



## State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

LAMONT O. REPOLLET, ED.D.  
*Acting Commissioner*

June 26, 2018

### **FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A10-18

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your own behalf as a member of the Board of Education (Board). The Commission will provide its advice based solely on the information included in your request, and its 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), the Commission discussed this matter at its meetings on March 27, 2018, and May 22, 2018.

You inform the Commission that you recently completed your first three-year term as a member of the Board, and that you were re-elected to another three-year term in November 2017. You state that during the course of your candidacy, the local education association (LEA) decided, on its own, to endorse your re-election. You also state that the LEA offered you financial support, which you declined; however, the LEA proceeded, with the assistance of the New Jersey Education Association (NJEA), to promote your re-election by way of printed material, including two mailers, one of which endorsed your candidacy, and the other did not.

Your request indicates that the mailers stated: "This message is intended solely for NJEA members and their families"; however, you are not certain whether the mailers were distributed solely to the NJEA members and their families. You also note that you did not request that the LEA or the NJEA, develop and circulate the mailers. In short, you indicate that the mailers were generated and mailed without your involvement or knowledge. You additionally state that, to the best of your knowledge, the LEA did not sponsor any other activities to promote your re-election, that you have not been asked by either the LEA or the NJEA to promise or commit to any course of action if elected, and that you have not promised or otherwise indicated that you would commit to any course of action if re-elected.

You also inform the Commission that the Board and the LEA recently completed contract negotiations for a new three-year term (July 1, 2017 through June 30, 2020), and that these negotiations were completed prior to your re-election. You were also recently reappointed to serve as a member of the Board's negotiations team. You also state that you have been put on notice that

a lawsuit may be filed against you, and others, by the LEA President. To the best of your knowledge, the allegations are that in the course of your re-election, you made defamatory comments and/or engaged in defamatory conduct against the LEA President.

Your inquiry seeks to determine whether the LEA and the NJEA's endorsement of your re-election may be perceived as a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq.

As an initial matter, the Commission advises that it cannot determine whether the LEA and the NJEA's previous endorsement of your re-election may be perceived as a violation of the Act because requests for advisory opinions must concern conduct or activity that is *prospective*. N.J.A.C. 6A:28-5.2(a). Your request seeks an opinion with respect to an endorsement of your candidacy, and that endorsement has already occurred.

Nonetheless, the Commission can address the extent to which the endorsement from the LEA and the NJEA impacts your current and future Board activities. In its review of the circumstances provided in your request for an advisory opinion, and provided that you have not taken any action that would compromise the Board as a whole in the exercise of its official duties, the Commission advises that, without additional facts and circumstances, your current and future Board activities are not limited because of the LEA and the NJEA's endorsement. Examples of action taken that could compromise the Board include, without limitation, if you had accepted a financial contribution from the LEA and/or the NJEA that was *intended* to influence your duties as a Board member.

The Commission notes that the endorsement of a candidate by a local and/or statewide union does not create a *per se* future conflict unless a financial contribution is given and is intended to influence the Board member in the discharge of his/her duties as a Board member. Legitimate political activity, without more (such as a campaign contribution intended to influence a Board member in the discharge of his/her duties), does not violate the Act, and does not create a *per se* conflict under the Act. Rather, each case must be examined on a case-by-case basis to determine whether the political support was provided to the candidate with the intent to influence him/her in the exercise of his/her official duties, and/or whether he/she, in acting on a particular matter, could receive some type of personal benefit or does in fact act to provide his/her political supporters with an unwarranted privilege, advantage or employment. Once a successful candidate becomes a Board member, the interests of the public are paramount, and action cannot be taken by a Board member that would compromise the Board as a whole in the exercise of its official duties. Therefore, and *generally* speaking, candidates/Board members are able to accept endorsements from local and/or statewide unions without violating the Act, and without creating a *per se* conflict under the Act.

Based on the facts presented here, the Commission does not find that you have an automatic conflict with respect to the LEA and the NJEA. However, the Commission cautions that you must always ensure that you do not surrender your independent judgment to any special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause.

Moreover, your request notes that a lawsuit may be filed against you, and others, by the LEA President. If and when litigation is initiated against you by the LEA President, you should recuse yourself from any matters, and abstain from any public votes, related to the LEA. The Commission notes that its determination is based on the representation in your request that a possible lawsuit may be filed against you by the LEA President. To be clear, the Commission is not making a general determination that *any* complaint filed by the LEA and/or its President automatically creates a conflict of interest.

Finally, the Commission reminds you that 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 Board, and to periodically re-evaluate the existence of potential conflicts.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission