

WD80176

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MISSOURI ETHICS COMMISSION,

Appellant,

v.

RON CALZONE

Respondent.

**Appeal from the Circuit Court of Cole County,
The Honorable Jon Beetem, Circuit Judge**

BRIEF OF APPELLANT

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Jurisdictional Statement

This appeal is from a Judgment of the Cole County Circuit Court, State of Missouri, issued on September 23, 2016 (LF 1057) prohibiting the Missouri AHC from conducting any further proceedings on Relator Ron Calzone's appeal from the Findings of Fact, Conclusions of Law, and Order of the Missouri Ethics Commission issued on September 11, 2015 (LF 658-681). This case is properly appealed under § 530.080, RSMo.

This appeal does not involve any of the categories reserved for the exclusive appellate jurisdiction for the Supreme Court of Missouri. Therefore, jurisdiction lies in the Missouri Court of Appeals, Western District, pursuant to Article V, Section 3 of the Missouri Constitution and § 477.070, RSMo 2000.

Statement of Facts

1. On November 4, 2014, Michael Dallmeyer filed an Official Complaint Form (Official Complaint) with the Missouri Ethics Commission (Ethics Commission) as “Michael A. Dallmeyer, Attorney.” Mr. Dallmeyer is a natural person. Mr. Dallmeyer filed the Official Complaint under his own name without identifying his client, as follows:

PART 1: PERSON BRINGING COMPLAINT			
NAME: Michael A. Dallmeyer, Attorney	DATE OF COMPLAINT: November 4, 2014		
ADDRESS: Carver & Michael LLC, 712 East Capitol Ave.			
CITY: Jefferson City	STATE: MO	COUNTY: Cole	ZIP:
CONTACT PHONE NUMBER/S: (HOME)	(WORK) 573-636-4215	(CELL)	
TITLE OF OFFICE HELD OR SOUGHT (IF APPLICABLE): N/A			

LF¹ 038-040.

2. Mr. Dallmeyer signed the Official Complaint personally before a notary and under penalty of perjury, again, without identifying his client, as follows:

VERIFICATION BY OATH OR AFFIRMATION	
STATE OF MISSOURI COUNTY OF <u>Cole</u>	
I, <u>Michael A. Dallmeyer</u> , being duly sworn upon oath and affirmation legally administered, certify under penalty of perjury that the foregoing information in this complaint is complete, true, and correct, to the best of my knowledge and belief.	
<u>Michael Dallmeyer</u> Signature of Complainant	
Subscribed and sworn to before me this <u>4</u> day of <u>November</u> , <u>2014</u> .	
THERESA M. SCHAEFER Notary Public - Notary Seal STATE OF MISSOURI Cole County Commission # 13452968 My Commission Expires: 12-09-2017	<u>Theresa M Schaefer</u> Notary Public

¹ Legal File

The Official Complaint did not identify Mr. Dallmeyer's client or any other entity supporting the Official Complaint, or state that he was filing the Official Complaint on their behalf. *Id.*

3. Mr. Dallmeyer's Complaint was accompanied by a transmittal letter stating "I am submitting on behalf of our client, Missouri Society of Governmental Consultants" (MCGC), and advising that "public or media communications should be directed to MCGC" while "questions from the [Ethics Commission] should be directed to [Mr. Dallmeyer]." LF 036.

4. By letter dated November 7, 2014, the Ethics Commission mailed the Official Complaint Form to Relator Calzone. LF 1102.

5. The Ethics Commission conducted an investigation into Mr. Dallmeyer's Complaint, found there was a reasonable basis for the Complaint, and scheduled a hearing for September 3, 2015. LF 973-979.

6. On January 21, 2015, during the investigation, the Ethics Commission's investigator provided a copy of the Transmittal Letter to Relator Calzone, which had not been provided earlier with the Official Complaint. LF 576-577 (Tr. 122:20-123:4).

7. On April 21, 2015, the Ethics Commission filed a Complaint with itself requesting a hearing pursuant to § 105.961.3, RSMo, and a determination of probable cause that Relator Calzone had violated §§ 105.473.1 and 105.473.2, RSMo. LF 396-403.

8. The Ethics Commission scheduled the hearing for September 3, 2015. LF 455.

9. On August 31, 2015, a few days before the hearing, Relator Calzone filed a motion to dismiss with the Ethics Commission explaining his defenses and raising certain constitutional issues, but Relator Calzone did not raise the issue that Mr. Dallmeyer's Complaint was improper because it was not filed by a natural person. LF 1038-1066.

10. On September 3, 2015, the Ethics Commission held a closed hearing on the issues raised by Mr. Dallmeyer's Complaint. At the hearing, the Ethics Commission took up and denied the motion. LF 462-464 (Tr. 8:20-10:5). At the hearing, the Ethics Commission called four (4) witnesses and introduced eight (8) exhibits, including the Official Complaint filed against Relator Calzone. LF 537 (Tr. 83:8-13). The following exchange occurred when the Ethics Commission offered the Official Complaint into evidence:

MR. STOKES: The purpose of admitting Exhibit 6 is to establish that a Complaint was filed with the Commission, that it was signed under oath and verified by the complainant.

MR. DICKERSON: I certainly do not object to that proffer.

LF 038-040, and 537 (Tr. 83:8-13). Relator Calzone exercised his Fifth Amendment right against self-incrimination (LF 588-599 (Tr. at 134:4-145:13)), called no witnesses, (LF 608 (Tr. 154:21-22)), and introduced only

one (1) exhibit, the cover letter to Mr. Dallmeyer's complaint. LF 578 (Tr. 124:5-9). In closing arguments, Relator Calzone incorporated his motion to dismiss, which included his admission that the Official Complaint was filed by “Mr. Dallmeyer individually, as required by state law, not by the Society of Governmental Consultants.” LF 613-614 (Tr. 159:24-160:4) and LF 1039 (see footnote 1).

11. On September 11, 2016, the Ethics Commission issued its Findings of Fact, Conclusions of Law, and Order against Relator Calzone 1) finding probable cause that Relator Calzone violated §§ 105.473.1 and 105.473.2, RSMo; 2) ordering that he register as a lobbyist and file all required reports; 3) ordering that he cease and desist from attempting to influence legislation until he files an annual lobbyist registration and other required reports; and 4) assessing a \$1,000 fine. LF 194-215.

Administrative Hearing Commission Proceedings

12. On September 25, 2015, Relator Calzone filed a Petition for Review with the Administrative Hearing Commission (AHC) under § 105.961.5, RSMo. On October 28, 2015, the Ethics Commission filed an Answer to Relator Calzone’s Petition for Review. LF 299-359.

13. On December 18, 2015, Relator Calzone filed a Motion for Decision on the Pleadings. LF 360-404.

14. On December 28, 2015, the Ethics Commission served its First Set of Interrogatories Directed to Petitioner Calzone. LF 065-076.

15. On February 3, 2016, the Ethics Commission filed a motion to file an amended Answer and submitted its proposed Amended Answer to the AHC. LF 406.

16. On February 5, 2016, the AHC issued an Order denying Relator Calzone's Motion for Decision on the Pleadings based on the parties seeking to submit evidence from outside of the pleadings and ordering that the parties file motions for summary judgment and allowing the Ethics Commission to file an Amended Answer. LF 405-407.

17. On February 24, 2016, the Ethics Commission served a Notice of Deposition on Missouri First, Inc., seeking to take of the deposition of its corporate designee on March 8, 2016. LF 100-102.

18. Relator Calzone subsequently filed a Motion for Protective Order against the Ethics Commission's discovery requests. LF 078-098.

19. On or about March 4, 2016, Relator Calzone filed a Motion for Summary Judgment. LF 408-440.

20. On April 8, 2016, the AHC issued an Order denying Relator Calzone's motion for a protective order and granting, in part, the Ethics Commission's motion to compel discovery. LF 058-063. Under this Order,

Relator Calzone was ordered to respond to two of three interrogatories and five requests for production of documents by April 18, 2016. LF 058-063.

Cole County Circuit Court Writ

21. On April 14, 2016, Relator Calzone filed a Petition for Writ of Prohibition with the Cole County Circuit Court, Case No. 16AC-CC00155 (Circuit Court), and Suggestions in Support. LF 12-19 and 20-111, respectively.

