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DEPARTMENT OF EDUCATION
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CHRISTOPHER D. CERF
Commissioner

June 25, 2013

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A10-13

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of three members of the Local Board of Education (Board). The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the board members who are the subject of the request. The board members did not submit a response to the Commission within the 10-day time limit set forth in N.J.A.C. 6A:28-5.2(b). Therefore, the Commission will provide its advice solely based on the information you included in your advisory opinion request.

Your request inquires about three Board members: two Board members, Member A and Member B, are police officers for the Local Borough (Borough), which through a shared services agreement with the Board, provides and maintains a professional security and resident civilian safety program. The third Board member, Member C, is married to a Borough police officer, who is also subject to the same shared services agreement. You ask specifically whether these Board members may vote on the shared services agreement without violating The School Ethics Act (Act). N.J.S.A. 18A:12-21 et seq.

In reviewing this matter at its meeting on May 28, 2013, the Commission has determined, and as you had suggested, that this matter turns on the applicability of N.J.S.A. 18A:12-24(c) of the Act. That provision states:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

Based on the facts presented, the Commission has determined that all three Board members' involvement in the discussions and/or vote on the shared services agreement would

implicate N.J.S.A. 18A:12-24(c). Since the Board members' vote is considered action in their official capacity in matters where they, or a member of the immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment, N.J.S.A. 18A:12-24(c) would be violated.

Similarly, the Commission also determines that, based on the facts presented, there is a personal involvement that is or creates some benefit to each Board member. Consequently, pursuant to N.J.S.A. 18A:12-24(c), these Board members may not vote on any bills which might approve payment to the Borough and/or the Borough Police Department for services under the shared agreement. If, however, the bills for payment to these entities were itemized, whereby the Board members could identify the amounts paid under the shared services agreement, then the Board members would be able to votes on all other entries, while recusing during consideration of the amounts pursuant to the shared services agreement and abstaining on the item when time for the public vote.

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson