jurisdiction in *quo warranto* cases, *State v. Olvera*, 969 S.W.2d 715 (Mo. 1998)); *State v. Rhoads*, 399 S.W.3d 905, 907 n.1 (“the Constitution does not even make an exception for a public official who appoints a relative to *employment* and the relative receives no pay for the services.”) (emphasis added).

22. The term “designate” means “to make known directly as if by sign; to distinguish as to class; Specify, stipulate; to declare to be; to name esp. to a post or function.” WEBSTER’S THIRD NEW INT’L DICTIONARY 612 (1986). “Designate may apply to choosing or detailing a person or group for a certain post by a person or group having the power or right to choose.” *Id.*

Answer to Complaint

23. Respondent Missouri Ethics Commission admits the allegations in paragraphs 1-3, 23-25, 34-35, 37-38, 55, 74-77, 156, and 159.

24. Respondent Missouri Ethics Commission denies the allegations in paragraphs 56, 68, 89, 158, 173, 177, 180, 183, 188, 193, 195, 197-198, 204-205 and 207-209.

25. Respondent Missouri Ethics Commission is without knowledge or information sufficient to admit or deny the allegations in paragraphs 203.

26. Paragraphs 4-16, 73, 125-129, 157, 172, 175-176, 179, 184-186, and 205 purport to summarize, quote, or make legal conclusions regarding case law and Missouri statutes, to which no response is required. The statutes and cases referred to in Petitioners' complaint speak for themselves. To the extent a response is required, Respondent denies any allegations not specifically admitted herein.

27. Paragraphs 17-22, 26-33, 36, 39-54, 57-71, 78-88, 90-124, 130-155, 160-170, 181-182, 190-192, and 200-202 purport to summarize and/or quote from testimony and evidence presented before the Missouri Ethics Commission, and from the Ethics Commission's Findings of Fact, Conclusions of Law, and Order, to which no response is required. The record of the hearing before the Missouri Ethics Commission speaks for itself. To the

extent a response is required, Respondent denies any allegations not specifically admitted herein.

28. Paragraph 72 refers to an exhibit attached to Petitioners' Complaint, to which no response is required. The Exhibit speaks for itself. To the extent a response is required, Respondent denies any allegations not specifically admitted herein.

29. Paragraphs 171, 174, 178, 187, 189, 194, 196, 199, and 206 re-allege other paragraphs of Petitioner's complaint, to which no response is required. To the extent a response is required, Respondent incorporates its answer to those paragraphs, and Respondent denies any allegations not specifically admitted herein.

30. Respondent generally denies any allegations not specifically admitted herein and denies that Petitioner is entitled to the relief he requests.

COUNT I: Complaint Brought By Non-Natural Person

31. The Administrative Hearing Commission should deny Petitioner's Count 1 because Section 105.957, RSMo, says the Missouri Ethics Commission "shall" investigate a complaint if it is: a) in writing, b) filed by a natural person, c) stating facts known by the complainant, and d) sworn to under penalty of perjury. Here, the Commission received a complaint in writing, filed by a natural person, stating that the facts in the complaint were known to him, and the complaint was notarized, signed under penalty of

perjury. Under Section 105.957, RSMo, the Missouri Ethics Commission has no authority to examine the subjective motivation of the person filing the complaint, and would be acting contrary to the language of Section 105.957, RSMo, if it were to refuse to investigate a complaint for any reason relating to the person's subjective motivation for filing the complaint.

32. The Administrative Hearing Commission should deny Petitioners Counts 2, 3, 4, and 6, because the hearing before the Administrative Hearing Commission is a *de novo* review. The Administrative Hearing Commission should rest its decision on the evidence presented to it.

33. The Administrative Hearing Commission should deny Petitioner's Count 5 because it fails as a matter of law. Petitioner's reading of Sections 105.470 and 105.473, RSMo, ignores the plain language, structure, and intent of the lobbyist statute in Missouri. "Every word, clause, sentence and section of a statute should be given meaning, and ... statutes should not be interpreted in a way that would render some of their phrases to be mere surplusage." *State v. Joyner*, 458 S.W.3d 875, 884 (Mo. App. W.D. 2015). Petitioner's reading of Sections 105.470 and 105.473, RSMo, would render subparagraphs (c) and (d) of Section 105.470(5), RSMo, superfluous, because subparagraphs (a) and (b) already cover every possible scenario in which a lobbyist principal provides compensation to a lobbyist.

34. The Administrative Hearing Commission should deny Petitioner's Count 7 because it fails as a matter of law. Senate Bill 58 (2015), cited by Petitioner, repealed "section 105.955 *as enacted by senate bill no. 844, ninety-fifth general assembly, second regular session.*" (emphasis added). The Missouri Revisor of Statutes had printed two versions of Section 105.955. The first version, modified by Senate Bill 844 (2010), was struck down on procedural grounds as unconstitutional in *Legends Bank v. State*, 361 S.W.3d 383 (2012). Consequently, the Missouri Revisor of Statutes printed the second version, which was the version that existed prior to Senate Bill 844, pursuant to Section 3.066, RSMo ("When the Missouri supreme court ... makes a final ruling that a bill enacted by the Missouri general assembly ... is unconstitutional on procedural grounds, the Missouri revisor of statutes shall: (1) For ... an amended statute contained in such bill, reprint the statute as it existed in the revised statutes of Missouri prior to the enactment of the bill that the court declared unconstitutional.").

35. The Administrative Hearing Commission should deny Petitioner's Counts 8 and 9 because the Administrative Hearing Commission is not authorized to declare statutes unconstitutional.

For the reasons stated above, the Administrative Hearing Commission should deny Petitioner's complaint, issue findings of fact, conclusions of law, and an order in favor of the Missouri Ethics Commission, upholding the

Missouri Ethics Commission's order of September 2015, and for such other relief that the Administrative Hearing Commission deems proper.

Respectfully submitted,



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