



## Missouri Highways and Transportation Commission Policies

**Category:** COMMISSION  
**Subcategory:** Members  
**Sub-Subcategory:** Reporting Potential Conflicts of Interest

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**EXHIBIT 1** – Summary of applicable ethics statutes.

## REPORTING POTENTIAL CONFLICTS OF INTEREST

- (1) **Policy Purpose:** The purpose of this voluntary policy is to assist Commission members to:
  - (A) Recognize an actual or appearance of conflict of interest;
  - (B) Comply with applicable conflict of interest laws and rules; and
  - (C) Avoid controversy or embarrassment for the affected individual member, the Commission, and MoDOT.
  
- (2) **Responsibility of Commission Members:** Conflict of interest may take many forms. The correct analysis of a potential conflict depends upon the facts disclosed as well as the applicable law, if any. Each Commission member should be alert to any potential conflict of interest. The responsibility for avoiding potential conflict of interest and complying with applicable statutes and rules rests with the individual Commission member.
  
- (3) **General provisions:**
  - (A) **Definitions:**
    1. **Potential Conflict of Interest:** This is an activity or financial interest which may lead to either an actual conflict of interest or the appearance of a conflict of interest.
      - A. **Actual Conflict of Interest:** This is an activity or financial interest which is prohibited by law or rule.
      - B. **Appearance of Conflict of Interest:** This is an activity or financial interest which is not prohibited by law or rule, but may appear to be a conflict of interest in the eye of the beholder and thereby controversial in nature.
    2. **Abstention/Abstain:** This is an action by a Commission member to decline to vote on a Commission agenda item/issue; however, the member may participate in and/or listen to Commission discussion of the issue.
    3. **Recusal/Recuse:** This is an action whereby the member excuses himself or herself from an agenda item/issue. The member would not:
      - A. be provided Commission meeting backup material regarding the matter;
      - B. listen to or participate in Commission discussion of the issue;
      - C. vote on the agenda item/issue; and
      - D. communicate with any Commission member and/or MoDOT employee regarding the issue.
  - (B) **Informal advisory opinions:** Upon request, the chief counsel will provide any

Commission member with an attorney client privileged informal advisory opinion regarding any potential conflict of interest about which the Commission member may have any question or concern.

(C) **Governor's director of boards and commissions:** The commission secretary shall correspond with the governor's director of boards and commissions to provide a copy of this policy six months prior to the scheduled expiration of any Commission member's term of office, or as soon as possible upon the inability of any Commission member to complete his/her scheduled term of office for any reason. The commission secretary shall provide a copy of the correspondence to the director and the chief counsel. The purpose of this requirement is to assist the governor's staff in advising prospective Commission members of the:

1. relevant ethics statutes;
2. application of some of the relevant statutes that could cost prospective members money because MoDOT refrains from making purchases during a member's term of office from any business in which a Commission member has a financial interest (e.g., section 105.454.1(1) and (2) RSMo and/or because Commission members are prohibited by law from having any direct or indirect pecuniary interest in the Commission's procurement of specified supplies, contracts for construction and maintenance of roads and the like under section 226.090 RSMo); and
3. Commission's policy for Commission Members to Disclose Potential Conflicts of Interest.

(D) **Conflicts committee:** There shall be a MoDOT standing conflicts committee to consist of the: chief engineer; chief financial officer; commission secretary; and director of audits and investigations. The chief counsel, or his/her designated representative, shall serve as counsel to the committee.

(E) **State Financial Interest Statements:** In addition to the required filing with the Missouri Ethics Commission, Commission members should file copies of their State Financial Interest Statements (also titled by the Missouri Ethics Commission as the Personal Financial Disclosure Statements) required by section 105.483(4) RSMo with the commission secretary who will provide copies of such statements to the members of the conflicts committee and the chief counsel to aid in assisting Commission members in identifying potential conflicts of interest.

