

TO: Board of Commissioners, Missouri Housing Development Commission
FROM: Margaret D. Lineberry, Executive Director
RE: Prepared Remarks / Staff Recommendation regarding MHDC Ethics Policy
DATE: December 17, 2010

Mr. Chairman, the next item on the agenda involves a proposed modification to MHDC's ethics policy. Because this issue relates to pending litigation, the Board would be entitled under the Sunshine Law to go into closed session to discuss the pending litigation before considering the proposed modification to the ethics policy. However, because this issue is of such importance in providing transparency and accountability to Missouri taxpayers, I am not asking the Board to go into closed session, and I would like to discuss this matter here in the public meeting.

As background, in July 2009, the Board of Commissioners adopted the Standards of Conduct Policy. This is MHDC's ethics policy. This policy specifically references two Missouri statutes that prohibit former employees of a state agency from coming back and lobbying the agency on behalf of someone who wants to do business with the agency. These statutes are commonly known as revolving door statutes. The reasoning behind such statutes is that everyone should be able to deal with a governmental agency on a level playing field, and that no one should have unfair access or be able to exert unfair influence over a state agency just because they can afford to pay a former employee to lobby the agency on their behalf.

These revolving door statutes are criminal statutes. In other words, any former employee of a state agency who violates these statutes can be prosecuted by the State and convicted of a crime.

As I noted, MHDC referenced these revolving door statutes in its ethics policy adopted in July 2009. Specifically, this part of the ethics policy states:

The revised statutes of the State of Missouri contain provisions which address employment options for Commissioners and Employees following their discontinuation of service to MHDC (Mo. Rev. Stat. § 105.454(5-6)). MHDC wishes to expressly incorporate into these Standards of Conduct these sections and the statutory established definitions referenced therein, as both may be amended from time to time.

A year after the Board adopted the ethics policy, MHDC's Debarment and Suspension Policy became effective, in the summer of 2010. The Debarment and Suspension Policy states that anyone who is involved in a violation of the ethics policy can be debarred from doing business with MHDC. Therefore, any former employee who violates the revolving door portion of the ethics policy can be debarred from doing business with MHDC, and anyone who has hired that former employee to lobby MHDC can also be debarred from doing business with MHDC.

In August 2010, MHDC was contacted by two former employees of MHDC, who asked about MHDC's intentions with respect to enforcement of the revolving door portion of the ethics policy. MHDC's General Counsel advised these former employees that if they violated the ethics policy, they -- as well as any business that hired them to lobby MHDC -- could be debarred from doing further business with MHDC.

One of these employees was unhappy with MHDC's response, and she filed a lawsuit in October 2010. This lawsuit argues that the revolving door statutes are criminal statutes and that MHDC cannot enforce criminal statutes. Basically, the lawsuit is asking the court to declare that a former employee can violate MHDC's ethics policy and MHDC cannot do anything about it.

Obviously, this is unacceptable. The Missouri taxpayer is entitled to expect that every state agency, and every person who deals with a state agency, will comply with appropriate ethics requirements. MHDC wants to have a clear and enforceable ethics policy. Therefore, staff recommended a clarification to MHDC's ethics policy to avoid the issue raised by the lawsuit.

Specifically, the lawsuit claims that MHDC's ethics policy relies on the revolving door statutes, which are criminal statutes, and that MHDC cannot enforce criminal statutes. In response to this lawsuit, MHDC staff recommended that the ethics policy delete the reference to the revolving door statutes and instead simply describe the type of conduct that is prohibited by the revolving door statutes. With this revision, then, everyone dealing with MHDC will be aware of the conduct prohibited by the ethics policy, and they will be aware they are subject to debarment if they engage in this conduct, and there will be no question about the enforceability of MHDC's ethics policy.

Earlier this week, the Policy Committee considered and accepted staff's recommendation for these revisions to the ethics policy. The revised ethics policy as approved by the Policy Committee was included in the mail-out materials. After the Treasurer's Office reviewed the mail-out materials, they suggested a couple of additional changes which staff presented to the Policy Committee and which the Policy Committee also found to be meritorious.

Therefore, staff is respectfully requesting that the Board take action on these suggested revisions to the MHDC ethics policy. Thank you.