22. On or about April 18, 2016, the Ethics Commission filed a Motion to Stay Proceedings in the AHC seeking to stay the AHC proceedings pending resolution of Relator Calzone's application for a writ of prohibition. LF 682-685.

23. On April 19, 2016, the Circuit Court issued Preliminary Orders in Prohibition against the AHC and Commissioner Sreenivasa Dandamudi. LF 112-115.

24. On April 22, 2016, Relator Calzone filed an opposition to any further action being taken on the Ethics Commission's Motion to Stay Proceedings due to the issuance of the Preliminary Writ of Prohibition. LF 686-688.

25. On April 26, 2016, the AHC issued an Order acknowledging the Preliminary Order in Prohibition, suspending all deadlines previously

imposed and stating no further action would be taken on any motions until ordered by the Court. LF 689.

26. On September 23, 2016, the Cole County Circuit Court issued a Judgment making permanent its preliminary writs of prohibition issued on April 19, 2016, based on finding “the complaint filed with the Missouri Ethics Commission was not filed by a natural person, but by an entity by its agent (notwithstanding the fact that the agent was a natural person),” declaring void “all actions taken on the complaint, and prohibiting the Missouri Ethics Commission and the AHC from taking any further action on that complaint.” LF 1157.

Points Relied On

- I. The Cole County Circuit Court erred in issuing its Judgment on September 23, 2016 prohibiting the AHC from reviewing Relator Calzone's appeal of the Missouri Ethics Commission's Order, because a writ for prohibition under § 530.010, et seq., RSMo, is improper when used to disrupt a proper appeal of an administrative action to the AHC under § 105.961.5, RSMo, in that AHC had proper jurisdiction to review the proceedings held by the Missouri Ethics Commission, regardless of whether the Missouri Ethics Commission acted without proper authority.

Derfelt v. Yocom, 692 S.W.2d 300, 301 (Mo. banc 1985)

State ex rel. Henley v. Eichel, 285 S.W.3d 327, 330 (Mo. banc 2009)

State ex rel. Missouri State Bd. of Registration for the Healing Arts v. Hartenbach, 768 S.W.2d 657, 660 (Mo. Ct. App. 1989)

§ 105.957.2, RSMo

§ 530.010, RSMo

§ 536.140.2(2), RSMo

II. The Cole County Circuit Court erred in issuing its Judgment on September 23, 2016 prohibiting the AHC from reviewing Relator Calzone's appeal of the Missouri Ethics Commission's Order, because the complaint filed with the Missouri Ethics Commission met the requirements of § 105.957.2, RSMo, in that Michael Dallmeyer was a natural person, he was identified in the Official Complaint Form as the complainant, and the Official Complaint was signed under penalty of perjury by him so that he was accepting responsibility towards the alleged violator for a frivolous complaint under § 105.957.4, RSMo.

Warner v. Berg, 679 S.W.2d 913, 915 (Mo. Ct. App. 1984)

§ 105.957.2, RSMo

§ 105.957.4, RSMo

§ 105.961, RSMo

Argument

I. The Cole County Circuit Court erred in issuing its Judgment on September 23, 2016 prohibiting the AHC from reviewing Relator Calzone's appeal of the Missouri Ethics Commission's Order, because a writ for prohibition under § 530.010, et seq., RSMo, is improper when used to disrupt a proper appeal of an administrative action to the AHC under § 105.961.5, RSMo, in that the AHC had proper jurisdiction to review the proceedings held by the Missouri Ethics Commission, regardless of whether the Missouri Ethics Commission acted without proper authority.

Relator Calzone appropriately filed his appeal of the Ethics Commission's Order with the Administrative Hearing Commission (AHC) as required under § 105.961.5, RSMo Cum. Supp. 2013. Under § 105.961.5, RSMo, the AHC had authority to determine all issues regarding the Ethics Commission's compliance with the laws regulating the handling of Mr. Dallmeyer's complaint against Relator Calzone, including whether Mr. Dallmeyer was a natural person and whether the complaint complied with § 105.957.2, RSMo. The issues raised in Relator Calzone's Petition for Writ of Prohibition were not outside the scope of authority of the AHC, and upon completion would have been subject to appeal to the circuit court. Therefore,

the Circuit Court should have denied the petition allowing the AHC to proceed with its administrative hearing, thus exhausting the administrative remedies available. “The remedy afforded by the writ of prohibition shall be granted to prevent usurpation of judicial power” (§ 530.010, RSMo), but here it has been used by the Circuit Court, at the behest of Relator Calzone, to usurp the AHC of its administrative power.

Prohibition is a discretionary writ. *State ex rel. Henley v. Eichel*, 285 S.W.3d 327, 330 (Mo. banc 2009). It is also an "extraordinary legal remedy" that risks circumventing normal appellate processes. *Derfelt v. Yocom*, 692 S.W.2d 300, 301 (Mo. banc 1985). For this reason, courts should employ it "judiciously and with great restraint," only when facts and circumstances "demonstrate unequivocally that there exists an extreme necessity for preventive action." *Id.* A court should decline to act in the absence of such extreme conditions. *Id.*

Here, Relator Calzone had a motion for summary judgment pending and a direct appeal right from a decision of the AHC to the circuit court, the same court that has issued this writ. § 536.100 et seq., RSMo. Relator Calzone filed this writ action improperly. Section 536.140.2(2), RSMo, expressly governs challenges to an agency's statutory authority, and such an action may be brought by a person who has exhausted his or her administrative remedies through the AHC. § 536.100, RSMo, and *State ex rel.*

Missouri State Bd. of Registration for the Healing Arts v. Hartenbach, 768 S.W.2d 657, 660 (Mo. Ct. App. 1989). By side-stepping the AHC, Relator Calzone has failed to exhaust his administrative remedies. The chance that the AHC might rule against Relator Calzone, either on a motion for summary decision or on a motion to compel, does not give Relator Calzone or the circuit court the right to proceed under a writ of prohibition. The Court should have waited for the AHC to rule on the case, before exercising its authority, which could then have been exercised through the standard appellate process on the record. § 536.140, RSMo.

After remand, if the AHC rules against Relator Calzone, he will have an opportunity to challenge the decision through a standard petition for judicial review. § 536.140.2(2), RSMo. The Court should have denied Relator Calzone's request for a permanent writ, quashed the original writ, and permitted the AHC to proceed on Relator Calzone's motion for summary decision.

Courts should be particularly skeptical that a writ process would spare the parties and the state's taxpayers litigation expenses compared to simply letting the case be resolved by a summary decision motion. *State ex rel. Henley v. Eichel*, 285 S.W.3d 327, 334 (Mo. banc 2009) (Fischer, J., dissenting).

This Court should reverse the Writ issued by the Cole County Circuit Court against the AHC and remand the case to the AHC for further proceedings, because Relator Calzone's petition for a writ was inappropriate.

II. The Cole County Circuit Court erred in issuing its Judgment on September 23, 2016 prohibiting the AHC from reviewing Relator Calzone's appeal of the Missouri Ethics Commission's Order, because the complaint filed with the Missouri Ethics Commission met the requirements of § 105.957.2, RSMo, in that Michael Dallmeyer was a natural person, he was identified in the Official Complaint Form as the complainant, and the Official Complaint was signed under penalty of perjury by him so that he was accepting responsibility towards the alleged violator for a frivolous complaint under § 105.957.4, RSMo.

Pursuant to § 105.957.2, RSMo, "[c]omplaints filed with the [Ethics Commission] shall be in writing and filed only by a natural person." Relator Calzone argues that this means an attorney cannot file a complaint in his own name on behalf of a non-natural entity. Relator Calzone's argument fails as a matter of law.