(F) **Annual review of statutes:** After each legislative session, the chief counsel will review the applicable statutes and, if appropriate, prepare a report for the Commission with recommendations regarding any proposed changes to this policy.

(4) **Procedure for disclosure by all Commission members of potential conflicts of interest:**

(A) **Commission Member Disclosure Report:** When a Commission member is first appointed to the Commission, the member should file a written Commission Member Disclosure Report with the commission secretary that at a minimum includes:

1. a list of the member's current employer(s), if any, and all business entities, if any, in which the member is an officer and/or has any ownership or financial interest that may directly or indirectly do business with the Commission/MoDOT including the nature of the business or activity;
  2. a list of all real estate located in Missouri in which the member (individually or a business entity in which the member is an officer), has any ownership, leasehold, or other possessory or financial interest including the general nature of such interest (e.g., ownership, lease, etc.), the use (e.g., residential, farming, commercial, etc.) and location (street address or township and range) of such real estate;
  3. a list of any other activity and/or financial interest in an organization, association, district, business entity or the like in which the member has no ownership and receives no income, such as a membership, serving on a board of directors, or the like, including the general nature of the activity or interest (e.g., professional, social, charitable, etc.); and
  4. for only Commission members who are attorneys, a list of all current and past lawfirm clients doing business with, being regulated by, or litigating for or against the Commission/MoDOT from which the member received or receives income, including the nature of the client's business.
- (B) **Distribution of Commission Member Disclosure Report:** The commission secretary will distribute the Commission Member Disclosure Report to all Commission members, the director, the chief counsel, all members of the conflicts committee, all MoDOT division directors, and all district engineers.
- (C) **Division and district review:** The MoDOT division directors and the district engineers shall review the Commission Member's Disclosure Reports and provide written comments to the commission secretary regarding:
1. the effect of any potential conflict of interest on his/her area of responsibility; and
  2. any additional information known by the staff that may have been overlooked by the Commission member in preparing the report.
- (D) **Conflicts committee review and advice to director:** After reviewing the Commission Member Disclosure Reports and the staff comments, the conflicts committee shall advise the director of potential conflicts and the recommended course of action, if any, to be taken by MoDOT and the affected Commission member(s).
- (E) **Discussion with member:** With director concurrence of the course of action, the commission secretary and/or chief counsel will discuss the matter with the affected Commission member(s).
- (F) **Amended Commission Member Disclosure Report:**
1. After filing a report with the commission secretary, if any Commission member

becomes aware that any of the member's activity, financial interest, or specific matter to be presented to the Commission creates a potential conflict of interest, the Commission member should file a disclosure letter with the commission secretary to direct that the member's report be amended to include the potential conflict of interest.

2. The commission secretary will distribute any amended Commission Member Disclosure Report as provided in section (4)(B) above.
- (G) **Assistance to members:** To assist the Commission members in identifying potential conflicts of interest, the director, commission secretary, chief counsel, and MoDOT division directors and district engineers will make every effort to alert the Commission member if a disclosed item is related in any way to an agenda item before the Commission for its action. This notice will include projects located within one mile of any real property in which a Commission member individually or a business entity in which the member is an officer, has any ownership, leasehold, or other possessory or financial interest.
- (H) **Member's determination regarding participation in a Commission action:** If a Commission member determines a Commission meeting agenda item is a potential conflict of interest for herself or himself, the Commissioner should either abstain from voting on the issue or recuse himself or herself from Commission discussion and voting on the issue.
- (I) **Annual update:** The commission secretary will provide an annual reminder notice to each Commissioner to update, if appropriate, due to a changed circumstance, his/her Commission Member Disclosure Report.
- (5) **Real property acquisition procedure:** When a Commission member individually or in a business entity in which the member is an officer has any ownership, leasehold or other possessory or financial interest in real property for which an offer of just compensation will be made so that it may be acquired by the Commission for a project, the following procedure should be used by the Commission member and shall be followed by MoDOT staff and special conflicts counsel.
- (A) **Fee appraisal(s):** The district right of way staff will have a preliminary estimate of damages in a fee study. If in the fee study, the apparent compensation is estimated to be \$500 or more, the staff will have one or more fee appraiser(s) determine just compensation for the property to be acquired and the damage, if any, to the property's remainder. If the apparent compensation in the fee study is less than \$500, the appraisal will be prepared by district staff appraiser(s) and approved by a district right of way manager who is a certified appraiser.
- (B) **Central office review and approval:** If the approved offer is \$500 or more, a central office right of way appraiser or right of way liaison officer who is also a certified appraiser will review the appraisal(s) and determine the approved offer of just compensation.

