

Advisory Opinion 22-09

This advisory opinion is in response to a request from the [REDACTED]. The [REDACTED] states that it is currently evaluating contract proposals for the provision of vending machine services to BCPS schools. One of the proposals provides that in “addition to the proposed commission under financial proposal, we are committing \$20,000 Unencumbered Catering Fund to be used for Breakfast, Thanksgiving, holiday luncheons, and an additional \$50,000 catering fund over a 5-year contract term.” This proposal further provides that in support of BCPS athletics programs it “will provide all coolers, water bottles, cups, sports drinks or powders, water, soda, for athletics and athletic staff at home game days at no cost.” Regarding the catering fund, the [REDACTED] states that the proposed vendor explained that:

For the catering fund it is an estimated budget we give our partner school districts to help them plan menu. We cater the meals and deliver based on that dollar amount. Example If there is a special event for a holiday that special catering is needed we use the “fund” as a guideline to plan what our chefs would deliver. Another example is teacher’s appreciation week. We can deliver breakfast worth \$10,000 either served on site or dropped off individually packaged. Hope I was able to explain it well.

In its request for an advisory opinion, the [REDACTED] states that while its “final decision will be based on the vendor’s ability to meet our needs, we are seeking an advisory opinion to determine whether the paragraph in question runs afoul of BCPS’ [] ethics guideline and should be omitted from the contract proposal or, whether such terms are acceptable and does not violate any existing BCPS policies.”

Generally speaking, the BCPS Ethics Code does not apply to vendors. Rather, the Ethics Code at Policy 8360, *Applicability and Definitions*, states that the “Ethics Code of the Board of Education of Baltimore County (Board) applies to members of the school Board, candidates to be members of the school board, the Superintendent and employees.” See, Policy 8360 § I.A. Additionally, the Ethics Code at Policy 8361, *Statement of Purpose and Policy*, states that the “Ethics Code establishes recommended behavior for members of the school board, candidates to be members of the school board, the Superintendent and employees.” See, Policy 8361, § II.A.

Further, while at first blush the proposed catering fund and supplies in support of athletics programs seem like gifts, the Panel understands that such would be

provided pursuant to the vendor’s contract proposal. In this regard, a “gift” is defined as the “transfer of anything of economic value, regardless of the form, without adequate and lawful consideration.” See Policy 8362, *Gifts*, § II.A.1. Emphasis supplied. As the catering fund and supplies are part of the vendor’s contract proposal, they would not appear to constitute gifts under the Ethics Code.

In sum, the Panel advises that the Ethics Code is not applicable to the question presented in your request for an advisory opinion. Further questions regarding the propriety of the vendor’s proposal should be directed to the BCPS Office of Purchasing and/or the BCPS Office of Law.

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 - December 21, 2022.

Tim Topoleski, Ph.D.
Chair

Thomas Keech, Esq.
Vice Chair

Owen Jarvis, Esq.
Panel Member

Ralph Sapia, Esq.
Panel Member

Cynthia Boyd, M.D. M.P.H.
Panel Member