There can be no dispute that Michael Dallmeyer, the attorney who filed the subject complaint, is a natural person. If there is any dispute it is whether the Official Complaint was filed by him or by an association, through him as its agent. In the Official Complaint, Mr. Dallmeyer identified himself as the complainant on the Ethics Commission's form without any reference to an association or client, except for identifying himself as "Attorney":

PART 1 - PERSON BRINGING COMPLAINT			
NAME: Michael A. Dallmeyer, Attorney		DATE OF COMPLAINT: November 4, 2014	
ADDRESS: Carver & Michael LLC, 712 East Capitol Ave.			
CITY: Jefferson City	STATE: MO	COUNTY: Cole	ZIP:
CONTACT PHONE NUMBER/S: (HOME)	(WORK) 573-636-4215	(CELL)	
TITLE OF OFFICE HELD OR SOUGHT (IF APPLICABLE): N/A			

(LF 1068.) Mr. Dallmeyer signed the complaint under penalty of perjury to the best of his knowledge and belief without reference to any other association or client, as follows:

VERIFICATION BY OATH OR AFFIRMATION	
STATE OF MISSOURI COUNTY OF <u>Cole</u>	
I, <u>Michael A. Dallmeyer</u> , being duly sworn upon oath and affirmation legally administered, certify under penalty of perjury that the foregoing information in this complaint is complete, true, and correct, to the best of my knowledge and belief.	
<u>Michael Dallmeyer</u> Signature of Complainant	
Subscribed and sworn to before me this <u>4</u> day of <u>November</u> , <u>2014</u> .	
THERESA M. SCHAEFER Notary Public - Notary Seal STATE OF MISSOURI Expires: <u>12-9-17</u> Cole County Commission # 13452968 My Commission Expires: <u>12-09-2017</u>	<u>Theresa M Schaefer</u> Notary Public

(Id.) The conclusion here is simple: Mr. Dallmeyer, a natural person, filed a complaint with the Ethics Commission in which he personally took responsibility for the information contained therein. In the cover letter, Mr. Dallmeyer stated that he was “submitting on behalf of our client, Missouri Society of Governmental Consultants.” LF 1067. Collateral information available through the cover letter, or elsewhere, that he was acting at the behest of another, does not alter the fact that Mr. Dallmeyer, a natural person filed the Official Complaint form with the Ethics Commission.

The fact that Mr. Dallmeyer stated in a cover letter that he was filing "on behalf of" the Society of Governmental Consultants is merely an acknowledgment that the Society of Governmental Consultants wanted to file the complaint, but could not, so it asked a natural person to do so, just as Relator Calzone suggests would be permissible at page 25 of his brief before the Circuit Court: "multiple members who wanted to file a complaint, if such members existed, could encourage just one member with personal knowledge to file the complaint." LF 722. There is no reason to later require that person to hide the fact they were acting on behalf of the larger organization.

Furthermore, § 105.957, RSMo, does not preclude the "natural person" from being hired by another, whether the other is natural or non-natural. If an association desires to file a complaint with the Missouri Ethics Commission, it cannot, due to the statute. Nevertheless, such statute would not prevent another from choosing to file the complaint, whether that is a member of the association or someone else. It would not be unreasonable for the complainant to characterize his or her actions as being "on behalf of" the association and the other members, even though that person's intent is to step forward as a natural person and take responsibility for filing the complaint. Any alternative interpretation would mean that anyone filing such a complaint would need to be a "lone wolf," unaffiliated with any other person or association with similar views, or risk being identified as an agent

of the non-natural entity and, therefore, without authority. To admit any such affiliation at a later date might jeopardize the authenticity of the Official Complaint. This interpretation has no merit.

It is not reasonable to require the Ethics Commission to look beyond the face of the Official Complaint form to determine if a natural person, who on its face is taking full responsibility for the filing, is actually acting for an association. Such would require a meaningless investigation into the natural person and his or her motivations, before commencing the investigation into the subject matter of the complaint. This would not be conducive to an effective enforcement of the ethics laws. Mr. Dallmeyer's statement that he was filing the complaint on behalf of his client in the cover letter does not diminish the significance that he named only himself in the Official Complaint.

The apparent purposes of requiring complaints to be filed in writing by a natural person under penalty of perjury, instead of in the name of the organization through an agent, is 1) to assure that the person filing the complaint has knowledge of or a solid basis for their belief in the facts alleged in the Complaint, 2) to provide the Ethics Commission with primary contact information for an individual with knowledge of the facts to begin an investigation, and 3) to require an individual (not a business entity that could be easily dissolved) to assume the liability imposed under § 105.957.4, RSMo,

which states: "Any person who submits a frivolous complaint shall be liable for actual and compensatory damages."

Here, those purposes have been achieved. The Ethics Commission received a complaint from a natural person. It is the identity and nature of the person identified in the Official Complaint that is controlling, not collateral information that shows other affiliations between the complainant and other interested non-natural entities. The law would be concerned with a non-natural person (which could be easily dissolved and liquidated) filing a complaint while hiding the true identity of the real party in interest, but the same concerns do not exist when a natural person files the Official Complaint. The law does not require that the natural person be unaffiliated with non-natural persons or require the Ethics Commission to undertake an investigation into the background of a natural person to verify that they are not acting on behalf of a non-natural person. Even a review of the accompanying cover letter is not required.

It is reasonable for the Ethics Commission to assume in the first instance, since Mr. Dallmeyer signed the verification certifying to his allegations "under penalty of perjury . . . to the best of his knowledge and belief," that he had a reasonable basis for his complaint. As an attorney, that ethical obligation is heightened. A verification "is not given the probative force of an affidavit." *Warner v. Berg*, 679 S.W.2d 913, 915 (Mo. Ct. App.

1984). In *Warner*, a party (Berg) was trying to strengthen his position vis-a-vis a motion for summary judgment by moving to file his petition as an amended verified petition. The Court noted that the “alleged negotiations between Warner and WGF that would establish discharge of Berg's liability, were not matters within Berg's own knowledge . . . [and that] the amended answer merely alleges the events happened “as best defendant Berg can presently reconstruct the factual situation.” *Id.* This was not a problem for the Court, except that it did not raise Berg’s level of evidence, because it was not an affidavit as is required by Supreme Court Rule 74.04(e), so he still lost the case. Similarly, Mr. Dallmeyer, as an attorney, signed to the “best of [his] knowledge and belief.” Such was not inappropriate, because he was not signing an affidavit that required personal knowledge of all facts, but a verification that required a mix of knowledge and belief.

The Ethics Commission had the contact information it needed to contact Mr. Dallmeyer during its investigation to confirm the facts in the complaint known by Mr. Dallmeyer and to obtain the names of additional witnesses upon whose testimony he based his belief. LF 537-538 (Tr. 83:17-84:7). The fact that Mr. Dallmeyer had been hired or encouraged by a non-natural person or that a non-natural association supported his complaint is irrelevant. In addition, Mr. Dallmeyer accepted the responsibility for filing a frivolous complaint. He is therefore available as much as any other natural

person for Relator Calzone to pursue if the complaint proves to be frivolous. Attorneys act at their own peril if they fail to conduct a diligent investigation prior to filing the Official Complaint under their own names.

Upon receipt of the Official Complaint from a natural person, the Ethics Commission was obligated to investigate. § 105.961, RSMo. Subsections 2 and 3 of § 105.957, RSMo, identify numerous circumstances when an investigation should not be undertaken, but none of the reasons are that the complaint was filed by a non-natural person. The reasonableness and credibility of the Official Complaint will be evaluated during the investigation, and any frivolity of the complaint may become apparent as the Ethics Commission pursues its investigation. If such frivolity is discovered, the Ethics Commission is obligated to dismiss the complaint. § 105.957.4, RSMo. If, after investigation, the Ethics Commission finds “there are reasonable grounds to believe that a violation of any law has occurred”, then the Commission moves forward with a probable cause hearing. § 105.961.3, RSMo. The findings of the probable cause hearing are appealable to the AHC. § 105.961.3 and .5, RSMo.

Relator Calzone’s remedy for a frivolous complaint is not an injunction against an investigation or an injunction against an action being brought against him. His remedy for a frivolous complaint is to pursue “actual and compensatory damages” against Mr. Dallmeyer. § 105.957.4, RSMo. The

system protects the alleged violator at the end of the process through an action for damages, not at the beginning as Relator Calzone desires. As in any litigation, a party needs to defend him or herself through the process. In certain situations, such as this case or an attorney fees claim in an agency proceeding, the party can seek compensation at the end of the process. (See §§ 105.957.4 and 536.087.4, RSMo.)

In conclusion, Mr. Dallmeyer is a natural person, and he filed a complaint in writing with the Ethics Commission under his own name. There is no prejudice to Relator Calzone that Mr. Dallmeyer did so at the behest or under the employ of the Society of Governmental Consultants. Mr. Dallmeyer's filing complied with the plain terms of the statute, and was properly investigated and processed by the Ethics Commission.

