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July 31, 2013

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A13-13

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of and with the consent of two Local Board of Education members (Board), Board Member A and Board Member B. 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 subjects of your request. Because the Board members did not submit any additional comments within the 10-day time limit set forth in N.J.A.C. 6A:28-5.2(b), the Commission will provide its advice based on the information you included in your advisory opinion request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31.

You have specifically asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., if these newly elected Board members were to be involved not only in the bargaining process with the Local Education Association (LEA), but also in the full panoply of Board negotiations and activity with the union. You have stated that Board Member A is employed by the NJEA as a field representative and was endorsed by NJEA/LEA. You have also stated that Board Member B is employed by County Special Services (CSS), with which the Local Board of Education has a number of contracts for classified student services.

After a review of your request, the Commission is concerned that the relationships these Board members enjoy with their employers will, at a minimum, create in the public a perception that these members and the Board at large might be compromised and their judgment or objectivity impaired. Moreover, the new members' employment positions may severely diminish the Board's ability to conduct much of its business. In many ways, we cannot now know all of the conflicts the Board may confront. For the present, however, the new Board members' involvement in these ongoing negotiations while still employed by the NJEA and CSS, respectively, violate N.J.S.A. 18A:12-24(a), (c), (d), and has the potential to violate N.J.S.A. 18A:12-24 (b), (g), (h), (i), and (k).

Even if the new Board members were to resign from their positions and divest themselves of all connection with their employers, they would still be prohibited from involvement in the instant negotiations and a great deal of future activity. This prohibition includes, but is not limited to, labor relations issues with the LEA, grievances, teacher contracts, salary guides, and development. Moreover, they would not be able to give technical advice or be privy to any discussions in closed session. Finally, while it would be possible for the new members to engage in discussions involving non-union personnel issues, the Board must be vigilant for the appearance of other

conflicts. Should a link be found, i.e., if by virtue of the new members' past relationships, some benefit flows to either the LEA, CSS, or the NJEA, to its members or to them, the new Board members would also be prohibited from involvement in that Board activity or function as well.

Finally, the Commission advises that this prohibition should extend for these Board members' full 3-year terms during which these new Board members may not be involved in these ongoing Board activities nor act as a liaison between the LEA, CSS, or the NJEA and the Board.

The Commission is mindful that in adopting the School Ethics Act, the Legislature found:

[I]t is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators 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(a)

It is incumbent on your Board and its members to preserve the public trust and to maintain the confidence and respect the people hold for them.

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson