

July 31, 1998

**FOR PUBLIC RELEASE**

RE: Advisory Opinion A13-98

The School Ethics Commission discussed your request for an advisory opinion at its meeting of July 30, 1998, and hereby renders this opinion in response to your request.

You are a co-founder of a charter school that proposed having a member of the School Board of the district in which the school sits serve on its Board of Trustees. However, you were advised that it would be a conflict of interest for a board member from your charter school's district of residence to serve on the charter school board. See *Advisory Opinion A22-96* (February 26, 1997). You therefore desire an advisory opinion on whether it would be a conflict of interest for a person on a school board in other than your district of residence, but which sends or may potentially send a student to the charter school, to serve simultaneously on the charter school board.

Your charter school is a performing arts high school that anticipates drawing students from 25 surrounding school districts. You would like to draw on the expertise of several of the school board members from these districts. For the reasons set forth below and in *Advisory Opinion A22-96*, the Commission advises that it would be a violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq., for a charter school trustee to simultaneously serve on a district board of education from which the charter school receives students.

The Commission discussed the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq., at length in *Advisory Opinion A22-96*. Therein, the Commission noted that a charter school is "a public school operated under a charter granted by the

Commissioner of Education which is operated independently of a local board of education and is managed by a board of trustees.” N.J.S.A. 18A:36A-3(a). The board of trustees, upon receiving a charter from the Commissioner, shall be deemed to be public agents authorized by the State Board of Education to supervise and control the charter school. Id. Specifically, the board of trustees is authorized “to decide matters related to the operation of the school including budgeting, curriculum, and operating procedures, subject to the school charter.” N.J.S.A. 18A:36A-14(a).

A large portion of the budget of a charter school derives from per pupil payments from the student’s district of residence. N.J.S.A. 18A:36A-12 of the Charter School Program Act provides:

The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district a presumptive amount equal to 90% of the local levy budget per pupil for the specific grade level in the district. At the discretion of the commissioner and at the time the charter is granted, the commissioner may require the school district of residence to pay directly to the charter school for each student enrolled in the charter school an amount equal to less than 90%, or an amount which shall not exceed 100% of the local levy budget per pupil for the specific grade level in the district of residence... The district of residence shall also pay directly to the charter school any categorical aid attributable to the student, provided the student is receiving appropriate categorical services, and any federal funds attributable to the student. [N.J.S.A. 18A:36A-12.]

It is this provision that is of paramount concern to the School Ethics Commission. The School Ethics Act provides:

No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. [N.J.S.A. 18A:12-24(d).]

As a member of the local school board, a board member is charged with, among other things, adopting a district budget. This budget presumably will represent the greatest benefits to the district at the lowest cost. As a charter school trustee, a trustee is also charged with the adoption of the charter school’s budget, a budget which to a large degree relies on the budget; and thus the per pupil expenditure, adopted by the local board(s) of education from which its students come. Thus, although each local board has no input on the percentage of the local levy budget per pupil that it must pay to the charter school, the local board’s determination of the local levy budget per pupil may reasonably be expected to conflict with the charter school trustee’s interest in obtaining as much funding as possible per pupil for the charter school. As in A22-96, abstaining on the budget will not obviate the conflict since there are numerous decisions made during the course of the year that impact upon the local budget. Thus, the Commission advises

that a board member's service as a charter school trustee might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties in violation of N.J.S.A. 18A:12-24(d) of the School Ethics Act.

The Commission is also concerned with the potential for litigation. Any litigation arising between the charter school and any local board from which the charter school obtains students would place a board member serving as a trustee in position to be barred from discussions on both boards. Such a board member would be viewed as serving in a capacity reasonably expected to prejudice his independence of judgment in the course of his duties as a board member and as a trustee.

For the foregoing reasons, the Commission advises that local board members who serve in districts from which your charter school obtains students may not serve on your charter school board of trustees. However, nothing set forth herein would prohibit the charter school from utilizing the services of former board members to assist you in getting the expertise you are seeking.

Because the Commission believes that others may be guided by this opinion it is making it public.

Sincerely,

Paul C. Garbarini  
Chairperson

I hereby certify that the Commission voted to make the within opinion public at its meeting of July 30, 1998.

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Lisa James-Beavers, Executive Director

PCG/LJB/ktC[m:ethics\lisa\advryop(A1398pub)]  
Enclosure