

TO: Policies Committee, Missouri Housing Development Commission

FROM: Margaret D. Lineberry, Executive Director

**RE: Prepared Remarks / Staff Recommendation for Clarifications to
MHDC Standards of Conduct Policy**

DATE: December 15, 2010

Commissioners, I would like to present the following information as background for staff's recommended clarifications to MHDC's Standards of Conduct Policy:

The Board of Commissioners of the Missouri Housing Development Commission adopted its Standards of Conduct Policy on July 31, 2009.

Primary Provision 10 of the Standards of Conduct Policy includes a reference to two Missouri statutes, Section 105.454 (5) and Section 105.454(6) of the Revised Statutes of Missouri.

These statutes prohibit certain elected and appointed public officials and employees from engaging in certain conduct after they leave their state office or employment.

Specifically, Section 105.454(5) prohibits a former official or employee, for one year after termination of his or her office or employment, from performing any service for consideration by which he or she attempts to influence a decision of any agency of the state.

Second, Section 105.454(6) prohibits a former official or employee, after termination of his or her office or employment, from performing any service for consideration in relation to any case, decision, proceeding, or application with respect to which he or she was directly concerned or in which he or she personally participated during the period of his or her service or employment.

Both of these statutes are commonly known as "revolving door" statutes. Revolving door statutes are intended to prevent people from profiting improperly from their former government service. Too often, after they leave government service, former governmental employees will act as consultants to the private sector, using the personal relationships they developed or the specialized knowledge they acquired during their time in government service. Without a revolving door statute, the highest bidder in the private sector is able to retain these former governmental employees as consultants, and thereby gain unfair governmental access and influence. The result is the lack of a level playing field for other persons wishing to do business with the government.

When MHDC adopted its Standards of Conduct Policy in July 2009, Primary Provision 10 referenced these two revolving door statutes and stated that:

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.

The clarifications to Primary Provision 10 that staff is now recommending to the Policies Committee will, number 1, continue to reference these revolving door statutes and, number 2, will also include an express statement of the prohibited conduct, just so it is very clear, both to former MHDC employees and to anyone who might hire them as consultants, that a former employee's attempt to sell their government access and influence is prohibited conduct that constitutes a violation of the MHDC Standards of Conduct Policy.

The recommended clarifications to Primary Provision 10 also include MHDC's acknowledgement that a former employee may be criminally prosecuted for violation of Missouri's revolving door statutes, but that the remedy MHDC would pursue against a former employee, and any third party hiring a former employee as a consultant, would be a debarment proceeding under MHDC's Debarment and Suspension Policy found at 4 Code of State Regulations Section 170-8.010, et seq.

Finally, in addition to the clarifications made to Primary Provision 10, MHDC staff also recommends a few additional revisions to the Standards of Conduct Policy. These include a revision to Primary Provision 1 (to recognize the fact that certain statutes and regulations cited therein may be amended from time to time), a revision to Primary Provision 7 (to include the definition of "confidential information" that is found in Section 105.450(5) of the Revised Statutes of Missouri), and a revision to Primary Provision 9 (to include a reference to "Business Entity," which is a newly-defined term using the definition that is found in Section 105.450(2) of the Revised Statutes of Missouri). Finally Exhibit A, the Definitions section of the Standards of Conduct Policy, also sets forth new definitions for the terms "Business Entity," "Development," and "MHDC Resources."

In sum, staff's recommendation to the Policies Committee is that the MHDC Standards of Conduct Policy be clarified as set forth in the proposed revisions we have provided to the Committee, to confirm that engaging in the type of conduct prohibited by Missouri's revolving door statutes is punishable both by a criminal prosecution brought by the Missouri Attorney General and/or by a debarment proceeding brought by MHDC pursuant to its Debarment and Suspension Policy.

Thank you for your time and consideration of our recommendation.