- (C) **FHWA review and approval:** MoDOT staff will secure review and approval of the appraisal(s) and the approved offer of just compensation from the Federal Highway Administration.
- (D) **Commission review and approval:** When the approved offer exceeds \$500, section 105.454.1(2) RSMo requires public notice before the sale of real property. Therefore, the state design engineer shall place the matter on the Commission's open session meeting agenda for the Commission to review and finally approve the offer of just compensation (with the affected member recusing himself/herself from discussion and voting) prior to the offer being made to the Commission member. To provide adequate public notice, the agenda item shall be styled: "Purchase of Real Property Interest from Commissioner\_\_\_\_\_." However, if the approved offer does not exceed \$500, Commission review and approval is unnecessary.
- (E) **Offer of just compensation to Commission member:** The approved offer will then be made by the district's right of way staff to the Commission member, or the corporation or entity for which the member is an officer, or his/her/its authorized representative. However, the member/corporation/entity will be encouraged to refuse the offer and go through condemnation to avoid any appearance of impropriety if the offer is more than \$10,000. Provided further, however, if the offer is \$10,000 or less, the member/corporation/entity need not be encouraged to go through condemnation and may execute a deed for the real property in exchange for the approved offer.
- (F) **Condemnation:** If the Commission member agrees to the condemnation, the parcel will be condemned at the first opportunity by special conflicts counsel approved by the Commission (with the affected member recusing herself/himself from discussion and voting).
- (G) **Settlement:** Once the condemnation commissioners appointed by the circuit court have set a value for the property, if that value is acceptable to all parties, a proposed settlement in the amount of the condemnation commissioners' award should be presented to the court for its review, approval, and entry of a judgment, but the court shall be requested by the special conflicts counsel to delay its action until after the member's term ends to avoid any appearance of impropriety.
- (H) **Jury trial:** Should either party not agree with the value established by the condemnation commissioners and file exceptions to the condemnation commissioners' award, the special conflicts counsel should prepare the case for trial, but shall request the circuit court to delay the jury trial until after the Commission member's term expires to avoid any appearance of impropriety. The final price for the property will be that determined by jury verdict and the court's final judgment after appeal, if any.
- (I) **Rule 17:** Should the circuit court refuse under section (5)(G) or (H) above to delay the action under Missouri Supreme Court Operating Rule 17, the special conflicts counsel shall consult with the Commission in closed meeting regarding the appropriate course of action (with the affected member being recused from the meeting).

**(6) Ethics Statutes:** The applicable statutes are complex and difficult to reasonably apply in some situations. A summary of the applicable statutes is attached as **EXHIBIT 1**. A copy of the statutes is available upon request to the chief counsel.

Effective Date: October 3, 2018  
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Related Commission Actions: November 4, 1994; December 1, 1995; April 3, 1997; March 12, 1999; May 5, 2000; November 8, 2000; September 4, 2003; November 9, 2005; November 7, 2013 – Comprehensive Policy Review; October 3, 2018 – Comprehensive Policy Review.

