

Advisory Opinion 23-05

This advisory opinion is in response to your request, [REDACTED], regarding the permissibility of BCPS [REDACTED] holding leadership positions with the Maryland Association of [REDACTED] (“MA [REDACTED]”). It is the Panel’s understanding that this matter came to your attention when [REDACTED] attendance of 24 BCPS [REDACTED] at a MA [REDACTED] conference and you learned that the [REDACTED] of MA [REDACTED] are among the BCPS [REDACTED] who would be attending the conference.

In response to follow-up questions from the Panel, you advised that BCPS does not have a contractual relationship with MA [REDACTED].

The relevant sections of the Ethics Code, Policy 8363, *Conflict of Interest – Prohibited Conduct*, provide 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.

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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.

B. The prohibition described in Paragraph IV(A) does not apply to:

1. A school official whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted in accordance with policies adopted by the Board;
2. Subject to other provisions of regulation and law, a member of the Board in regard to a financial interest or employment held at the time of the oath of office, if the financial interest or employment:
 - a. Was publicly disclosed to the appointing authority and the Ethics Review Panel at the time of appointment; or
 - b. Was disclosed on the financial disclosure statement filed with the certificate of candidacy to be a candidate to be a member of the school board; or
3. Employment or financial interests allowed by opinion of the Ethics Review Panel if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

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 “[w]e 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.” SEC Advisory Opinion No. 99-06. *See also*, SEC Advisory Opinion No. 02-02 (“the focus has been to avoid situations in which the population served by the private practice and the agency may overlap.”)

The Maryland State Ethics Commission has also advised that non-compensated service involving a fiduciary relationship, such as service of a board of directors, constitutes secondary employment under the State Ethics Law. Accordingly, for purposes of this advisory opinion,

the Panel assumes that holding positions as the [REDACTED] of MA [REDACTED] by the BCPS [REDACTED] constitutes secondary employment under Policy 8363.

The Panel advises that as MA [REDACTED] does not have a contractual relationship with BCPS (and presumably is not negotiating such a contractual relationship and is not subject to the authority of BCPS) it is permissible for the BCPS [REDACTED] to hold the positions as the [REDACTED] of MA [REDACTED]. However, consistent with the above-referenced advisory opinions from the SEC, this outside employment must be performed on their own personal time and may not utilize BCPS materials or resources.

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 May 18, 2023.

Tim Topoleski, Ph.D.
Chair

Thomas Keech, Esq.
Vice Chair

Ralph Sapia, Esq.
Panel Member

Owen Jarvis, Esq.
Panel Member