



State of New Jersey

DEPARTMENT OF EDUCATION

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SCHOOL ETHICS COMMISSION

April 30, 2024

For Public Release

Subject: Public Advisory Opinion – A07-24

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 subjects of the request, Board member A and Board member B, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that neither Board member A nor Board member B submitted 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 April 10, 2024, and again at its regularly scheduled meeting on April 30, 2024.

You inform the Commission that Board member A and Board member B are Board members who own an ice cream shop together, Shop, which is located in the town, and is the "only ice cream store in the municipality."

You further inform the Commission that Board member A and Board member B are interested in "supporting the community by conducting fundraisers" in which they would sell ice cream "during particular hours, with a percentage of sales during that period being donated to a local entity." You state Board member A and Board member B have "received inquiries about hosting such fundraisers for the parent teacher organization (PTO) that supports one of the District's schools, a theater club for the District's high school, and to potentially sponsor a local baseball team associated with the Recreation Department at District maintained baseball fields." You further state the subject Board members have also received "inquiries about participating in fundraising activities such as advertising in the high school theater group's playbill, advertising in the high school yearbook, and contributing gift certificates to 'Tricky Trays.'" Finally, you note Board member A and Board member B are interested in employing "minors that are paid and hired in accordance with all applicable laws governing same."

Based on the information provided in your request, you inquire whether (1) there are any issues with the Shop hosting the aforementioned and similarly situated fundraisers at the store outside of school hours; (2) there are any ethics issues with the aforementioned and similarly situated fundraisers occurring on-site at a corresponding District location, and if there are not any issues, is there a distinction if the Board members are present and assisting with the ice cream fundraiser, or if it would be required to have a third party staff member administer; (3) there is an issue with the Shop advertising in the high school theater group's playbill, advertising in the high school yearbook and contributing to "Tricky Trays"; and (4) minors who attend the high school within the District may be employed by the Shop.

As an initial matter, please be advised that the Commission's authority is limited to enforcing the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, a set of minimum ethical standards by which all school officials must abide. In this regard, the Commission has jurisdiction only over matters arising under the Act, and it may not receive, hear, or consider any matter that does not arise under the Act, *N.J.A.C. 6A:28-1.4(a)*. To the extent that you are requesting that the Commission opine on issues which exclusively relate to the business practices of the Shop and/or that are completely unrelated to the District, the Commission notes it does not have jurisdiction over such determinations. However, should the Shop hold a fundraising event at the shop for the community or a community organization that is not affiliated with the District and/or sponsor a local recreational sports team, also not affiliated with the District, Board member A and Board member B should not invoke their Board status and they should not use their positions as Board members to obtain financial benefits.

Furthermore, and as to employing minors from the District at the Shop, should a student from the District apply for an employment opportunity with the Shop, Board member A and Board member B should not provide that student any benefit, and should view their application as they would any other application. Additionally, should any matter involving a student employee come before the Board, Board member A and Board member B should refrain from participating in any and all matters related to District students who are also employees at their shop.

Turning to the remainder of your request, in its review of the specific facts and circumstances detailed within, the Commission notes that the PTO and the high school theater club are organizations and individuals with whom Board member A and Board member B will likely work, directly or indirectly, in their capacities as members of the Board. The Legislature has declared that board members "must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." *N.J.S.A. 18A-12-22*.

Based on the information you provided, the public may view the Board members' outside engagement with the PTO, the high school theater club, and other similar organizations/individuals within the District to be in furtherance of their business and contrary to the public trust. It is clear Board member A and Board member B have a direct and personal involvement in the Shop and that, as owners, they financially benefit from any sales. Due to these significant interests, the public may perceive that Board member A and Board member B will place their ownership in the business as predominant to the best interest of the District,

which might reasonably be expected to impair their objectivity or independence of judgment. Moreover, in general, fundraisers not only benefit the organization that is the recipient/focus of the event, but also could yield a benefit to Board member A and Board member B's business, monetary or otherwise, which again, may cause the public to perceive their ownership in the business as predominant to the best interest of the District.

Therefore, and consistent with previously issued public advisory opinions, namely *Advisory Opinion A13-21* (A13-21), *Advisory Opinion A12-21* (A12-21), *Advisory Opinion A03-21* (A03-21) and *Advisory Opinion A18-15* (A18-15),¹ the Commission advises that Board member A and Board member B would violate the Act if the Shop were to host fundraisers for any parent teacher organizations that support one or more of the District's schools, the theater club for the District's high school and any other District related organization, team etc., whether they are held at the Shop, or onsite at a District location. The same would be true if the Shop were to provide gift certificates to support "Tricky Trays" within the District. The Commission acknowledges that Board member A and Board member B's altruistic gesture to raise money for organizations that provide services to children is commendable; however, the Commission must also consider whether same would implicate the Act and, in its evaluation, if the Shop provides services to District families and/or collaborates with the District PTO and other District organizations *while they* are a Board members, they would violate the Act.

Regarding your inquiry related to advertising in the high school yearbook and the theater group's playbill, the Commission advises *general* advertisement in these publications, when sought by organizations including the District PTO and/or the high school theater club, would not be a violation of the Act. Board member A and Board member B, as business owners, may respond to a solicitation for advertisements by an organization, even one linked to the District like the yearbook or playbill for a school play, when the solicitation is open to the public at large and available to any individual or business who may wish to respond. However, when they respond to a general solicitation for advertisements, the Commission advises them that they must be treated equally and must not be given preferential treatment in the costs to advertise or be given a preferential location of their advertisement, absent paying a higher fee available to anyone who may wish to pay more for such placement. Further, when advertising, Board member A and Board member B should not indicate that they are Board members or invoke their Board status in any way.

In sum, the Commission advises that *while they are* Board members, Board member A and Board member B should not solicit business within the District, including but not limited to providing gift certificates to "Tricky Trays," and holding fundraisers for the PTO, the high school theater club, and/or any other organizations within the District that directly involves members of these organizations who interact with the Board or staff members of the District. Using the schools to promote their business and supporting District programs for personal gain would violate the Act. Moreover, and although not part of your request, should any District students and/or personnel choose, on their own, to patronize the Shop, Board member A and Board member B should refrain from providing these individuals special inducements, such as a discount, that would not be available for other patrons.

¹ Public advisory opinions, including A03-21 and A07-20, can be found on the Commission's website: [Public Advisory Opinions \(nj.gov\)](http://PublicAdvisoryOpinions.nj.gov)

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