Conclusion

WHEREFORE, the Missouri Ethics Commission respectfully requests that this Court reverse the Cole County Circuit Court Judgment, and remand to the Administrative Hearing Commission for further proceedings regarding its review of Relator Calzone's appeal of the Missouri Ethics Commission's probable cause determination and the discipline imposed.

Respectfully Submitted,

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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically pursuant to Rule 103 and Local Rule XII through Missouri Case Net, on this 11th day of April, 2017, to:

David E. Roland
Freedom Center of Missouri
P.O. Box 693
Mexico, MO 65265
dave@freedom.org

and by email and first class mail, postage prepaid, to:

Allen Dickerson
Center for Competitive Politics
124 S. West St., Suite 201
Alexandria, VA 22314
adickerson@campaignfreedom.org

/s/ Craig H. Jacobs _____
Assistant Attorney General

Certification of Compliance

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b), and that the brief contains 4,366 words.

/s/ Craig H. Jacobs
Assistant Attorney General

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Filed
SEP 11 2015
Missouri Ethics
Commission

**BEFORE THE
MISSOURI ETHICS COMMISSION**

MISSOURI ETHICS COMMISSION,)	
)	
Petitioner,)	
)	Case No. 14-0005-I
v.)	
)	
RON CALZONE,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER**

This is the decision and order of the Missouri Ethics Commission following a hearing on a complaint filed by Petitioner by and through counsel, pursuant to Section 105.961, RSMo, and Chapter 536, RSMo. The hearing was conducted before the following members of the Missouri Ethics Commission: Charles Weedman, John Munich, Bill Deeken, Eric Dirks, Nancy Hagan, and Bill Stoltz.

A closed hearing took place on Thursday, September 3, 2015, at the offices of the Missouri Ethics Commission at 3411A Knipp Drive, Jefferson City, Missouri 65109. The Commission was represented by attorney Curt Stokes. Respondent Calzone appeared in person with counsel, Allen Dickerson and David E. Roland.

The Commission admitted into evidence Petitioner's Exhibits 1 (with the exception of pages 13 through 19), 2, 3, 4, 6, 7 and 8; testimony of Randy Scherr, Secretary, Missouri Society of Governmental Consultants; Della Luaders, Senior Field Investigator; Betsy Byers, Director of Business Services; and Ron Calzone, Respondent and Respondent's Exhibit 9. Respondent Calzone exercised his Fifth Amendment privilege against self-incrimination when called to

testify. Having considered all the competent and substantial evidence upon the whole record, the Commission finds by a vote of 6-0 as follows:

FINDINGS OF FACT

1. The Missouri Ethics Commission is an agency of the State of Missouri established pursuant to Section 105.955, RSMo, in part for the purpose of enforcing the provisions of Chapter 105, RSMo.

2. Respondent Calzone is an incorporator and director of Missouri First, Inc.

3. Respondent Calzone is the President, Secretary, and registered agent of Missouri First, Inc.

4. Missouri First, Inc. is a non-profit, public benefit corporation formed in or around 2006, and registered with the Missouri Secretary of State.

5. Pursuant to Section 105.961, RSMo, the Commission's staff investigated a complaint filed with the Commission and reported the investigation findings to the Commission.

6. Based on the report of the Commission's staff, the Commission determined that there were reasonable grounds to believe that violations of law occurred, and it therefore authorized a hearing in this matter pursuant to Section 105.961.3, RSMo.

7. Missouri First, Inc., asks Missourians to join its organization on its website, stating:

By joining Missouri First, you place your name and influence on the *right* side of issues affecting Missourians. The old saying, "there is strength in numbers" holds true, especially when lobbying Missouri House and Senate members. You may be certain that Missouri First is working hard to represent your values in the

issues that touch your life All we ask is that you agree with the principles outlined in our Charter and fill out the form below We ask this form to be completed that we may better keep you informed on Missouri issues, and to bolster our [your] clout when fighting the war for sovereignty.

A copy of this page from the website for Missouri First, Inc., is included at Appendix 1.

8. The Charter for Missouri First, Inc., states as follows:

Missouri First will give priority to educating and mobilizing the public to meet our objectives. Media advertising, public oratory, informational seminars, legislative lobbying, and citizen involvement may be used to teach or to influence public policy Missouri First will campaign for legislative and ballot issues, as well as specific candidates who further our stated objectives, but will not lobby or campaign for a particular political party.

A copy of this page from the website for Missouri First, Inc., is included at Appendix 1.

9. Missouri First, Inc., invites Missourians to fill out "witness forms" on its website, permitting an individual to identify a particular piece of legislation, whether he or she supports or opposes it, and to record his or her comments regarding the legislation. Missouri First, Inc., states that it will present all witness forms to the appropriate committee of the Missouri General Assembly.

10. Since 2013, Respondent Calzone has been designated by the actions of Missouri First, Inc., and its constituent members for the purpose of attempting to influence official action on the bills, resolutions, amendments, and other matters, when Respondent Calzone, acting

consistent with the purpose of Missouri First, Inc., and its members, met with legislators and legislators' staff to support or oppose matters pending before the Missouri Legislature, testified in opposition or support of matters pending before the Missouri Legislature, submitted witness forms as requested by individuals who provided those forms to Respondent Calzone through Missouri First, Inc., and by appearing as a witness before committees of the Missouri Legislature for the purpose of representing the interests of Missouri First, Inc., and its members.

11. The Commission heard testimony that Respondent Calzone has been seen in the Missouri House and Missouri Senate, particularly on the third and fourth floors of the Missouri Capitol, where most legislators' offices are located, and has been seen meeting with legislators individually in their offices.

12. Ms. Luaders, the Ethics Commission's investigator, testified that Respondent Calzone told her that he met with legislators individually, outside of committee hearings, to discuss legislation and policy, and that Respondent Calzone described Missouri First, Inc., as a think tank made up of like-minded individuals who mostly dealt with politics and spent a lot of time commenting on legislation and public policy.

13. Ms. Luaders testified that Respondent Calzone told her that he "clearly lobbied," but felt that he did not fall within the definition of legislative lobbyist.

14. Ms. Luaders testified that Mr. Calzone stated that he was aware that people complained to Respondent Calzone and had voiced opinions that Respondent Calzone should be registered as a lobbyist.

15. Respondent Calzone appeared before legislative committees of the Missouri House and the Missouri Senate, identifying himself as appearing on behalf of Missouri First, Inc.

16. The witness appearance forms before the Missouri House, required by Section 105.473.2, and the Hearing Minutes before the Missouri Senate, are included in Appendix 2.

17. Respondent Calzone appeared before the General Laws Committee of the Missouri House on March 6, 2013, on behalf of Missouri First, Inc., regarding HB 436.

18. Respondent Calzone appeared before the General Laws Committee of the Missouri Senate on March 12, 2013, on behalf of Missouri First, Inc., regarding SB 325.

19. Respondent Calzone appeared before the Health Care Policy Committee of the Missouri House on March 12, 2013, on behalf of Missouri First, Inc., regarding HJR 19.

20. Respondent Calzone appeared before the General Laws Committee of the Missouri Senate on January 28, 2014, on behalf of Missouri First, Inc., regarding SB 613.

21. In taking the actions to influence official action on legislation as alleged above, Respondent Calzone acted on behalf of Missouri First, Inc., and its members, as stated on the website for Missouri First, Inc.

22. In taking the actions to influence official action on legislation as alleged above, Respondent Calzone has acted consistent with the Charter for Missouri First, Inc., which states that "legislative lobbying . . . may be used to teach or to influence public policy." A copy of this page from the website for Missouri First, Inc., is attached hereto as Appendix 1.

CONCLUSIONS OF LAW

23. A Missouri lobbyist shall "not later than January fifth of each year or five days after beginning any activities as a lobbyist, file standardized registration forms, verified by a written declaration that it is made under the penalties of perjury, along with a filing fee of ten dollars, with the commission." § 105.473.1, RSMo.

