

Advisory Opinion 21-09

This Advisory Opinion is in response to an *Application to Provide an Advisory Opinion* (“Application”) filed by a staff member working in the BCPS [REDACTED]. The staff member has asked whether it would be permissible to obtain secondary employment with a consulting group, whereby she would utilize her expertise in [REDACTED] and [REDACTED], to participate as a member of a team that would conduct an audit of an out-of-state school district. The staff member states that the consulting group does not have a contract with BCPS and is not doing business with BCPS. The staff member further states that the “majority” of her work for the consulting group would be conducted outside of her BCPS workday. The staff member also states that she would report the compensation that she receives for this secondary employment and that, if offered, she would not accept a contract for work for any project concerning a Maryland school system.

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

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.

VII. 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 Panel concludes that, subject to the restrictions below, the staff member may engage in the secondary employment described above. While the staff member states that the “majority” of her work for the consulting group would be conducted outside

of her BCPS workday, the Panel advises that the entirety of such work must be conducted outside of her BCPS workday, *e.g.*, such as during leave or personal time. Further, when conducting such work, the staff member should not utilize any BCPS materials, resources or equipment. These restrictions apply regardless of whether the staff member is performing work for the consulting group on a permanent or a temporary basis.

Additionally, this Advisory Opinion is premised upon the understanding that the consulting group is not subject to the authority of the Board or the school system and does not have, and is not negotiating, a contract with the Board or school system. If those circumstances change, or if the nature of the work performed by the staff member for the consulting group changes, the staff member should submit a new *Application to Provide an Advisory Opinion* to the Panel.

This Advisory Opinion has been adopted by the Ethics Review Panel members on January 24, 2022.

Ralph Sapia, Esq.
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