

Advisory Opinion 22-05

This Advisory Opinion is in response to a request for an advisory opinion submitted by [REDACTED] asking whether it is a conflict of interest for [REDACTED] to attend a vendor sponsored dinner “and then approving said vendors’ contracts?” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] has [REDACTED] confirmed that the vendor in question, BoardDocs (a Diligent Brand) does provide software services to the Baltimore County Public School system. Furthermore, [REDACTED] confirmed said vendor did sponsor an event [REDACTED] This event required participants to register and obtain a wristband for entry. The vendor advertised the event as an “after dinner event for a night of networking and entertainment with some snacks, beer and wine on us.”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The request for an advisory opinion implicates the provisions of the Ethics Code pertaining to Gifts (Policy 8362) and Conflicts of Interest – Participation (Policy 8363).

Regarding gifts, Policy 8362 III.C.1 provides that: “A school official may not knowingly accept a gift, directly or indirectly, from a person that the official knows or has reason to know: Is doing business with or seeking to do business with the Board of school system.” A “gift” is defined as the “transfer of anything of economic value, regardless of the form, without adequate and lawful consideration.” Policy 8362 II.A.1.

Accordingly, if BoardDocs is a vendor to the school system, a Board member or other school official may not knowingly accept food and beverages from BoardDocs without providing adequate and lawful consideration for the food and beverages.

That said, there are also numerous exceptions to the gift prohibition. As applicable here, Policy 8362 III.E.1. provides that: “Notwithstanding subparagraph III(C), a school official may accept: Meals and beverages consumed in the presence of the donor or sponsoring entity.” Accordingly, a Board member or other school official may accept a gift of meals and beverages from a vendor if such are consumed in the presence of the vendor.

If a [REDACTED] accepted such a gift from a vendor, may the [REDACTED] then participate in a decision on whether to award a contract to that vendor? The short answer is “yes.” The participation restrictions set forth in Policy 8363 III.A. provide as follows:

- A. Except as permitted by Board policies, or in the exercise of an administrative or ministerial duty that does not affect the disposition or decision in the matter, a school official may not participate in:

1. Any matter in which, to the knowledge of the school official, the official or a qualified relative of the official has an interest; or
2. Any matter in which any of the following is a party:
 - a. A business entity in which the school official has a direct financial interest of which the official may reasonably be expected to know;
 - b. A business entity, including a limited liability company or a limited liability partnership, for which the school official or a qualified relative of the official is an officer, director, trustee, partner or employee;
 - c. A business entity with which the school official or, to the knowledge of the official, a qualified relative of the school official has applied for a position or is negotiating employment or has any arrangement concerning prospective employment;
 - d. A business entity that is a party to an existing contract with the school official or which, to the knowledge of the official, a qualified relative of the school official, if the contract reasonably could be expected to result in a conflict between the private interests of the official and the school system or Board duties of the school official;
 - e. An entity, doing business with the Board or school system, in which a direct financial interest is owned by another business entity in which the school official has a direct financial interest, if the official may be reasonably expected to know of both direct financial interests; or
 - f. A business entity that:
 - (1) The school official knows is a creditor or obligee of the school official or a qualified relative of the school official with respect to a thing of economic value; and
 - (2) As a creditor or obligee, is in a position to affect directly and substantially the interest of the school official or qualified relative of the school official.

The acceptance of a gift of meals and beverages from a vendor consumed in the presence of the vendor does not fall within the participation restrictions set forth above and, accordingly, would not prohibit [REDACTED] from participating in a decision on whether to award a contract to that vendor.

Please note that pursuant to Policy 8366 the Panel's advisory opinions are made available to the public with the identity of the subject(s) deleted in accordance with applicable State laws regarding public records.

This Advisory Opinion has been adopted by the Ethics Review Panel members on June 16, 2022.

Tim Topoleski, Ph.D.
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