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SCHOOL ETHICS COMMISSION

March 26, 2024

For Public Release

Subject: Public Advisory Opinion A05-24

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 the subject of the 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 March 13, 2024, and again at its regularly scheduled meeting on March 26, 2024.

You inform the Commission that a newly elected Board member, Board member A, was endorsed by the Local Education Association (LEA). You state the LEA "prepared a press release of its endorsement, which the [local newspaper] declined to publish." However, Board member A "used the press release and the LEA endorsement in campaign postings on social media and in printed materials." You further state the LEA also "printed and sent postcard mailers to all NJEA members residing in [the district]," which Board member A "reported as a gift in kind . . . on [the] campaign finance disclosure form."

You note that Board member A serves on the Curriculum Committee and the Policy Committee. In this role on the Policy Committee, Board member A may need to review, modify and adopt policies, "including but not limited to reviewing policies and proposed policies for reduced tuition for staff members' children to attend [the Public School District (District)] or its Infant Toddler Development Center." In addition, other policy revisions that are of interest to the LEA may come before the Policy Committee, such as "proposed modifications to the policy on employee physical examinations for cause." Additionally, you indicate "other proposed adoptions, such as a policy instituting a dress code for faculty, have been initiated at the local level" and you inquire as to whether Board member A's "position on such policy initiatives [could] be challenged as biased."

You further inform the Commission that Board member A has a sibling who is employed as a teacher in another school district and who is a member of the local union and the New Jersey Education Association (NJEA), and another sibling who is a retired principal from another school district and who is a former member of the local union and the NJEA. You note Board member A has also been an active member of the District's Home and School Associations and has previously served as the President of the District's Federated Home and School Association.

You indicate that you have reviewed previously issued public advisory opinions, namely *Advisory Opinion A10-18* (A10-18), *Advisory Opinion A13-02* (A13-02) and *Advisory Opinion A24-16* (A24-16); however, you state the advice within these public advisory opinions does not "squarely address[]" the matter involving Board member A because the "issues underlying this request potentially impinge upon [Board member A's] full involvement in policy discussions and other Board business besides collective negotiations." You further indicate Board member A has agreed to recuse themselves from collective contract negotiations during his/her first year of Board membership.

Based on the information provided in your request, you inquire whether, in addition to recusing themselves from collective contract negotiations during the first year as a Board member, Board member A: (1) should also recuse from any policy discussions that affect the terms and conditions of the LEA member employment, including any that could potentially provide a monetary or other benefit to the LEA members for at least one year; (2) is able to participate in discussions and votes on adoption of and/or revision to Board policies on matters that are of interest to staff members who are members of the LEA, e.g., staff member student tuition, physical examinations for cause, faculty dress code, etc.; and (3) may participate in reviewing and recommending policy alerts and proposed revisions to policies based on the New Jersey Department of Education guidance and recommendations from Strauss Esmay and also on the policies initiated at the local level, on which the LEA has a position.

As an initial matter, the Commission notes previously issued advisory opinions, namely A13-02 and A10-18, which you cited, discuss the amount/type of support that the local union provided to the candidate/subject board member and whether that level of support presented a conflict. First in A10-18, the local union, with the assistance of the NJEA, distributed "printed material[s], including two mailers, one of which endorsed [the subject board member's] candidacy" to the NJEA members and their families. The Commission opined that this type of unsolicited activity from the union would not present a conflict for the subject board member.

However, in A13-02, the local teachers' association played a more prominent role in the type of support that was provided to the subject board members such as, distributing newsletters encouraging votes, hosting a "Hot Dog Rally" where the subject board members addressed the public, holding a "phone bank," and "printing and distributing palm cards that indicated the ballot numbers of the [subject] board members." In this advisory opinion, the Commission advised that the union had "a position of prominence" in the campaign, and that amount of support, combined with the close amount of time between the election and the contract negotiations for certain subject board members, created a conflict for those board members regarding negotiations.

With the above in mind, and in its review of the specific facts and circumstances detailed in your request, the Commission advises that the type of endorsement you describe is more akin to the support provided in A10-18, and therefore, would not present a *per se* conflict for Board member A related to the Policy Committee, absent a financial contribution to influence Board member A in the

discharge of his/her duties. The Commission recognizes that Board member A received the LEA's endorsement and may have expressed agreement with the views and interests advocated by the LEA; however, Board member A is permitted as an individual, and as a Board member, to hold views aligned with the LEA and their goals and those facts alone would not bar Board member A from participating in his/her role on the Policy Committee. Absent any additional information indicating otherwise, board members cannot be assumed to have surrendered their independent judgment to the association simply because they have received or accepted an endorsement. Moreover, board members are generally guided by their own personal opinions and beliefs about a particular issue or cause, and unless their conduct or action exceeds the scope of their authority or is otherwise unethical, they are free to participate in matters related to that issue or cause.

Therefore, based on the information you have provided, Board member A may participate in policy discussions that affect the terms and conditions of the LEA members' employment, including any that could potentially provide a monetary or other benefit to the LEA members, may participate in discussions and votes on adoption of and/or revision to Board policies on matters that are of interest to staff members who are members of the LEA, e.g., staff member student tuition, physical examinations for cause, faculty dress code, etc., and may participate in reviewing and recommending policy alerts and proposed revisions to policies based on the New Jersey Department of Education guidance and recommendations from Strauss Esmay and also on the policies initiated at the local level, on which the LEA has a position. However, the Commission cautions Board member A that he/she needs to remain objective and not seek to benefit the LEA, nor take any action, which may or does surrender his/her independent judgment to the LEA, which would be in violation of the School Ethics 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