**EXHIBIT 1**  
**SUMMARY OF APPLICABLE ETHICS STATUTES**  
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- (1) **Introduction:** Commission members should be familiar with the applicable ethics statutes. The statutes are summarized in this exhibit. A copy of the applicable statutes are available upon request to the chief counsel.
- (2) **Specific conflict of interest statutes applicable to MHTC members:**
  - (A) **Political fundraising--**Section 226.033 RSMo says that any Commission member shall not:
    1. Host or manage a political fund-raiser or solicit funds for any candidate who is seeking a statewide or nationally elected office; or
    2. Serve on the board or chair any political action committee, political party committee, or continuing committee.
  - (B) **Highway construction, maintenance, funding and insurance--**
    1. Section 226.090 RSMo prohibits actual conflicts of interest and provides, in part, that no Commission member or MoDOT employee shall, directly or indirectly, have any pecuniary interest in, or act as agent for, the sale of road or bridge building material, equipment, tools, machinery or supplies, or in any contract for the construction or maintenance of state highways or bridges, or the financing thereof, or in any performance bond or workers' compensation or any other insurance furnished to the Commission, or insurance furnished to any person, firm or corporation contracting with the Commission.
    2. Section 226.090 RSMo states that a violation of its provisions is an unspecified misdemeanor. Pursuant to section 557.021.1 RSMo, unspecified misdemeanors carry the penalty of a class A misdemeanor.
      - A. Section 558.002.1(2) RSMo says that a person who is convicted of a class A misdemeanor may be sentenced to pay a fine which does not exceed **\$2,000**.
      - B. Section 558.011.1(6) RSMo says a person convicted of a class A misdemeanor may serve a prison term not to exceed **1 year**.
  - (C) **Specific removal statute applicable only to MHTC members:** Section 226.030 RSMo provides that any commission member may be removed by the governor if the governor is fully satisfied of the Commission member's inefficiency, neglect of duty, or misconduct in office.
  - (D) **Motor carrier and railroad regulation--**Sections 226.008, 622.120 and 622.130 RSMo apply to MoDOT and its employees as a result of the 2002 One Stop merger and prohibit certain acts and financial interests.

1. Section 226.008.5 RSMo abolished the division of motor carrier and railroad safety within the department of economic development.
  2. Pursuant to Section 226.008.3 RSMo, all the powers, duties and functions of the division of motor carrier and railroad safety under state law, including Chapter 622 RSMo, were transferred to MoDOT, which is governed by the Commission.
  3. In the opinion of the chief counsel, section 622.120 RSMo prohibits the Commission from appointing anyone to an office or MoDOT from employing anyone in a position involved in the regulation of motor carriers or railroads who holds any official relation to, owns stocks or bonds therein or has any pecuniary interest in any common carrier, railroad corporation, street railroad corporation, transportation of freight or property company, carrier, corporation or person subject to any of the provisions of chapters 387, 388, 389, 390, 391 or 622 RSMo.
  4. In the opinion of the chief counsel, section 622.130 RSMo prohibits any person appointed by the Commission to an office or employed by MoDOT in a position involved in the regulation of motor carriers or railroads from recommending any person for employment, directly or indirectly, to any common carrier or other person subject to regulation. Also, any regulated person or entity is forbidden from providing any Commission appointee or MoDOT employee any transportation that is free or at a reduced rate, or any present, gift, entertainment, or gratuity of any kind.
    - A. Any Commission appointee or MoDOT employee who violates section 622.130 RSMo is subject to removal from office or employment and further is guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and imprisonment. Section 622.130.2 and .4 RSMo.
    - B. Section 622.130.3 RSMo provides that if any common carrier or other person subject to the supervision of MoDOT violates 622.130 RSMo it, he, or she shall be liable to the state of Missouri in a civil action for a civil penalty not to exceed \$20,000 in addition to any other penalty for violation of chapter 622 RSMo.
- (3) **General financial interest statement statutes:** Sections 105.483 to 105.492 and 105.963 RSMo, as amended, are applicable to certain state officials and decision making public servants, including Commission members and select MoDOT management, and require Commission members to file annual financial interest statements with the Missouri Ethics Commission which are then public records.
- (A) Section 105.485 RSMo requires Commission members in their annual statements to disclose specified information for the member, their spouse, and the member's dependent children, including, but not limited to:

1. annual income of \$1,000 or more from an employer (§105.485.2(1) RSMo);
2. the identity of any business entity<sup>1</sup> in which the member has an ownership interest;
  - A. except that for closely held corporations or limited partnerships, no disclosure is required if the member owns less than 10% of any outstanding stock or limited partnership units; and
  - B. further except that for any publicly traded corporation or limited partnership which is listed on a regulated stock exchange or automated quotation system, no disclosure is required where the member owns less than 2% of any class of outstanding stock, limited partnership units or other equity interests unless the member receives \$1,000 or more income per year from such business entity which would then require disclosure (§105.485.2(2), (3) RSMo);
3. the name and address of each business entity in which the member owns stock, bonds, or other equity interest with a value in excess of \$10,000 except that such member does not need to report interests in publicly traded corporations or limited partnerships listed on a regulated stock exchange or automated quotation system nor interests in any qualified plan/annuity pursuant to the Employees' Retirement Income Security Act (§105.485.2(5) RSMo);
4. the location and property tax classification of any real property in Missouri owned (or leased for more than 10 years) other than the member's residence, having a fair market value of \$10,000 or more, and, if the property is transferred during the year covered by the statement, the name and address of the person furnishing or receiving consideration for such transfer (§105.485.2(4) RSMo);
5. the identity of each corporation for which the member served in the capacity of a director, officer or receiver (§105.485.2(6) RSMo);
6. the name and address of each not-for-profit corporation, organization or union, whether incorporated or not, except for not-for-profit corporations formed to provide church services, fraternal organizations, or service clubs in which such person was an officer, director, employee or trustee but which the member draws no remuneration, as well as a general description of the nature and purpose of the organization (§105.485.2(7) RSMo);
7. the name and address of each source from which the member received a gift or gifts, or honoraria or honorarium in excess of \$200 in value per source during the year covered by the statement; excepting gifts from family members within the third degree of consanguinity or affinity or gifts construed to mean political contributions otherwise required to be reported, or gifts of hospitality such as

food, beverages, or admissions to social, art, or sporting events, or informational material. A gift would include gifts to or by creditors of the member for the purpose of canceling, reducing or otherwise forgiving the indebtedness of the member to that creditor (§105.485.2(8) RSMo);

8. the lodging and travel expenses provided by any third person for expenses incurred outside the state of Missouri whether by gift or in relation to the duties of the member's office with exceptions for travel for which the official may be reimbursed as provided by law, paid by family members, and the like (§105.485.2(9) RSMo);
9. the assets in a revocable trust (§105.485.2(10) RSMo);
10. the name, position, and relationship of any relative within the first degree of consanguinity or affinity to the member who: (1) is employed by the state of Missouri, by a political subdivision of the state, or a special district; (2) is a lobbyist; or (3) is a fee agent of the Department of Revenue (§105.485.2(11) RSMo); and
11. the name and address of each campaign, political, continuing or candidate committee for which such person or any corporation listed on the person's financial interest statement, received payment (§105.485.2(12) RSMo).

**(B)** Violation of these sections may result in:

1. a member's loss of compensation, suspension, removal from office, and/or a daily late filing fee of \$10/day, increasing to \$100/day after 30 days from receipt of notice from the Missouri Ethics Commission of the person's failure to file a financial interest statement (§105.492 and 105.963.3 RSMo); and/or
2. pursuit of a criminal charge of a class B misdemeanor for knowingly misrepresenting or omitting any facts required to be contained in the financial interest statement (§105.492.4 RSMo).
  - A. Section 558.002.1(3) RSMo says that unless specifically provided otherwise, a person convicted of a class B misdemeanor may be sentenced to pay a fine that does not exceed **\$1,000**.
  - B. Section 558.011.1(7) RSMo says a person convicted of a class B misdemeanor may serve a prison term not to exceed **6 months**.

