



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

DAVID C. HESPE  
*Commissioner*

January 26, 2016

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A26-15

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of the Board of Education (Board). You have verified that you copied the Board member, who is the subject of the request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that this Board member did not submit comments; therefore, the Commission will provide its advice based solely on the information included in your request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any prospective conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31. Pursuant to N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its December 15, 2015 meeting.

You inform the Commission that a newly appointed Board member was a former employee of the District for 28 years prior to her retirement on June 30, 2015, and that during the last 13 years of her employment, she served as the President of the Local Education Association (LEA). You seek an advisory opinion as to what, if any, involvement the new Board member may have with respect to issues and matters involving the LEA, including possible negotiations and votes on contract(s) between the Board and the LEA.

Initially, although the Commission notes that this Board member's prior employment with the District and service as an official with the LEA is no bar to her service on the Board, her recent past employment and service as President of the LEA creates the appearance of a conflict of interest for this Board member. The Commission considers it reasonable for members of the public to believe that the new Board member, having so recently been an employee of the District, who was represented by the LEA and served the LEA as its President, would be unable at this time to separate her past involvement with the LEA from her new role on the Board and may be suspect to surrender her independent judgment in violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq.

Therefore, to avoid a violation of the Act and to preserve the public trust, the Commission advises that the new Board member must recuse herself from any matters involving the LEA and abstain from any votes from any matters involving the LEA for the duration of her

initial term. The Commission does not consider this conflict to be in perpetuity, but only for the new Board member's initial term on the Board, wherein she becomes acclimated to her new role serving the public, as opposed to her recent, past role serving the LEA. After the completion her initial term on the Board, the Commission advises that the public would view her service solely as a Board member and not as the recent, former President of the LEA. At that time there would no longer be the appearance that the Board member's independence of judgment and objectivity with regard to the LEA would be impaired.

Although the presumption of a conflict may be lifted at the end of the Board member's initial term, the Commission cannot determine if a conflict with matters related to the LEA may present itself or one of a different nature may develop, but is unknown at this time to the Commission or the new Board member. (E.g. If a matter comes before the Board that might affect or benefit the retired Board member, such as through benefit changes through negotiations, a conflict would present itself requiring the Board member's recusal from that matter and abstaining from all votes on the matter). The new Board member, as with all Board members, must always be cognizant of the responsibility to protect the public trust and the obligation to serve the interests of the public and Board.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission