



State of New Jersey
DEPARTMENT OF EDUCATION
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Acting Commissioner

SCHOOL ETHICS COMMISSION

April 25, 2023

For Public Release

Subject: Public Advisory Opinion – A08-23

The School Ethics Commission (Commission) received your request for an advisory opinion on your own behalf as a member of the Board of Education (Board). 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 preliminarily discussed this matter at its Advisory Opinion Committee meeting on April 12, 2023, and again at its regularly scheduled meeting on April 25, 2023.

In your request, you inform the Commission that the Board has entered into a shared services agreement (SSA) with the Town for "bidding and awarding contracts for the upgrade of six (6) tennis courts, all of which are at the site of the [d]istrict's [m]iddle [s]chool, four of which are owned by the Board." The SSA notes, among other things, that "the contracts will be entered into between the Town and the contractors" through "lawfully awarded contracts." As such, you inquire whether your "company may serve as a subcontractor on the tennis court job referenced in the SSA between the Town and the Board."

Based on the facts and circumstances presented in your request, and with the understanding that the full extent of the terms and conditions of the SSA between the Town and the Board has already been negotiated and executed, the Commission advises that you would not violate the School Ethics Act (Act) *N.J.S.A.* 18A:12-21 *et seq.*, if your company bids on, and is awarded, a contract with the Town to "serve as a subcontractor on the tennis court job." To the extent that the Board may need to review, discuss, and/or approve the selection of the subcontractors, the subcontractor agreements/contracts, and/or payments to the subcontractors, you are prohibited from participating in any and all discussions and votes related to same. You also may not be privy to the minutes on such discussion or votes until such time as they would otherwise be made available to the general public, such as with the adoption and publication of Board minutes or public votes. In short, and in all matters related to the SSA between the Town and the Board, you only have rights as great as those of the public, and you must not use any knowledge not known to or accessible by the public to assist you in your business ventures.

If your company is selected as a subcontractor, it is preferable, to the fullest extent possible, that someone other than you physically perform the required work on the Public Schools District's (District) premises. If your physical presence cannot be avoided, and another employee(s) cannot perform all required work, when you are on District grounds, you must be zealous in remembering that you are not representing the Board, you have no authority over District personnel, and you and your company are not entitled to receive any unwarranted privilege or advantage. If you encounter an issue while working on District grounds, you, like any business or guest who may be present on District property, may not personally act to resolve an issue or matter, and must follow the appropriate chain of command. The Commission further advises that, prior to your arrival on District property, you should advise the Superintendent so that he/she can communicate to relevant staff members who may need to interact with you that your presence is as the owner of the company, and not as a Board member.

Finally, as a reminder, school officials must always be cognizant of their responsibility to protect the public trust, to honor their obligation to serve the interests of the public and the Board, and to periodically re-evaluate the existence of potential conflicts of interest. In addition, the only way for a school official to truly safeguard against alleged violations of the Act is to avoid any conduct which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission