

**CITY OF COLLEGE PARK ETHICS COMMISSION
ADVISORY OPINION 10-01**

August 16, 2010

Peggy Higgins, the Director of the City of College Park's Community Resources Department has asked the Ethics Commission for an advisory opinion regarding the propriety of her running for a seat on the Prince George's County Board of Education or serving as a member of the Board while retaining her position with the City under Chapter 38, Ethics, of the College Park Code.

I. Facts.

As the Community Resources Director, Ms. Higgins oversees the City's Youth and Family Services program (hereinafter, "Program"). The City's Class Specification for Ms. Higgins's position includes the following essential job functions:

- Plans and directs department programs which include Youth and Family Services and the Seniors Program. Develops program goals and objectives; develops policies and procedures; and directs the work of subordinate staff.
- Performs a variety of administrative duties associated with program management to include developing and monitoring the department budget; coordinating activities with other City and community agencies; providing staff training and community outreach work; and reviewing and evaluating the work of subordinate staff.
- Evaluates program operations; implements and/or recommends policy changes to improve program effectiveness. Reviews and/or prepares reports on department activities and programs.
- Writes position papers regarding family related issues; seeks additional funding sources for Youth and Family Services programs; and serves on commissions and committees in order to identify needs, resources and effect changes related to program services and issues.
- Maintains effective working relationships with State, City and County human services agencies and organizations.
- Provides overall monitoring of Department cases for quality of service delivery and of case, program and service documentation. Ensures compliance with applicable regulations and standards. Participates in the development and modification of policies and procedures.

- Conducts clinical review of the Clinical Supervisor's cases.

According to the City's web site, the Program provides community outreach and enhanced family functioning through its clinical programs, school assembly events, parent education and support groups, and client advocacy. Ms. Higgins has advised the Commission that the Program's typical interactions with Prince George's County Public Schools (hereinafter, "school system") include the following:

- providing structured group counseling sessions on topics such as bullying and coping with separation and divorce for children at elementary schools located in the City
- providing structured group counseling sessions on topics such as truancy and self esteem and social integration for Hispanic girls, and support groups for Hispanic parents at Parkdale Highschool
- accompanying approximately eight to ten City families per year to individual education plan meetings at their child's school

According to Ms. Higgins, the school system does not pay for the services that the City provides in the public schools.

The Program also provides staff support for the City's Education Advisory Committee, which sometimes interacts with members of the Board of Education when the Board Members make presentations at City Council Meetings.

The Prince George's County Board of Education is responsible for governance of the school system. According to the Board of Education Handbook, the Board's primary responsibilities include the following:

1. Selecting and appointing the Superintendent of Schools, Educ. Art., §4-201.
2. Enacting, interpreting and implementing policies, (Board Policy 9340, "Policy Development").
3. Adopting operating and capital budgets, Educ. Art., §5-101.
4. Making decisions on educational, budgetary, facility, and financial matters (including authorization of contracts and legal settlements), Educ. Art, §4-108.
5. Establishing curriculum guides and courses of study, Educ. Art., §4-111.
6. Appointing personnel, Educ. Art., §4-103 and §6-201.
7. Establishing school boundaries, Educ. Art. §4-109.
8. Communicating with residents, staff, and students.
9. Acting in a quasi-judicial capacity, in particular, deciding student and

- employee appeals, Educ. Art., §3-1006; §4-205(c); §6-202.
10. Advancing a legislative agenda.
 11. Making a continuous appraisal of the educational and administrative management of the school system, Board Policy 120, "System Oversight".

Prince George's County Board of Education Handbook, Dec. 7, 2009 (internal citations are to the Maryland Code).

Board Members receive compensation of \$18,000.00 per year.

II. Applicable Law.

Chapter 38 of the College Park Code establishes ethical standards for City employees. The goal of the Ethics Chapter is to ensure that City employees perform their duties with only the best interests of the City in mind. Section 38-11 prohibits City employees from participating in certain matters and holding certain employment relationships that may create conflicts between their private interests and the interests of the City.

Based on the information provided by Ms. Higgins and the information readily available to the Commission, the Commission believes that three provisions of the Ethics Chapter are pertinent to Ms. Higgins's inquiry. First, section 38-4 defines "employer" as "any person paying . . . compensation to another person for services rendered." Second, section 38-11(C) provides that

[n]o City official or employee shall be employed by a business entity that has or is negotiating a contract of \$1,000 or more with the City or is regulated by any City body or when the employer may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the covered person's official duty. This prohibition does not apply to employment relationships disclosed to and exempted by the Commission pursuant to § 38-10 of this chapter.

Third, section 38-11(A)(1) prohibits City employees from participating on behalf of the City in matters that would have a "direct financial impact" upon their employer.

III. Discussion.

A. Ethical Implications of Ms. Higgins's Candidacy.

As discussed in section (B), below, the fact that Ms. Higgins would be an employee of the school system if she is elected to the Board of Education creates potential conflicts of interest under the Ethics Chapter. Ms. Higgins's *candidacy* for that position does not create potential conflicts of interest. However, the Commission notes that section 38-15 prohibits the use of City

personnel and property for private purposes. Therefore, the Commission reminds Ms. Higgins not to use City personnel or property for her campaign efforts.

B. Section 38-11(C), Prohibited Employment.

Because Ms. Higgins would receive compensation for her service on the Board of Education, Prince George's County Public Schools would be her "employer" for purposes of the Ethics Chapter. Accordingly, the Commission must determine whether section 38-11(C) prohibits her simultaneous employment as a School Board Member and as Community Resources Director.

The Commission is not aware of any existing or potential contracts involving \$1,000.00 or more between the City and the school system, and the City does not have regulatory authority over the school system. Therefore, the pertinent issue is whether the school system "may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance" of Ms. Higgins's duties as Community Resources Director.

Ms. Higgins clearly is ultimately responsible for the Youth and Family Services program's activities in the public schools, including group counseling, support groups, and participation in individual education plan meetings. However the Commission believes that the children and parents participating in the groups and meetings are the primary beneficiaries of those activities. Assuming the Program's activities in the public schools are effective, they should have a substantial and material impact upon the school system by reducing social problems that may interfere with the education process and facilitating the development of effective individual education plans for students with special needs. However, the Commission believes that the presumed benefits to the school system of the Youth and Family Services program's activities in the schools also inure to the public generally by reducing juvenile delinquency in the City and preparing the City's youth to become productive members of society.

Regarding the Program's provision of staff support for the Educational Advisory Commission and the Educational Advisory Commission's interaction with members of the Board of Education during City Council meetings, the Commission does not believe that such activities presently have a substantial and material impact upon the school system.

Accordingly, the Commission does not believe that section 38-11(C) prohibits Ms. Higgins from serving on the Board of Education while employed as the City's Community Resources Director.

C. Section 38-11(A)(1), Disqualification from Participation.

As noted above, if Ms. Higgins is elected to the Board of Education, Prince George's County Public Schools would be her employer. Section 38-11(A)(1) would require her to recuse herself from participating in matters arising in the course of her employment as the Community Resource Director that would have "a direct financial impact, as distinguished from the public generally," upon the school system.

Based on the Commission's understanding of Ms. Higgins's duties and the interaction between the Youth and Family Services program and the school system, the Commission does not believe that any of the matters likely to arise in the performance of Ms. Higgins's duties as Community Resources Director will have a direct financial impact upon the school system. As noted above, the children and parents that participate in the counseling sessions and support groups provided by the Youth and Family Services program and who are represented by the Program at the individual education plan meetings at the public schools are the primary beneficiaries of the Program. Arguably, the participants receive a direct financial benefit, as they receive a valuable service for which they would otherwise have to pay. Again assuming the Program is effective, the school system does receive a benefit from the Program in that the Program facilitates the educational process by improving the social conditions of the participating students and developing effective individual education plans. However, any financial benefit that may inure to the school system is not at all direct. Accordingly, the Commission does not believe that section 38-11(A)(1) will prohibit Ms. Higgins from performing her duties as Community Resources Director.

The Commission notes that, because of the interactions between the school system and the Youth and Family Services program, Ms. Higgins, if elected to the Board of Education, should remain on the look out for situations where her actions as Community Resources Director may have a direct financial impact upon the school system. When such situations arise, she must recuse herself or, if she believes that she can participate in the matter free from any influence resulting from her employment with the school system, apply for an exemption from or modification to section 38-11(A)(1) pursuant to section 38-10(A).

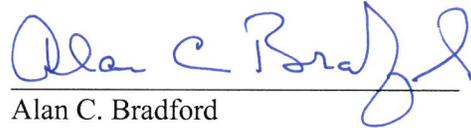
IV. Conclusion.

Based on the facts provided and readily available to the Commission, neither Ms. Higgins's candidacy for a seat on the Prince George's County Board of Education nor, if elected, her service on the Board, will result in a violation of the Ethics Chapter. Therefore, the Commission is of the opinion that Ms. Higgins may run for a seat on the School Board and serve on the School Board while retaining her position as Community Resources Director. However, in light of the relationship between the Community Resources Department and the public schools located in the City, the Commission recommends that Ms. Higgins remain vigilant for potential conflicts of interest that may arise if she is elected and take appropriate action to avoid such conflicts.



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