

BOARD OF EDUCATION OF BALTIMORE COUNTY

ETHICS REVIEW PANEL

ADVISORY OPINION 13-01

This advisory opinion is in response to the request of [REDACTED] (hereinafter "Petitioner"), an employee of the Baltimore County Public Schools (BCPS). Petitioner states that he began work as a full-time permanent employee of BCPS on July 1, 2013. He previously was employed by BCPS as a contract employee through April 30, 2013.

Petitioner further advised that in early 2013, he was appointed as a Trustee of the Board of the Community College of Baltimore County (CCBC). At the time of his appointment, he was employed as a BCPS contract employee. Following Petitioner's attendance at "4-5 CCBC Board Meetings" during 2013, the CCBC Board Chair recently informed Petitioner that "CCBC legal counsel has communicated to her that I am required to either resign from my position as a Trustee on the CCBC Board or to resign from my BCPS position," citing a conflict between Petitioner's duties as a CCBC trustee and his duties as a BCPS employee. Petitioner requests an advisory opinion "to assist [him] in developing an understanding as to whether [his] BCPS employment precludes [him] from continuing [his] service as a Trustee on the CCBC Board."

At the outset, the Ethics Review Panel notes that it is only able to advise Petitioner concerning the applicability of the BCPS Ethics Code as it pertains to Petitioner in his BCPS employment. The Panel is unable to opine regarding the determination of CCBC's legal counsel that Petitioner may not continue serving as a CCBC trustee while employed by BCPS.

With his application, Petitioner provided a summary of points apparently raised by CCBC's legal counsel regarding Petitioner's dual positions, including the following:

- [Petitioner's] employment by BCPS brings his impartiality into question because he is obligated to advocate for both BCPS and CCBC.
- The Board of Education Ethics Code does not allow participation on behalf of the school system in any matter which would have a direct financial impact on a business entity with which they are affiliated.
- Under the BCPS Code, officials may not hold any other employment relationship that would impair the impartiality or independent judgment of the official.

The Panel considered the applicability of Policy 8363 (Conflict of Interest-Prohibited Conduct) to the circumstances presented.

As a general policy statement, Policy 8363 I. A. provides, in pertinent part; that a "School System Official" (defined at Policy 8360 II. T. to include BCPS employees) "shall not participate on behalf of the school system in any matter which would, to their knowledge, have a direct financial impact, as distinguished from the public generally, on them, their immediate family, or

a business entity with which they are affiliated.” The Panel considered the possibility that Petitioner, in his BCPS employment position, would have to participate on behalf of the school system in a matter that potentially could have a direct financial impact on CCBC. Even assuming such a scenario arose, the Panel concluded that CCBC is a governmental entity. The BCPS Ethics Code, in defining the term “Business entity” at Policy 8360 II. B., expressly states: “1. ‘Business Entity’ does not include a governmental entity.” Accordingly, the Panel does not find Petitioner’s affiliation with CCBC as a trustee to be an affiliation that is covered by the prohibition in Policy 8363 I. A. against participation in any matter which would have a direct financial impact on “a business entity with which they are affiliated.”

The Panel also considered Policy 8363 III. A. 3., which prohibits a school system official from holding “any other employment relationship that would impair the impartiality or independence of judgment of the official.” Policy 8360 II. (Definitions) does not define the term “employment relationship.” In the absence of a definition, the Panel does not find Petitioner’s position as a trustee on the CCBC Board to be an “employment relationship” that is covered by Policy 8363 III. A. 3.

Even in the absence of a specifically prohibited conflict of interest, school system officials subject to the Ethics Code must recognize that the Code “advocates positive behavior and the avoidance of impropriety or the appearance of impropriety.” Policy 8361 I. A. While the Code “establishes recommended behavior” for school system officials, Policy 8361 II. A., “[n]o Code can delineate the appropriate ethical behavior for every situation with which the school system’s personnel will be confronted.” Policy 8361 II. B.

The Panel is concerned about Petitioner’s ability to serve effectively as a CCBC trustee when, by his own admission, there already have been several occasions since his appointment in early 2013 when Petitioner “intentionally refrained from participating in discussion on a topic that [he] believed could pose some potential conflict or even an appearance of conflict regarding connection(s) between BCPS activities and CCBC Board activities.” Petitioner acknowledges that on at least one occasion, he “abstained from a Board vote on the approval of a contract executed between CCBC and BCPS.” Given Petitioner’s apparent recognition of potential conflicts, or at least the appearance of impropriety, on several occasions to date, the Panel encourages Petitioner to exercise his own good judgment concerning his ability to serve effectively as a CCBC trustee while he is concurrently employed by BCPS.

Finally, as mentioned previously, the Ethics Review Panel has no jurisdiction to determine whether Petitioner’s continued service as a CCBC trustee is otherwise prohibited by any other Ethics Code or Code of Conduct governing the trustee members of the CCBC Board.

This Advisory Opinion has been signed by the Ethics Review Panel members and adopted on September 26, 2013.

Raymond A. Hein
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Vacant