

ST. MARY'S COUNTY PUBLIC SCHOOLS
ETHICS PANEL

In the Matter of [REDACTED]

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* Advisory Opinion No: 2018-01

Request for Advisory Opinion

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ADVISORY OPINION

On or about September 18, 2017, you submitted a Request for an Advisory Opinion regarding your plan to offer several programs to children [REDACTED] through the [REDACTED] entity that you recently formed, [REDACTED]. The programs consist of [REDACTED] which are both [REDACTED] and will be offered to children ages [REDACTED] and [REDACTED] respectively. The third program is [REDACTED] which is an after-school program that you intend to offer [REDACTED] per week for [REDACTED] weeks to students aged [REDACTED] or older. Each of the programs will be offered at St. Mary's County Public Schools (SMCPS) facilities. Finally, you hope to enter into an agreement with SMCPS, whereby [REDACTED] would receive funding to help defray the cost of staffing [REDACTED].

The Ethics Panel considered your request at its October 19, 2017 meeting, as well as the helpful materials that you provided to the Panel in advance of the meeting. The Panel determined that the three programs, as currently envisioned, would violate the St. Mary's County Public Schools Ethics Regulation (BCA-R) for the following reasons.

Prohibited Conduct and Conflicts of Interest:

Employment and Financial Interests

The Ethics Regulation provides, in pertinent part, that a "school employee may not be employed by . . . an entity that is . . . [n]egotiating or has entered [into] a contract with the school system or Board." You currently plan for [REDACTED] to enter into an agreement with St. Mary's County Public Schools or the Board of Education for the purpose of securing funding to help staff [REDACTED]. However, the materials that you submitted reflect that you will be receiving compensation, i.e., be employed by, [REDACTED] for your time at [REDACTED]. Accordingly, the Panel has determined [REDACTED] entry into such a contract would violate the Ethics Regulation given your compensation arrangement.¹

¹The Panel is concerned about the contemplated agreement for a second reason. The Ethics Regulation also provides that a "school employee may not . . . have a financial interest in an entity that is [n]egotiating or has entered [into] a contract with the school system or Board." The Ethics Policy (BCA) defines financial interest as "[t]he ownership of any interest as a result of which the owner has received within the past 3 years or is presently receiving, or in the future is entitled to receive, more than \$1,000 per year." The Articles of Incorporation that you submitted to the Panel reflect that you are the [REDACTED] and [REDACTED]. The Panel does not know the precise nature of your ownership interest in [REDACTED] or its finances, and it is aware that [REDACTED] is a [REDACTED] entity. However, while not basing the current Opinion on the financial interest ground, the Panel believes that any such agreement between [REDACTED] and SMCPS or the Board would likely run afoul of the financial interest prohibition as well.

The Ethics Regulation also provides that a "school employee may not . . . [h]old any other employment relationship that would impair the impartiality or independence of judgment of the . . . school employee." You are currently employed by SMCPS as the [REDACTED] in the Department of [REDACTED] and are responsible for working with [REDACTED] students in K-12th grades. The Panel believes that your plan to draw compensation derived from [REDACTED] receipt of program enrollment fees from the parents of the same population of students that you currently serve in your capacity as an SMCPS employee, has the potential to impair your impartiality and/or independent judgment. Accordingly, the Panel believes that your employment by [REDACTED] constitutes an impermissible conflict of interest under the Ethics Regulation.²

Prestige of Office

Finally, the Panel also wants to highlight the restrictions that the Prestige of Office prohibition contained in the Ethics Regulation will impose on your [REDACTED] activities. The Regulation provides that a "school employee may not intentionally use the prestige of office or public position for the private gain of that . . . school employee or the private gain of another." The Panel acknowledges your stated intent to keep your [REDACTED] activities separate from your duties as an SMCPS employee. However, the Panel wants to emphasize that the Prestige of Office prohibition applies equally outside your SMCPS duty day. You will not be able to permissibly point to your role as [REDACTED] or otherwise to your employment with SMCPS, at any time that you are discussing [REDACTED] programs with any current or prospective clients, or other third parties, even when you are not working for SMCPS.

11/1/2017

Date

Wayne T. Lockley

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Ethics Panel Chair

Robert Ertter

Robert Ertter

Absent

Peter Neus

F. J. Talley

F. J. Talley, Ph.D.

John A. Walters

John A. Walters

²The Ethics Regulation provides for an exception where the school employee's "duties are ministerial and if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest." Emphasis supplied. The Panel concluded that the exception is not applicable here because of your leadership position in [REDACTED] (Director, Executive Director), your overall supervisory authority over [REDACTED] programs, and the overlap between the students that [REDACTED] intends to serve, and you currently serve in your capacity as a SMCPS employee.