



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

School Ethics Commission

February 27, 2024

For Public Release

Subject: Public Advisory Opinion – A04-24

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of your client, the Board of Education (Board). 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 Board member A 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 February 7, 2024, and again at its special meeting on February 27, 2024.

You inform the Commission that prior to Board member A becoming a Board member, the Board approved conveyance of its property (Property) to a local nonprofit organization called the Foundation. The Board further memorialized the ownership of the Property to the Foundation by way of a deed dated June 10, 2021 (Deed).

You state Board member A has two children (Person X and Person Y), who are members of the Foundation's Board of Trustees. In addition to holding seats on the Foundation's Board of Trustees, Person X, also acts as the Foundation's legal counsel and Person Y is employed by the Board. You further state, upon information and belief, neither Person X nor Person Y reside with Board member A.

You note at the time the Board negotiated and entered into the Deed with the Foundation, Board counsel (Counsel) represented the Board, and Person X, represented the Foundation as its legal counsel and signed the Deed on behalf of the Foundation. You further note that the Deed between the Board and the Foundation requires, *inter alia*, that "the Foundation make the building occupancy-ready within 18 months of the date of the deed and use the Property primarily as a children's library and youth center. If the Foundation violates the agreement, the title would revert to the Board. This 18-month deadline has elapsed, and upon information and belief, the Foundation

has not made the building occupancy-ready. As such, the Board will be required to deliberate and determine any next steps.” You further note Counsel has stated that he would voluntarily recuse himself from issues relating to the Foundation and the Property and that he would “transition the matter” to your law firm moving forward.

You further inform the Commission that on or about January 23, 2023, Person Y retained legal counsel and alleged that Counsel, among others, engaged in “‘potentially tortious conduct’ against [Person Y] and that such conduct ‘. . . may have been harassing, discriminatory, retaliatory, and may have created a hostile work environment.’” Person Y further alleged that “[Counsel] has continuously engaged in a petty, long-standing feud with [Person Y] and his family; of concern now is that the fact he has attempted to manipulate [the Superintendent] into participating in his ongoing vendetta.” You indicate, “The correspondence stated that it serves as a litigation hold notice and further requested that an investigation occur. Person Y’s counsel copied all of the Board members at that time on the correspondence.” Consequently, the Board “retained an outside law firm to conduct an investigation [and] the outside attorney ultimately determined that [Person Y’s] allegations were unsubstantiated.”

Based on the information provided in your request, you inquire (1) whether Board member A, would be in violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* if he participates in discussions and/or votes on matters pertaining to the Foundation and/or the Property; and (2) whether he would have any conflicts with the Board’s Solicitor.

As an initial matter, to the extent you are requesting the Commission opine on Counsel’s voluntary recusal from issues relating to the Foundation and the Property and whether he should “transition the matter” to your law firm moving forward, the Commission notes it does not have the authority or jurisdiction to render a determination as to Counsel’s conduct as he is not a school official. The Commission’s authority is limited to enforcing the provisions of the Act as it relates to an individual’s service as a school official. In short, the Commission cannot opine on whether Counsel should continue to recuse from issues relating to the Foundation and the Property and whether he should “transition the matter” to your law firm as those determinations are beyond the jurisdiction of the Commission.

Turning to your first inquiry, the Commission has reviewed the specific facts and circumstances detailed in your request, and notes that for purposes of the Act, because Person X and Person Y are Board member A’s children, but do not reside with Board member A, they are regarded as “relatives.” Therefore, based on the analysis that Board member A has relatives who are trustees of the Foundation, the Commission advises it would be a conflict of interest for Board member A to vote on any matter involving the entity or public body on which his relatives contemporaneously serve as voting members. The Commission regards the facts and circumstances at issue here as being analogous to a school official’s vote on a matter involving their relative’s employer. Regardless of whether Board member A and/or his children may have an actual or even a perceived personal or financial involvement (direct or indirect) in such matters, his involvement could violate the public confidence. As such, Board member A must recuse himself from participating in any and all discussions and votes related to the Foundation, including participating in the “discussions and/or votes on matters pertaining to the [Foundation] and/or the [Property].” Whether Board member A’s children should also recuse themselves from matters involving the Board is a matter outside the scope and jurisdiction of the Commission.

As to your second inquiry and whether Board member A has any conflicts related to the Board's solicitor, the Commission notes 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 this end, you have not identified any specific action that Board member A will be taking related to Counsel. The Commission 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. Should additional facts arise, or facts exist that have not been disclosed to the Commission, i.e., the Board is considering a change in Board counsel's contract, you may request an additional advisory opinion if/when more specific facts can be provided as to whether some prospective conduct or activity would violate the Act.

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