24. The registration form "shall include the lobbyist's name and business address, the name and address of all persons such lobbyist employs for lobbying purposes, the name and address of each lobbyist principal by whom such lobbyist is employed *or in whose interest such lobbyist appears or works.*" § 105.473.1, RSMo (emphasis added); *see also* Missouri Ethics Commission Opinion 1994.06.113 ("...that principal being the person by who is employed or in whose interest he appears or works."); Missouri Ethics Commission Opinion 1995.03.114; Missouri Ethics Commission Opinion 1998.01.101.

25. In addition, "[e]ach person shall, before giving testimony before any committee of the general assembly, give to the secretary of such committee such person's name and address and the identity of any lobbyist or organization, if any, on whose behalf such person appears." §105.473.2, RSMo.

26. Lobbyists must regularly file monthly reports disclosing expenditures by the lobbyist or lobbyist principals made on behalf of all public officials. § 105.473.3, RSMo.

27. Twice per year, lobbyists must provide to the Ethics Commission a "general description of the proposed legislation or action by the executive branch or judicial branch which the lobbyist or lobbyist principal supported or opposed." § 105.473.12, RSMo.

28. A "lobbyist" is "any natural person defined as an executive lobbyist, judicial lobbyist, elected local government official lobbyist, or a legislative lobbyist." § 105.470(6), RSMo.

29. 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
- (b) Is engaged for pay or for any valuable consideration for the purpose of performing such activity; or
- (c) Is designated to act as a lobbyist by any person, business entity, governmental entity, religious organization, nonprofit corporation, association or other entity; or
- (d) Makes total expenditures of fifty dollars or more during the twelve-month period beginning January first and ending December thirty-first for the benefit of one or more public officials or one or more employees of the legislative branch of state government in connection with such activity. . . .

§ 105.470(5), RSMo.

30. The term "designate" is defined by *Webster's Third New International Dictionary* as "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 INTERNATIONAL DICTIONARY 612 (1986). "Designate may apply to choosing or detailing a person or group for a certain post by a person or group having power or right to choose." *Id.*

31. A "legislative lobbyist" shall not include any member of the general assembly, an elected state official, or any other person *solely* due to such person's participation in any of the following activities:

- a. Responding to any request for information made by any public official or employee of the legislative branch of government;
- b. Preparing or publication of an editorial, a newsletter, newspaper, magazine, radio or television broadcast, or similar news medium, whether print or electronic;
- c. Acting within the scope of employment of the legislative branch of government when acting with respect to the general assembly or any member thereof;
- d. Testifying as a witness before the general assembly or any committee thereof;

§ 105.470(5), RSMo (emphasis added).

32. The term "lobbyist principal" means "any person, business entity, governmental entity, religious organization, nonprofit corporation or association who employs, contracts for pay or otherwise compensates a lobbyist." § 105.470(7), RSMo. The term "employ" means "To make use of the services of; to give employment to; to entrust with some duty or behest..." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1986); *see also State v. Rhoads*, 399 S.W. 3d 905, 907 n.1 (for purposes of the Missouri Constitution's prohibition against nepotism, the court notes "that 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.").

33. There is probable cause to believe that Respondent Calzone violated Sections 105.473.1 and 105.473.2, RSMo, when during 2013 and 2014 he did not register as a lobbyist and did not file regular lobbyist disclosure reports with the Missouri Ethics Commission after he attempted to influence official action on matters pending before the Missouri Legislature in 2013 and 2014, and while doing so acted on behalf of Missouri First, Inc. and its members, as a regular pattern of conduct and consistent with a Charter purpose of Missouri First, Inc., and that Respondent Calzone knowingly did not register as a lobbyist.

ORDER

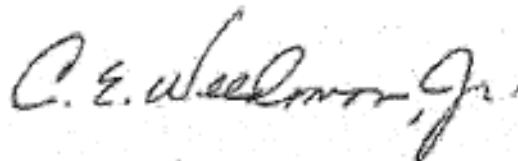
The Missouri Ethics Commission finds probable cause that Respondent Calzone violated, and has knowingly violated, Sections 105.473.1 and 105.473.2, RSMo.

The Commission orders Respondent Calzone to register as a lobbyist and to file accurately all necessary lobbyist expenditure disclosure reports pursuant to Sections 105.961.4(2) and 105.961.5(3), RSMo.

The Commission orders Respondent Calzone to cease and desist from acting to attempt to influence any pending or potential legislation on behalf of Missouri First, Inc., or any other person, until filing an annual lobbyist registration report and filing all necessary lobbyist expenditure disclosure reports pursuant to Sections 105.961.4(1) and 105.961.5(1), RSMo.

The Missouri Ethics Commission further orders a fee be imposed against Respondent Calzone in the amount of \$1,000 pursuant to Section 105.961.4(6), RSMo.

SO ORDERED this 11th day of September, 2015.



Charles E. Weedman, Jr., Chair
MISSOURI ETHICS COMMISSION

Missouri Revised Statutes

Chapter 105 Public Officers and Employees--Miscellaneous Provisions

[←105.957](#)

Section 105.957.2

[105.958→](#)

August 28, 2016

Receipt of complaints--form--investigation--dismissal of frivolous complaints, damages, public report.

105.957. 1. The commission 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.

2. Complaints filed with the commission shall be in writing and filed only by a natural person. The complaint shall contain all facts known by the complainant that have given rise to the complaint and the complaint shall be sworn to, under penalty of perjury, by the complainant. No complaint shall be investigated unless the complaint alleges facts which, if true, fall within the jurisdiction of the commission. Within five days after receipt of a complaint by the commission, a copy of the complaint, including the name of the complainant, shall be delivered to the alleged violator.

3. No complaint shall be investigated which concerns alleged criminal conduct which allegedly occurred previous to the period of time allowed by law for criminal prosecution for such conduct. The commission may refuse to investigate any conduct which is the subject of civil or criminal litigation. The commission, its executive director or an investigator shall not investigate any complaint concerning conduct which is not criminal in nature which occurred more than two years prior to the date of the complaint. A complaint alleging misconduct on the part of a candidate for public office, other than those alleging failure to file the appropriate financial interest statements or

campaign finance disclosure reports, shall not be accepted by the commission within sixty days prior to the primary election at which such candidate is running for office, and until after the general election.

4. If the commission finds that any complaint is frivolous in nature or finds no probable cause to believe that there has been a violation, the commission shall dismiss the case. For purposes of this subsection, "frivolous" shall mean a complaint clearly lacking any basis in fact or law. Any person who submits a frivolous complaint shall be liable for actual and compensatory damages to the alleged violator for holding the alleged violator before the public in a false light. If the commission finds that a complaint is frivolous or that there is not probable cause to believe there has been a violation, the commission shall issue a public report to the complainant and the alleged violator stating with particularity its reasons for dismissal of the complaint. Upon such issuance, the complaint and all materials relating to the complaint shall be a public record as defined in chapter 610.

5. Complaints which allege violations as described in this section which are filed with the commission shall be handled as provided by section 105.961.

(L. 1991 S.B. 262 § 2, A.L. 1997 S.B. 16, A.L. 2006 H.B. 1900)

Effective 1-1-07

*Revisor's Note: This section is reprinted in accordance with Section 3.066. Senate Bill 844 in 2010 amended this section. Senate Bill 844 was declared unconstitutional as a violation of the original purpose requirement of Art. III, Sec. 21, of the Missouri Constitution (see annotation below), rendering the repeal and reenactment of this section ineffective.

(2012) Senate Bill 844 provision declared unconstitutional as a violation of the original purpose requirement of Art. III, Sec. 21, Constitution of Missouri. Legends Bank v. State, 361 S.W.3d 383 (Mo. banc).

(2015) Requirement of closed hearing under section is valid under both First and Sixth Amendments. Geier v. Missouri Ethics Com'n, 474 S.W.3d 560 (Mo.).

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Missouri General Assembly

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Missouri Revised Statutes

Chapter 105

Public Officers and Employees--Miscellaneous Provisions

[←105.961](#)

Section 105.961.2

[105.962→](#)

August 28, 2016

Special investigator--report--commission review, determination--special prosecutor--hearings--action of commission--formal proceedings--appropriate disciplinary authorities--powers of investigators--fees and expenses--confidentiality, penalty--compensation.

