

Advisory Opinion 23-03

This advisory opinion is in response to your request regarding the permissibility of your continued ownership [REDACTED] given your recent assignment [REDACTED] with the Baltimore County Public Schools (“BCPS”). As set forth on the BCPS website:



In your request for an advisory opinion, you state that:

[REDACTED] Prior to [REDACTED] I had founded and operated an association [REDACTED] This entity is still in existence and operating as of this date.

[REDACTED] is a sole owner LLC which has conducted networking events to gather members [REDACTED] Further, [REDACTED] provided educational events, newsletters, podcasts, etc. to provide information designed to help [REDACTED] run efficient, compliant, and profitable businesses. Likewise, [REDACTED] has partnered with companies who provide services to its members in areas [REDACTED].

[REDACTED] we discussed the Annual Financial Disclosure reporting. I made an inquiry [REDACTED] [REDACTED] was advised that I should request the Ethics Panel to review and determine how my new position may require any change to activities [REDACTED].

I will gladly furnish any information you require and adjust, as necessary.

In response to follow-up questions from the Panel, you advise that [REDACTED] is a for-profit corporation that receives income via memberships, event sponsorships, event attendance fees, website advertising, and newsletter advertising from a broad range of companies and professionals working in, and providing services [REDACTED] including owners/developers, [REDACTED] and a wide range of related professionals.

You further advise that there are [REDACTED] members and advertisers who contract with BCPS. Additionally, you have advised the Panel that:

[S]ince [REDACTED] has not conducted any events or sold any sponsorships. There have been a handful of automated renewals of memberships and advertisements. These were from memberships and advertisements which were processed via [REDACTED] annual subscription system. However, there is a no-cost educational program being offered by one of [REDACTED] members on March 7th which was planned prior to my employment at BCPS.

From the onset of my desire to become a part of the BCPS system, I have made it known that employment with BCPS is my highest priority. I have not conducted normal [REDACTED] business activities pending discovery of what could or would be permissible.

I am fully prepared to take whatever steps are necessary to ensure continued employment with BCPS. Maintaining complete and total compliance with our policies and procedures is my primary concern. As such, I am amenable to all decisions resulting from this review [REDACTED].

I am waiting to receive the results of the panels' [sic] determination prior to the submission of my annual financial disclosure form.

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.

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.

Your inquiry also implicates Policy 8363, Section III.A.2.d. which prohibits a school official from participating in the disposition or decision of any matter in which a business entity “is a party to an existing contract with the school official...”

Returning to your inquiry, the Panel finds that there is a substantial overlap between entities from which ██████ receives income and entities that are, or may in the future be, doing business with BCPS ██████. That overlap raises conflict of interest concerns in that it could be perceived that entities from which ██████ receives income might obtain preferable treatment ██████. Accordingly, the Panel advises that your continued ownership of or employment ██████ would be incompatible with your position ██████ BCPS ██████.

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 April 20, 2023.

Tim Topoleski, Ph.D.
Chair

Thomas Keech, Esq.
Vice Chair

Ralph Sapia, Esq.
Panel Member

Owen Jarvis, Esq.
Panel Member