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Acting Commissioner

October 29, 2014

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A38-14

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of a member of the Board of Education (Board) of the County Special Services School District (District). You have verified that you copied the Board member who is the subject of the advisory opinion request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that this Board member did not submit comments and, therefore, the Commission will base its advice solely on the facts included in your request dated August 19, 2014. Pursuant to its authority, the Commission discussed your request at its September 23, 2014 meeting.

You inquired whether the Board member would violate the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., if he were to donate a large sum of money to the District when he concurrently serves the District as a member of its Board. After discussion, the Commission has determined that such a donation would not in and of itself constitute a violation of the Act; however, issues may arise, which the public might view as a benefit to the Board member.

The Commission notes that whether these funds are fungible or set aside in a separate account, the Board member may have no control over the dispersal of these funds. Thus, when the Board member votes on decisions affecting the use of these funds, he must do so as he would on any matters concerning spending by the District. If he is unable to be objective, then he must recuse himself from discussions regarding the funds and abstain from voting.

Although your request indicates that the Board member would like his donation to be “applied towards capital improvements and technology,” the Commission advises that if the Board member were able to personally direct how the funds were to be spent, he would violate N.J.S.A. 18A:12-24.1(d). N.J.S.A. 18A:12-24.1(d) provides that board members “carry out his responsibility, not to administer the schools, but, together with her fellow board members, to see that they are well run.” As such, the Board member will need to understand that in donating the funds, he cannot exert an overriding control over how the funds are distributed or applied in any way different than if he were dealing with any other funds spent by the District. Likewise, the Board member would violate the Act if, in discussions with fellow Board members or other

school officials, he were to act in a way to suggest that he has influence or suggests that he have a greater say in how the funds are to be spent by virtue of his donation.

The Commission also recognizes that the Board member was appointed to the Board by the County Executive and seated upon the advice and consent of the County Board of Chosen Freeholders. The time may come for the Board member to be reappointed to the Board. The Commission would caution the Board member that advocating for his reappointment on his own behalf, or potentially by others, by noting his generous donation to the District may constitute a benefit in violation of N.J.S.A. 18A:12-24(b). N.J.S.A. 18A:12-24(b) provides, “No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of her immediate family or others.” The public may view this donation as this Board member’s attempt to secure an unwarranted privilege or advantage for himself in securing reappointment.

While the Commission notes that the Board member is free to fulfill his generous, philanthropic gesture to the District, and such a donation is not itself a violation of the Act, this tribunal requests that he consider the forgoing should he make this magnanimous donation. Following a donation, the Board member must continue to serve as a Board member equal to his fellow Board members with no special privilege, real or presumed, over the manner in which the donated funds are to be spent. He would need to continue to engage in his duties as though he made no donation at all, as such donation cannot change how he acts or votes on matters before the Board.

We hope this information is helpful.

Sincerely,

Robert W. Bender, Chairperson