



STATE OF CONNECTICUT

OFFICE OF STATE ETHICS

ADVISORY OPINION 2010-5

Board of Education and Services for the Blind Board Members and Employees Utilizing Agency Goods and Services

Introduction

The Citizen's Ethics Advisory Board issues this advisory opinion at the request of Andrew Norton, Legislative and Legal Affairs Director for the Board of Education and Services for the Blind ("BESB"), whose inquiry pertains to the application of the Code of Ethics for Public Officials ("Code of Ethics") to BESB's board of directors and employees who receive goods and/or services provided by BESB. Further, Mr. Norton asks whether a BESB Board member may advocate or vote for an agency decision which would predominantly benefit a class of which he is a member (e.g., blind persons over the age of 55). The latter question will be addressed in a separate advisory opinion.

Facts

The following facts are relevant to this advisory opinion. Established in 1893, BESB is the oldest continually-operating state agency in the United States that provides services to individuals with visual limitations.¹ BESB

provides, within available resources, comprehensive low vision services, specialized education services, life skills training, case management, and vocational services to individuals of all ages who are legally blind and to children who are visually impaired. The agency assists them in acquiring the skills and support services necessary to be independent.²

BESB's enabling statute requires that "not less than two of the members" of its board be blind persons, and that one member be the parent of a child "who receives services provided by the board."³ Currently ten of the eleven members of the board are blind and all have received BESB services, or have a child who has.

¹ Board of Education and Services for the Blind website, <http://www.ct.gov/BESB/>.

² *Id.*

³ General Statutes § 10-293 (b) (1).

BESB adheres to federal enactments and regulations in the administration of its programs. There are also supplemental state laws, regulations and policies in effect for certain programs. BESB's board approves which state regulatory and policy changes will be submitted to the legislature's regulations review committee, which are initially developed and presented by the agency director and staff. Those policies and regulations are of general application. BESB's executive director is appointed, not by the board, but by the governor.⁴ The executive director's compensation is determined by the Commissioner of Administrative Services.⁵ Furthermore, the BESB board does not determine the salary, benefits or working conditions of any BESB staff. In fact, BESB board duties are listed in the statutes as follows:

- Submitting a report to the Governor;
- serving as the central policy making authority in providing services to the blind and visually impaired;⁶
- monitoring the activities of the agency in carrying out its mission to provide educational and rehabilitative services to all state residents who are blind;⁷
- monitoring compliance with agency benchmarks.⁸

Thus, while the board is involved in general policy-making,⁹ it does not become involved in the agency's day-to-day implementation of programs.

By way of example, Mr. Norton has offered two different hypothetical scenarios of situations that may arise. The first scenario addresses the procedure for acquisition of BESB goods. The second addresses the procedure for acquisition of BESB services.

Hypothetical #1:

A blind BESB board member seeks equipment that will aid her in living independently. The member follows the necessary procedure which includes going to a private eye doctor to establish legal blindness. She then brings that report to the Adult Services ("AS") division of BESB. The AS staff member, a BESB employee, verifies that the report comports with the statutory definition of blindness. The staff member then creates a Certificate of Legal Blindness, which must be signed by BESB's executive director. The board member would then be referred to an AS social worker. After obtaining information about that individual's background, the social worker refers the individual to a Rehabilitation Teacher, a BESB employee, or a "low vision provider," who may determine what, if any, vision aids will assist the person. For example, the

⁴ General Statutes § 10-294.

⁵ See General Statutes §§ 10-294 and 4-40.

⁶ General Statutes § 10-293 (a).

⁷ General Statutes § 10-293 (c).

⁸ Section 10-293 (c).

⁹ General Statutes § 10-293 (a).

Rehabilitation Teacher or low vision provider may determine that the BESB board member would benefit from a closed circuit television (“CCTV”). CCTVs can cost around \$2,000.

BESB provides applicants with CCTVs in chronological order of approval, but there can be a lag in providing them. The client who is a board member will, as with every other client, receive a CCTV in the order of their approval. BESB board members are in no way involved in this process. It is a staff-led process.

Hypothetical #2:

A BESB board member is already a client of the agency having established his legal blindness. The client expressed an interest in pursuing work and was accepted as a client of the Vocational Rehabilitation (“VR”) division. A VR Counselor, a BESB employee, has been assigned to his case and the counselor and the client jointly develop an Individual Plan for Employment (“IPE”). The client has decided that he would like to pursue a massage therapy course. Such a course of training can take eighteen months and cost around \$15,000.

