

Advisory Opinion 23-01

This advisory opinion is in response to your request regarding the permissibility of your outside employment [REDACTED]. In your request for an advisory opinion, you state that:

I recently retired from the [BCPS] [REDACTED]

I will be returning to BCPS [REDACTED] contractually for 6 months, 15 hours a week, to train my replacement. In addition, I was recently offered a job [REDACTED]. They would like me to work on bid submissions. This would also be a part-time job.

My question is - would working in both positions be a conflict of interest?

In response to follow-up questions from the Panel, you advise that the name of the [REDACTED] that the company does not currently have a contract with BCPS and is not currently negotiating a contract with BCPS; and that the company is not currently submitting bids to BCPS.

Your inquiry implicates Policy 8363, Section IV.A. which provides as follows:

IV. Employment and Financial Interests

A. Except as permitted by Board policies when the interest is disclosed or when the employment does not create a conflict of interest or appearance of a conflict, a school official may not:

1. Be employed by or have a financial interest in an entity that is:
 - a. Subject to the authority of the Board or school system; or
 - b. Negotiating with or has entered into a contract with the Board or school system; or
2. Hold any other employment relationship that would impair the impartiality or independence of judgment of the school official.

Emphasis supplied.

Your inquiry also implicates Policy 8363, Section VII.A. which provides as follows:

VII. Use of Prestige of Office

A. A school official may not intentionally use the prestige of office or public position:

1. For private gain of that school official or the private gain of another; or
2. To influence, except as part of the official duties of the school official or as a usual and customary constituent service by a member of the Board without additional compensation, the award of a state or local contract to a specific person.

The Maryland Public Ethics Law contains provisions which are analogous to these provisions of Policy 8363. *See*, Annotated Code of Maryland, *General Provisions Article*, § 5-502(b) (prohibiting an official or employee from “hold[ing] any other employment relationship that would impair the impartiality and independent judgment of the official or employee.”) and § 5-506(a) (“An official or employee may not intentionally use the prestige of office or public position for that official’s or employee’s private gain or that of another.”)

The Maryland State Ethics Commission (“SEC”) has issued a number of advisory opinions construing the Public Ethics Law’s “prestige” provision and a public agency employee’s permissible outside employment activities. In interpreting *General Provisions Article* §§ 5-502(b) and 5-506(a), the SEC has stated in its opinions that “the focus has been to avoid situations in which the population served by the private practice and the agency may overlap.” SEC Advisory Opinion No. 02-02. *See also*, SEC Advisory Opinion No. 99-06 (“We have advised, for example, that use of State time, materials and equipment would be within the prestige prohibition, and this section has been the basis for prohibiting employees from engaging in private businesses that involve interaction with populations also served by their agencies.)

In this regard, the SEC has stated that:

The general approach developed under these two provisions of the Law as applied to outside consulting and related private endeavors has resulted in a series of criteria, including for example, that the activity is

out-of-state or in a different geographic jurisdiction than the employee's agency duties, that it is not the type of undertaking that the person might be expected to do as part of their State duties and would not involve individuals or matters with which the person would be interacting or impacting in their State job, and that the activity would not be done on State time or as part of official duties or have some direct relationship to the individual's State job and duties.

SEC Advisory Opinion No. 99-06.

Returning to your inquiry, you state that [REDACTED] does not currently have a contract with BCPS and is not currently negotiating a contract with BCPS. Accordingly, the Panel advises that your secondary employment [REDACTED] is permissible. However, if [REDACTED] submits a contract proposal to BCPS, the Panel advises that you must remove yourself from participating in any aspect of BCPS' consideration of that proposal. In this regard, the Panel advises that you are to disclose your secondary employment [REDACTED] to your supervisors and provide documentation of that disclosure to the Panel.

Your inquiry also implicates Policy 8363, Section VIII which provides as follows:

VIII. Disclosure of Confidential Information

Other than in the discharge of official duties, a school official or former school official may not disclose or use confidential information that the school official acquired by reason of the school official's public position or former public position and that is not available to the public for the economic benefit of the school official or the economic benefit of another.

This provision operates to preclude you from disclosing confidential information you obtained through your position [REDACTED] [REDACTED] for your own economic benefit or the economic benefit of others. For example, this provision would be violated if you disclosed confidential information that you obtained through your position [REDACTED], such as a company's bid proposal, to benefit a competing company [REDACTED].

The Panel would like to express its appreciation for this request for an advisory opinion and your sensitivity to the ethical considerations which generated the request.

This Advisory Opinion has been adopted by the Ethics Review Panel members on February 27, 2023.

Tim Topoleski, Ph.D.
Chair

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