105.961. 1. Upon receipt of a complaint as described by section [105.957](#), the commission shall assign the complaint to a special investigator, who may be a commission employee, who shall investigate and determine the merits of the complaint. Within ten days of such assignment, the special investigator shall review such complaint and disclose, in writing, to the commission any conflict of interest which the special investigator has or might have with respect to the investigation and subject thereof. Within one hundred twenty days of receipt of the complaint from the commission, the special investigator shall submit the special investigator's report to the commission. The commission, after review of such report, shall determine:

- (1) That there is reasonable grounds for belief that a violation has occurred; or
- (2) That there are no reasonable grounds for belief that a violation exists and the complaint should be dismissed; or
- (3) That additional time is necessary to complete the investigation, and the status and progress of the investigation to date. The commission, in its discretion, may allow the investigation to proceed for additional successive periods of one hundred twenty days each, pending reports regarding the status and progress of the investigation at the end of each such period.

2. When the commission concludes, based on the report from the special investigator, or based on an audit conducted pursuant to section [105.959](#), that there are reasonable grounds to believe that a violation of any criminal law has occurred, and if the commission believes that criminal prosecution would be appropriate upon a vote of four members of the commission, the commission shall refer the report to the Missouri office of prosecution services, prosecutors coordinators training council established in section [56.760](#), which shall submit a panel of five attorneys for recommendation to the court having criminal jurisdiction, for appointment of an attorney to serve as a special prosecutor; except that, the attorney general of Missouri or any assistant attorney general shall not act as such special prosecutor. The court shall then appoint from such panel a special prosecutor pursuant to section [56.110](#) who shall have all the powers provided by section [56.130](#). The court shall allow a reasonable and necessary attorney's fee for the services of the special prosecutor. Such fee shall be assessed as costs if a case is filed, or ordered by the court if no case is filed, and paid together with all other costs in the proceeding by

the state, in accordance with rules and regulations promulgated by the state courts administrator, subject to funds appropriated to the office of administration for such purposes. If the commission does not have sufficient funds to pay a special prosecutor, the commission shall refer the case to the prosecutor or prosecutors having criminal jurisdiction. If the prosecutor having criminal jurisdiction is not able to prosecute the case due to a conflict of interest, the court may appoint a special prosecutor, paid from county funds, upon appropriation by the county or the attorney general to investigate and, if appropriate, prosecute the case. The special prosecutor or prosecutor shall commence an action based on the report by the filing of an information or seeking an indictment within sixty days of the date of such prosecutor's appointment, or shall file a written statement with the commission explaining why criminal charges should not be sought. If the special prosecutor or prosecutor fails to take either action required by this subsection, upon request of the commission, a new special prosecutor, who may be the attorney general, shall be appointed. The report may also be referred to the appropriate disciplinary authority over the person who is the subject of the report.

3. When the commission concludes, based on the report from the special investigator or based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to believe that a violation of any law has occurred which is not a violation of criminal law or that criminal prosecution is not appropriate, the commission shall conduct a hearing which shall be a closed meeting and not open to the public. The hearing shall be conducted pursuant to the procedures provided by sections 536.063 to 536.090 and shall be considered to be a contested case for purposes of such sections. The commission shall determine, in its discretion, whether or not that there is probable cause that a violation has occurred. If the commission determines, by a vote of at least four members of the commission, that probable cause exists that a violation has occurred, the commission may refer its findings and conclusions to the appropriate disciplinary authority over the person who is the subject of the report, as described in subsection 7 of this section. After the commission determines by a vote of at least four members of the commission that probable cause exists that a violation has occurred, and the commission has referred the findings and conclusions to the appropriate disciplinary authority over the person subject of the report, the subject of the report may appeal the determination of the commission to the administrative hearing commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal shall be filed not later than the fourteenth day after the subject of the commission's action receives actual notice of the commission's action.

4. If the appropriate disciplinary authority receiving a report from the commission pursuant to subsection 3 of this section fails to follow, within sixty days of the receipt of the report, the recommendations contained in the report, or if the commission determines, by a vote of at least four members of the commission that some action other than referral for criminal prosecution or for action by the appropriate disciplinary authority would be appropriate, the commission shall take any one or more of the following actions:

(1) Notify the person to cease and desist violation of any provision of law which the report concludes was violated and that the commission may seek judicial enforcement of its decision pursuant to subsection 5 of this section;

(2) Notify the person of the requirement to file, amend or correct any report, statement, or other document or information required by sections 105.473, 105.483 to 105.492, or chapter 130 and that the commission may seek judicial enforcement of its decision pursuant to subsection 5 of this section; and

(3) File the report with the executive director to be maintained as a public document; or

(4) Issue a letter of concern or letter of reprimand to the person, which would be maintained as a public document; or

(5) Issue a letter that no further action shall be taken, which would be maintained as a public document; or

(6) Through reconciliation agreements or civil action, the power to seek fees for violations in an amount not greater than one thousand dollars or double the amount involved in the violation.

5. Upon vote of at least four members, the commission may initiate formal judicial proceedings seeking to obtain any of the following orders:

(1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter 130, or sections 105.955 to 105.963;

(2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130;

(3) File any reports, statements, or other documents or information required by sections 105.450 to 105.496, or chapter 130; or

(4) Pay restitution for any unjust enrichment the violator obtained as a result of any violation of any criminal statute as described in subsection 6 of this section.

The Missouri ethics commission shall give actual notice to the subject of the complaint of the proposed action as set out in this section. The subject of the complaint may appeal the action of the Missouri ethics commission, other than a referral for criminal prosecution, to the administrative hearing commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal shall be filed no later than fourteen days after the subject of the commission's actions receives actual notice of the commission's actions.

6. In the proceeding in circuit court, the commission may seek restitution against any person who has obtained unjust enrichment as a result of violation of any provision of sections 105.450 to 105.496, or chapter 130 and may recover on behalf of the state or political subdivision with which the alleged violator is associated, damages in the amount of any unjust enrichment obtained and costs and attorney's fees as ordered by the court.

7. The appropriate disciplinary authority to whom a report shall be sent pursuant to subsection 2 or 3 of this section shall include, but not be limited to, the following:

(1) In the case of a member of the general assembly, the ethics committee of the house of which the subject of the report is a member;

(2) In the case of a person holding an elective office or an appointive office of the state, if the alleged violation is an impeachable offense, the report shall be referred to the ethics committee of the house of representatives;

(3) In the case of a person holding an elective office of a political subdivision, the report shall be referred to the governing body of the political subdivision;

(4) In the case of any officer or employee of the state or of a political subdivision, the report shall be referred to the person who has immediate supervisory authority over the employment by the state or by the political subdivision of the subject of the report;

(5) In the case of a judge of a court of law, the report shall be referred to the commission on retirement, removal and discipline, or if the inquiry involves an employee of the judiciary to the applicable presiding judge;

(6) In the case of a person holding an appointive office of the state, if the alleged violation is not an impeachable offense, the report shall be referred to the governor;

(7) In the case of a statewide elected official, the report shall be referred to the attorney general;

(8) In a case involving the attorney general, the report shall be referred to the prosecuting attorney of Cole County.

8. The special investigator having a complaint referred to the special investigator by the commission shall have the following powers:

(1) To request and shall be given access to information in the possession of any person or agency which the special investigator deems necessary for the discharge of the special investigator's responsibilities;

(2) To examine the records and documents of any person or agency, unless such examination would violate state or federal law providing for confidentiality;

(3) To administer oaths and affirmations;

(4) Upon refusal by any person to comply with a request for information relevant to an investigation, an investigator may issue a subpoena for any person to appear and give testimony, or for a subpoena duces tecum to produce documentary or other evidence which the investigator deems relevant to a matter under the investigator's inquiry. The subpoenas and subpoenas duces tecum may be enforced by applying to a judge of the circuit court of Cole County or any county where the person or entity that has been subpoenaed resides or may be found, for an order to show cause why the subpoena or subpoena duces tecum should not be enforced. The order and a copy of the application therefor shall be served in the same manner as a summons in a civil action, and if, after hearing, the court determines that the subpoena or subpoena duces tecum should be sustained and enforced, the court shall enforce the subpoena or subpoena duces tecum in the same manner as if it had been issued by the court in a civil action; and

(5) To request from the commission such investigative, clerical or other staff assistance or advancement of other expenses which are necessary and convenient for the proper completion of an investigation. Within the limits of appropriations to the commission, the commission may provide such assistance, whether by contract to obtain such assistance or from staff employed by the commission, or may advance such expenses.

