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School Ethics Commission

January 23, 2024

For Public Release

Subject: Public Advisory Opinion A02-24

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of a member of the Board of Education (Board) and one of its members. You verified that you copied Board Member A, the subject of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that the subject Board member did not submit a response to your request, and therefore, the Commission will issue 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)*, your request was preliminarily discussed by the Commission at its Advisory Opinion Committee meeting on January 10, 2024, and again at its regularly scheduled meeting on January 23, 2024.

You inform the Commission that School District A (District A) sends its students to School District B (District B) for grades seven through twelve. You note that you were employed by District A, which "had a Shared Service Agreement for [your] service," with District B and that agreement expired on June 30, 2023. You further note in June 2023, you decided to leave your employment at District A and "take a full time position with [District B]."

You further inform the Commission that Board Member A was employed by District A during your tenure as Superintendent, and while in that role, you made a recommendation to terminate Board Member A's employment "after a series of disciplinary issues, and [a] failure to comply with a Corrective Action Plan." You state, thereafter, Board Member A requested a "Donaldson Hearing," at which time the [District A] Board upheld the decision to terminate." Subsequently, Board Member A filed a civil suit against you and the District A Board, which was settled last year. You further state Board Member A started a petition to have you fired, and "put up billboards throughout the towns that send students to [District B] to that effect." You note that Board Member A has filed "various [Commission] [c]omplaints against [you] and other members of [your] administrative team," including a lawsuit claiming the Board did not follow proper protocols in approving your contract, which was recently withdrawn. You further note Board Member A has a pending matter before the Commission against a Board member.

Based on the information provided in your request, you inquire whether Board Member A has a conflict under the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, which would prohibit Board Member A from “formally or informally” evaluating you, from voting on your employment and from voting on matters concerning other administrators with whom Board Member A has taken issue. You further inquire if there are other conflicts that exist for Board Member A.

In its review of the specific facts and circumstances detailed in your request, the Commission notes that it appears you and Board Member A have a tenuous history that stems from the recommendation you made to terminate Board Member A’s employment when you were the Superintendent. Therefore, the Commission advises that Board Member A should recuse themselves from any and all matters related to your employment, including, but not limited to “formally and informally” evaluating you, and voting on matters related to your employment.

To be clear, the matter of termination in, and of itself, is not enough to create a *per se* conflict of interest for Board Member A related to your employment matters. Each circumstance must be examined on a case-by case basis to determine whether the public might reasonably perceive that a prior animus has the potential to prejudice or interfere with a board member’s independence of judgment in the exercise of their official duties as a board member or could create a justifiable impression that the public trust has been violated. Here, the Commission’s advice is predicated on the totality of Board Member A’s actions, namely the “filing of a civil lawsuit” against you, starting “a Petition to have [you] fired” and placing “billboards throughout the towns that send students to [District B] to that effect.” The Commission maintains these actions support the existence of a tenuous history between you and Board Member A, and therefore, in order to avoid a possible violation of the Act, Board Member A should not participate in or vote on any matter that involves your employment. The Commission notes permitting Board Member A to participate in any matters related to your employment would subvert the fundamental purpose of the Act and call into question the integrity of the vote, the action, and ultimately the Board and its members. Such a circumstance would vitiate the foundation of the Board as a fair and impartial tribunal and ultimately damage the public trust.

Regarding whether Board Member A has a conflict related to voting on matters concerning other administrators with whom there may be an issue, the Commission reiterates that simply filing a complaint does not create a *per se* conflict for Board Member A related to the administrators. In addition, there does not appear to be any direct or indirect evidence of animus between the administrators and Board Member A, such as the ones you mentioned relating to you, e.g., the petition and the billboards. However, although there is no presumption of a conflict of interest between the administrators and Board Member A based on the facts and circumstances presented in this request, the Commission cannot determine if a future conflict involving the administrators and Board Member A may present itself, or if one of a different nature may develop, but is unknown at this time to the Commission, the administrators and/or Board Member A. If such a circumstance should present itself, the administrators may then request an advisory opinion as to whether any proposed conduct or activity of Board Member A constitutes a violation of the Act.

As to your final inquiry, “[w]hat other conflicts exist for [Board Member A],” the Commission notes that requests for advisory opinions **must** clearly set forth, in specific detail, the prospective conduct or activity that the school official seeks to undertake, and the exact role the official will play in that prospective activity or conduct. *N.J.A.C. 6A:28-5.2(a)*. To the extent you are requesting a general overview of any additional “conflicts [that may] exist for [Board Member A],” the Commission notes it cannot opine on non-specific conflicts without more detailed information about the nature of the proposed activity Board Member A seeks to undertake. In short, the Commission cannot offer clear guidance on theoretical, hypothetical, and non-specific activity or conduct.

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 reevaluate 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