The VR Counselor will assess the client’s ability to succeed in such a goal. The Counselor may, for example, doubt that the client has sufficient physical capabilities (for example, because of arthritis) to perform such tasks. The VR Counselor might then consult a physician and seek a medical determination that the client is capable. If the Counselor does approve a course in massage therapy training as part of the IPE, he must receive approval from the VR Supervisor as is the case for any VR expenditure. An expenditure of this size (over \$2,500), will also require approval from the VR Supervisor’s superior and the agency’s Executive Director. With these approvals, the client can then proceed with such a course of training and the agency will pay his costs. Again, BESB board members are uninvolved in this process.

Federal law requires that BESB provide qualifying individuals with “vocational rehabilitation services” unless BESB can demonstrate by clear and convincing evidence that such individuals are “incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.”¹⁰

Question

Petitioner asks whether it is a violation of the Code of Ethics for BESB board members or employees to receive BESB goods or services.

¹⁰ 29 U.S.C.S. § 722 (a) (2) (A).

Conclusion

We conclude that, with strict adherence to the guidelines provided in this opinion, BESB board members or employees may receive BESB-provided goods and services without violating the Code of Ethics.

Analysis

May BESB board and staff members receive BESB-provided goods and services without violating the Code of Ethics?

This Board previously addressed a similar question in Advisory Opinion No. 2008-6. Specifically, this Board was asked whether employees of Connecticut Innovations, Inc. (“CI”) may participate in a Solar photovoltaic (“PV”) Rebate Program administered by CI on the same terms as other eligible Connecticut residents. This Board concluded that:

[w]ith the exception of those substantially involved in developing, and those involved in approving the development of, the criteria under which the Solar PV Rebate Program operates, CI employees, including those involved in administering the program, may participate in the program on the same terms as other eligible Connecticut residents, provided that ... guidelines are followed[.]¹¹

As stated in that opinion, “a state employee is not per se prohibited by the Code from interacting in a private capacity with his or her employing agency, even if such interaction will result in personal financial gain.”¹² Thus, BESB employees may, consistent with Advisory Opinion No. 2008-6 and the guidelines presented below, seek the goods and services provided by BESB.

If the employees who are themselves approving the award of goods and services may partake in such things, common sense dictates that so may board members who, as explained by Mr. Norton, are uninvolved in the decision-making process for goods or services (e.g., CCTVs or Vocational Rehabilitation services) and do not develop specific criteria on a case by case basis for qualification for goods and services. Also, the fact that board members may not determine the salary, benefits, or working conditions of any BESB staff removes the concern that staff members will be compelled to treat board member applications differently from others.

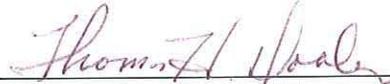
¹¹ Advisory Opinion No. 2008-6.

¹² Id.

The guidelines established by Advisory Opinion No. 2008-6 include measures for complying with the Code of Ethics. Similarly, here, it is permissible for BESB board members and employees to request the services of their agency so long as the following provisions are met:

- a. If a BESB employee involved in administering BESB programs is faced with a decision that would affect a financial interest of his, his spouse, parent, brother, sister, child or the spouse of a child or a business with which he is associated, he must, in accordance with § 1-86 (a), file a written statement describing the potential conflict with his or her immediate superior, who must then assign the matter to another BESB employee who is not a subordinate to the conflicted individual.
- b. If a BESB employee applies for BESB goods or services, his or her application must not be evaluated by a subordinate.
- c. BESB employees and board members applying for BESB goods or services must receive absolutely no preferential treatment; that is, their applications must be treated precisely in the same manner as those submitted by other applicants.
- d. BESB employees and board members must refrain from using their positions, or any confidential information acquired in the course of their employment, to influence BESB's response to their applications for services.
- e. Lastly, taking into consideration the need for verbal communication, especially with the Vocational Rehabilitation process, rather than require that every step of the process be in writing, this Board will require that only communications regarding action to be taken (e.g., the filing of the application, the granting of the application, etc.) be in writing.

By order of the Board,



Thomas H. Dooley, Chairperson

Dated 9/23/10 _____