9. (1) Any retired judge may request in writing to have the judge's name removed from the list of special investigators subject to appointment by the commission or may request to disqualify himself or herself from any investigation. Such request shall include the reasons for seeking removal;

(2) By vote of four members of the commission, the commission may disqualify a judge from a particular investigation or may permanently remove the name of any retired judge from the list of special investigators subject to appointment by the commission.

10. Any person who is the subject of any investigation pursuant to this section shall be entitled to be represented by counsel at any proceeding before the special investigator or the commission.

11. The provisions of sections 105.957, 105.959 and 105.961 are in addition to other provisions of law under which any remedy or right of appeal or objection is provided for any person, or any procedure provided for inquiry or investigation concerning any matter. The provisions of this section shall not be construed to limit or affect any other remedy or right of appeal or objection.

12. No person shall be required to make or file a complaint to the commission as a prerequisite for exhausting the person's administrative remedies before pursuing any civil cause of action allowed by law.

13. If, in the opinion of the commission, the complaining party was motivated by malice or reason contrary to the spirit of any law on which such complaint was based, in filing the complaint without just cause, this finding shall be reported to appropriate law enforcement authorities. Any person who knowingly files a complaint without just cause, or with malice, is guilty of a class A misdemeanor.

14. A respondent party who prevails in a formal judicial action brought by the commission shall be awarded those reasonable fees and expenses incurred by that party in the formal judicial action, unless the court finds that the position of the commission was substantially justified or that special circumstances make such an award unjust.

15. The special investigator and members and staff of the commission shall maintain confidentiality with respect to all matters concerning a complaint until and if a report is filed with the commission, with the exception of communications with any person which are necessary to the investigation. The report filed with the commission resulting from a complaint acted upon under the provisions of this section shall not contain the name of the complainant or other person providing information to the investigator, if so requested in writing by the complainant or such other person. Any person who violates the confidentiality requirements imposed by this section or subsection 17 of section 105.955 required to be confidential is guilty of a class A misdemeanor and shall be subject to removal from or termination of employment by the commission.

16. Any judge of the court of appeals or circuit court who ceases to hold such office by reason of the judge's retirement and who serves as a special investigator pursuant to this section shall receive annual compensation, salary or retirement for such services at the rates of compensation provided for senior judges by subsections 1, 2 and 4 of section 476.682. Such retired judges shall by the tenth day of each month following any month in which the judge provided services pursuant to this section certify to the commission and to the state courts administrator the amount of time

engaged in such services by hour or fraction thereof, the dates thereof, and the expenses incurred and allowable pursuant to this section. The commission shall then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent, and within limitations, provided for in this section. The state treasurer upon receipt of such warrant shall pay the same out of any appropriations made for this purpose on the last day of the month during which the warrant was received by the state treasurer.

(L. 1991 S.B. 262 § 4, A.L. 1997 S.B. 16)

*Revisor's Note: This section is reprinted in accordance with Section 3.066. Senate Bill 844 in 2010 amended this section. Senate Bill 844 was declared unconstitutional as a violation of the original purpose requirement of Art. III, Sec. 21, of the Missouri Constitution (see annotation below), rendering the repeal and reenactment of this section ineffective.

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Missouri General Assembly

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Missouri Revised Statutes

Chapter 530
Prohibition

[←530.090](#)

Section 530.010.1

[530.020→](#)

August 28, 2016

Writ issued for what purposes.

530.010. The remedy afforded by the writ of prohibition shall be granted to prevent usurpation of judicial power, and in all cases where the same is now applicable according to the principles of law.

(RSMo 1939 § 1773)

Prior revisions: 1929 § 1609; 1919 § 2057; 1909 § 2622

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Missouri General Assembly

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Missouri Revised Statutes

Chapter 536 Administrative Procedure and Review

[←536.095](#)

Section 536.100.1

[536.110→](#)

August 28, 2016

Party aggrieved entitled to judicial review--waiver of independent review, when.

536.100. Any person who has exhausted all administrative remedies provided by law and who is aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review thereof, as provided in sections 536.100 to [536.140](#), unless some other provision for judicial review is provided by statute; provided, however, that nothing in this chapter contained shall prevent any person from attacking any void order of an agency at any time or in any manner that would be proper in the absence of this section. If the agency or any board, other than the administrative hearing commission, established to provide independent review of the decisions of a department or division that is authorized to promulgate rules and regulations under this chapter fails to issue a final decision in a contested case within the earlier of:

- (1) Sixty days after the conclusion of a hearing on the contested case; or
- (2) One hundred eighty days after the receipt by the agency of a written request for the issuance of a final decision,

then the person shall be considered to have exhausted all administrative remedies and shall be considered to have received a final decision in favor of the agency and shall be entitled to immediate judicial review as provided in sections 536.100 to [536.140](#) or other provision for judicial review provided by statute. In cases, whether contested or not, where the law provides for an independent review of an agency's decision by a board other than the administrative hearing commission and further provides for a de novo review of the board's decision by the circuit court, a party aggrieved by the agency's decision may, within thirty days after it receives notice of that decision, waive independent review by the board and instead file a petition in the circuit court for the de novo review of the agency's decision. The party filing the petition under this section shall be considered to have exhausted all administrative remedies.

(L. 1945 p. 1504 § 10, A.L. 2005 H.B. 576, A.L. 2006 S.B. 1146)

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Missouri General Assembly

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Missouri Revised Statutes

Chapter 536 Administrative Procedure and Review

[←536.130](#)

Section 536.140.1

[536.150→](#)

August 28, 2016

Scope of judicial review--judgment--appeals.

536.140. 1. The court shall hear the case without a jury and, except as otherwise provided in subsection 4 of this section, shall hear it upon the petition and record filed as aforesaid.

2. The inquiry may extend to a determination of whether the action of the agency

- (1) Is in violation of constitutional provisions;
- (2) Is in excess of the statutory authority or jurisdiction of the agency;
- (3) Is unsupported by competent and substantial evidence upon the whole record;
- (4) Is, for any other reason, unauthorized by law;
- (5) Is made upon unlawful procedure or without a fair trial;
- (6) Is arbitrary, capricious or unreasonable;
- (7) Involves an abuse of discretion.

The scope of judicial review in all contested cases, whether or not subject to judicial review pursuant to sections [536.100](#) to 536.140, and in all cases in which judicial review of decisions of administrative officers or bodies, whether state or local, is now or may hereafter be provided by law, shall in all cases be at least as broad as the scope of judicial review provided for in this subsection; provided, however, that nothing herein contained shall in any way change or affect the provisions of sections 311.690* and 311.700*.

3. Whenever the action of the agency being reviewed does not involve the exercise by the agency of administrative discretion in the light of the facts, but involves only the application by the agency of the law to the facts, the court may upon application of any party conduct a de novo review of the agency decision.

4. Wherever under subsection 3 of this section or otherwise the court is entitled to weigh the evidence and determine the facts for itself, the court may hear and consider additional evidence if the court finds that such evidence in the exercise of reasonable diligence could not have been produced or was improperly excluded at the hearing before the agency. Wherever the court is not entitled to weigh the evidence and determine the facts for itself, if the court finds that there is competent and material evidence which, in the exercise of reasonable diligence, could not have been produced or was improperly excluded at the hearing before the agency, the court may

remand the case to the agency with directions to reconsider the same in the light of such evidence. The court may in any case hear and consider evidence of alleged irregularities in procedure or of unfairness by the agency, not shown in the record.

5. The court shall render judgment affirming, reversing, or modifying the agency's order, and may order the reconsideration of the case in the light of the court's opinion and judgment, and may order the agency to take such further action as it may be proper to require; but the court shall not substitute its discretion for discretion legally vested in the agency, unless the court determines that the agency decision was arbitrary or capricious.

6. Appeals may be taken from the judgment of the court as in other civil cases.

(L. 1945 p. 1504 § 10, A.L. 1953 p. 679, A.L. 2005 H.B. 576)

*Sections 311.690 and 311.700 were repealed by S.B. 661, 1978.