**(4) General conflict of interest and lobbying statutes:**

- (A)** Sections 105.452 and 105.454 RSMo are general conflict of interest statutes applicable to all state officials and employees including MHTC members and MoDOT employees. These statutes prohibit actual conflicts of interest including, but

not limited to:

1. favorably acting or refraining from acting on any matter or using decision making authority to obtain financial gain (§105.452.1(1), (4) and (5) RSMo);
  2. using confidential information obtained in his/her official capacity in any matter with the intent to result in financial gain for himself, his spouse, his dependent child, or any business with which he is associated (§105.452.1(2) RSMo);
  3. disclosing confidential information obtained in the course of or by reason of his employment or official capacity in any manner with intent to result in financial gain for himself or any other person (§105.452.1 (3) RSMo);
  4. performing any service for an agency in which he/she is an officer or employee or has supervisory authority for payment in excess of **\$500** per transaction or **\$5,000** per year without competitive bidding (§105.454.1(1) RSMo);
  5. participating in any matter, directly or indirectly, in which he or she attempts to influence any decision of any agency of the state in which he or she is an officer or over which he or she has supervisory power, when he or she knows the result of such decision may be the acceptance of the performance of a service or the sale, rental or lease of any property to that agency for consideration in excess of five hundred dollars' value per transaction or five thousand dollars' value per annum to him or her, to his or her spouse, to a dependent child or to any business with which he or she is associated unless the transaction is made pursuant to an award on a contract let or sale made after public notice and in the case of property other than real property, competitive bidding, provided that the bid or offer accepted is the lowest received (§105.454.1(3) RSMo); and
  6. selling or leasing any property<sup>2</sup> to an agency in which he/she is an officer or employee or has supervisory authority over for payment in excess of **\$500** per transaction or **\$5,000** per year without competitive bidding (§105.454.1(2) RSMo). However, this provision does not apply to property that is condemned by the agency from its officer or employee (§105.466.3 RSMo).
- (B) Section 105.455 RSMo prohibits Commission members who vacate the office, whether by resignation, expulsion, or otherwise, from acting, serving, or registering as a lobbyist until six months after the vacation of such office.
- (C) Section 105.470 RSMo defines an “executive lobbyist” as a person who attempts to influence the actions of the executive branch of government, including a commission like the Commission. The conduct of executive lobbyists is regulated and for things like food and beverages, fees that are waived or reduced, gifts, and transportation costs, expenditures made by an executive lobbyist in lobbying appointed officials, like Commission members, must be reported to the Missouri Ethics Commission and are available for public inspection. For example, gifts of baseball tickets, meals and

greens fees fall within the definition of “expenditure” and must be reported by the lobbyist, not the Commission member, with certain listed exceptions, such as when the ticket, meal, or green fee is necessary for the Commission member to perform his/her duty as a Commission member when participating in a ceremony, public presentation or official commission meeting.

**(D)** A first violation of these sections is a class B misdemeanor, but subsequent violations are class E felonies. Section 105.478 RSMo.

1. Section 558.002.1(1) RSMo says that a person who is convicted of a class E felony may be sentenced to pay a fine which does not exceed **\$10,000**.
2. Section 558.011.1(5) RSMo says a person convicted of a class E felony may serve a prison term not to exceed **4 years**.

**ENDNOTES:**

- 1 **Definition of Business:** Business entity means any corporation, association, firm, partnership, proprietorship, or business entity of any kind or character (§105.450(2) RSMo).
- 2 **Definition of Property:** Property includes both real property and personal property. Real property includes land or real estate, including whatever is erected on, growing on, or affixed to the land. Personal property includes all property that is not real property, including corporeal personal property such as products, equipment, machinery, tools, autos, merchandise, animals, etc., and incorporeal property such as stocks, bonds, annuities, patents, copyrights, etc.