

# Hodges Loizzi Eisenhammer Rodick & Kohn LLP

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## ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

October 11, 2019

### **Via Electronic Mail**

Dr. Kevin Russell, Superintendent of Schools  
Downers Grove Grade School District No. 58  
1860 63rd Street  
Downers Grove, IL 60516  
[krussell@dg58.org](mailto:krussell@dg58.org)

**Re: No Conflict of Interest – Beyond Your Base and Wight & Co.**

Dear Dr. Russell:

Per your request on October 8, 2019, this letter addresses our firm's legal opinion whether any impermissible conflict of interest exists with respect to a proposed contract between the Board of Education and Beyond Your Base, a consulting group of Wight & Company. As explained below, no such impermissible conflict exists.

As we understand the facts, the Board issued a request for qualifications for a consultant to lead a public engagement strategy for its long-range facilities plan, and the Board selected Paul Hanley as its consultant. Wight & Company is the District's architect of record and was previously engaged by the Board to develop the long-range facilities plan and provide related services. Recently, Wight & Company hired Mr. Hanley to form a new division within Wight (called "Beyond Your Base"), and Mr. Hanley and Beyond Your Base still wish to provide the Board's requested public engagement and communications services.

The association between Wight and Hanley does not present any impermissible conflict of interest. The *School Code* and other laws broadly forbid Board members and certain District employees/officers from having financial interests in any contracts awarded by the Board. *E.g.*, 105 ILCS 5/10-9; 105 ILCS 5/22-5; 50 ILCS 105/0.01 *et seq.* But these laws do not generally forbid one contractor (i.e., architect) from having a financial interest in another contractor's (i.e., a communications consultant's) contract with the Board, unless the companies are engaged in some type of anticompetitive scheme behind the scenes such as bid-rigging or bid-rotating.

That said, as the Board is aware, the size of any referendum or projects recommended by Hanley will impact the amount of architectural and other fees Wight can expect to receive from the Board in the event of a successful referendum. Thus, by virtue of his association with Wight, Hanley may have an incentive to recommend a larger-sized referendum than he otherwise would.

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To address these concerns, we have requested and received a copy of the proposed contract with Beyond Your Base, and we prepared a proposed amendment that includes the following language:

In performing the services, Consultant [i.e., Beyond Your Base] shall have a strict fiduciary duty to the Owner [i.e., the Board], including a duty of loyalty and the utmost good faith and honesty towards the Owner, and Consultant shall act solely in Owner's best interests without regard to Consultant's (or its parent or subsidiary firm's) financial or other interests. Consultant shall disclose any potential conflicting interests in writing to Owner and obtain Owner's informed written consent to any such conflicts. Because Consultant's (or its parent or subsidiary firm's) architectural and other fees will be based on the size of the capital projects recommended, Consultant shall implement and follow rigorous internal written procedures designed to ensure that any such prospective fees or interests cannot affect its independent judgement in performing the services. Consultant shall provide a copy of such written conflict-screening procedures to Owner before commencing the work. Consultant shall undertake independent investigations at all times to ensure that it is not basing any recommendation on inaccurate or incomplete information.

In addition, we have inserted provisions requiring Beyond Your Base to comply with the Illinois *State Officials and Employees Ethics Act*, 5 ILCS 430/1-1 *et. seq.* and Board of Education Policy 4011 (2:105).

In sum, we believe no impermissible conflict of interest exists, and we further have taken measures to ensure that Beyond Your Base owes a fiduciary duty and duty of loyalty to the Board in performing the services. Please do not hesitate to contact us if we can be of any further assistance in this matter.

Sincerely,

HODGES, LOIZZI, EISENHAMMER,  
RODICK & KOHN LLP



Steven M. Richart