(2004) Reviewing court must look to the whole record involving an administrative agency's decision, and not merely that evidence supporting its decision. *Lagud v. Kansas City Board of Police Commissioners*, 136 S.W.3d 786 (Mo.banc).

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Missouri General Assembly

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November 4, 2014

Missouri Ethics Commission
PO Box 1370
Jefferson City, MO 65102-1370

 **COPY**
MISSOURI ETHICS COMMISSION
NOV 04 2014

Re: Complaint

HAND DELIVERED

Dear Sir or Madame:

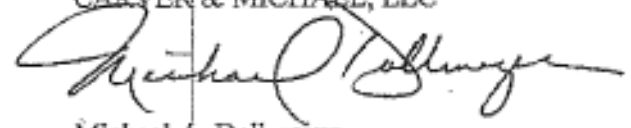
Enclosed herewith for filing and action by MEC is the complaint, along with supporting Exhibits A-E, against Ron Calzone for violating the requirements imposed on lobbyists by Missouri law that I am submitting on behalf of our client, Missouri Society of Governmental Consultants.

The MSGC is headed by Sam Licklider, president, and Randy Scherr, secretary, and is organized as a nonpartisan, not for profit entity which supports education, regulation and compliance training for professionals engaged in the profession of serving clients as governmental consultants. Any public or media communications should be directed to MSGC, while any communications or questions from MEC should be directed to the undersigned.

Thank you for your prompt attention to processing and investigating this complaint.

Sincerely,

CARVER & MICHAEL, LLC



Michael A. Dallmeyer
mike@carvermichael.net

MAD/ts



OFFICIAL COMPLAINT FORM

Missouri Ethics Commission
PO Box 1370
Jefferson City, MO 65102-1370

- Section 106.867, RSMo states that the Commission shall receive any complaints alleging violations of the provisions of:
- 1) The requirements imposed on lobbyists by section 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, RSMo;
 - 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 106.450 to 106.467 and section 171.181, RSMo; 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.

This complaint shall contain all the facts known to the person bringing the complaint that give rise to the complaint.

This complaint shall be sworn to under penalty of the crime of perjury.

Within 5 days of receipt of this complaint, the Commission will send a copy of this complaint, including the name of the person bringing this complaint, to the person, organization or campaign committee against whom the complaint is brought.

Note: According to Missouri State Law, the Commission shall dismiss any complaint which is frivolous in nature, as lacking any basis in fact or law. Any person who submits a frivolous complaint shall be liable for actual and compensatory damages to the alleged violator for holding the alleged violator before the public in a false light. A finding by the Commission that a complaint is frivolous or without probable cause shall be a public record.

THIS FORM MUST BE RETURNED BY MAIL OR HAND-DELIVERED. FAXED COPIES OR EMAILS WILL NOT BE ACCEPTED.

PART 1 - PERSON BRINGING COMPLAINT

NAME: Michael A. Dallmeyer, Attorney DATE OF COMPLAINT: November 4, 2014

ADDRESS: Carver & Michael LLC, 712 East Capitol Ave.

CITY: Jefferson City STATE: MO COUNTY: Cole ZIP: 65101

CONTACT PHONE NUMBER(S): (HOME) (WORK) 573-636-4215 (CELL)

TITLE OF OFFICE HELD OR SOUGHT (IF APPLICABLE): N/A

PART 2 - ORGANIZATION OR CAMPAIGN COMMITTEE AND INDIVIDUAL(S) OR POSITION(S) AGAINST WHOM

THIS COMPLAINT IS BEING BROUGHT AGAINST:

NAME: Ron Calzone

ADDRESS: 33867 Highway E

CITY: Dixon STATE: MO COUNTY: Maries ZIP: 65459

CONTACT PHONE NUMBER(S): (HOME) 573-759-7556 (WORK)

TITLE OF OFFICE HELD OR SOUGHT (IF APPLICABLE): N/A

DATE OF ELECTION (IF APPLICABLE): CHECK ELECTION TYPE (IF APPLICABLE): Primary

VERIFICATION BY OATH OR AFFIRMATION

STATE OF MISSOURI
COUNTY OF Cole

I, Michael A. Dallmeyer, being duly sworn upon my oath and in the presence of a Notary Public, certify under penalty of perjury that the foregoing information in this complaint is complete, true, and correct, to the best of my knowledge and belief.

Michael A. Dallmeyer
Signature of Complainant

THERESA M. SCHAEFER
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
Commission # 13452968
My Commission Expires: 12-09-2017

Subscribed and sworn to before me this 4 day of November, 2014.
Theresa M. Schaefer
Notary Public



PART 3 - STATEMENT OF FACTS

State in your own words the detailed facts and the actions of the candidate or organization named in part two which prompted you to make this complaint. The space provided below is not intended to limit your statement of facts. Please use additional sheets if necessary. Include relevant dates and times, and the names and addresses of other persons whom you believe have knowledge of the facts and attach hereto copies of any documentary evidence that supports the facts alleged in the complaint.

Please check the box next to the area that the complaint concerns.

- 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, RSMo.
- 4. Any code of conduct promulgated by any department, division or agency of state government, or by state institution of higher education, or by executive order.
- 5. The conflict of interest laws contained in sections 105.450 to 105.467 and section 171.181, RSMo.
- 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.

PLEASE STATE THE FACTS BELOW:

See Attached

YES Are any of the matters alleged by you the subject of civil or criminal litigation? If yes, please provide the county and case number if known by you. _____

NO

PART: STATEMENT OF FACTS

On Aug. 4, 2000, Ron Calzone incorporated Missouri First, Inc. as a Missouri Non-profit. (Exhibit A) Mr. Calzone has for 14 years presented himself as representing "Missouri First". He has served as President and /or Secretary/Member of the Board for all of those 14 years. (Exhibit B)

Although their website claims they are a not-for-profit and tax exempt (See exhibit C), no Federal 990 Tax Returns can be found.

According to their Charter (Exhibit D) their "Methods of Operation" state that "....legislative lobbying and citizen involvement may be used toinfluence public policy".

Since 2000, Mr. Calzone has continuously and consistently lobbied members of the Missouri General Assembly on issues relating to right to bear arms, common core standards, property rights, and privacy of records. Section 105.473.1 (RSMo.) states "Each lobbyist shall, no later than January fifth of each year or five days after beginning any activity as a lobbyist, file standardized registration forms, verified by a written declaration that it is made under penalties of perjury, along with a filing fee of ten dollars, with the commission". Mr. Calzone has not filed such registration and therefore is in violation of the law.

He has engaged in numerous conversations with legislators including Rep. Doug Funderburk (3/26/2013), Rep. Kurt Bahr (3/27/2013), Sen. Ed Emery (4/10/2013), Rep. Mike Kelley (5/2/2013), Sen. Jay Wasson (5/14/2013), Sen. Ed Emery (3/31/2014), Sen. Brian Nieves, Sen. Jim Lembke, Sen. Will Kraus, and Sen. Kurt Schaefer. In addition he presented collectively to the House Republican Caucus on Sept. 10, 2013.

For several years, Mr. Calzone has constantly worked out of the offices of Sen. Brian Nieves using them as his own "office" in the Capitol.

Mr. Calzone has repeatedly appeared before numerous House and Senate committees over the last 14 years in support of or in opposition to many bills relating to the issues listed above. In addition to his personal appearances before committees, Mr. Calzone solicits witness forms from supporters with the expressed purpose of personally delivering them to the committee members. (See Missouri First website pages -Exhibit E)

When testifying he consistently identifies himself as a director of Missouri First, and then declares that he is not a registered lobbyist, and doesn't need to be because he does not get paid.

Because of these activities over the past 14 years, where Mr. Calzone has designated himself to act on behalf of Missouri First, the organization he created, he meets the definition of "legislative Lobbyist" as defined in 105.470 (4)(c) and has for 14 years failed to register as a Lobbyist as required by 105.473. Further section 105.473 .3(1) (RSMo) states the "During any period of time in which a lobbyist continues to act as an executive lobbyist, judicial lobbyist, legislative lobbyist, or elected local government official lobbyist, the lobbyist shall file with the commission on standardized forms prescribed by the commission monthly reports which shall be due at the close of business on the tenth day of the following month." Failure to file such reports subjects the individual to a ten dollar a day late fee. Mr. Calzone has failed to file a monthly lobbyist report for over fourteen years.