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Commissioner

December 20, 2013

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A19-13

Pursuant to your request for an advisory opinion, filed on behalf of two members of the Local Board of Education (Board) and consistent with its authority under N.J.S.A. 18A:12-28(b), the School Ethics Commission (Commission) discussed this matter at its November 26, 2013 meeting. Initially, the Commission notes that you properly verified that the Board members whose conduct is the subject of the advisory opinion request were copied on the request, thus complying with N.J.A.C. 6A:28-5.2(b). Because the Board members did not submit comments, the Commission bases its advice solely on the facts included in your 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 stated that two Board members are municipal employees whose union contracts are negotiated and voted on by town council members. You also state that one of the teachers in your District is a town council member. You have asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.*, for the Board members to serve on the negotiations committee since their input may have a direct financial impact on the teacher/council member's salary and benefits.

In review of your inquiry, the Commission notes that the Act was adopted to provide a set of ethical standards to guide board of education members and other school officials in the proper conduct of their relative positions. Consequently, the Commission takes no position on the conflicts which may arise when the teacher/council member negotiates or votes on the Board members' municipal salaries, since the Commission does not have *in personam* jurisdiction over the teacher.

The Commission, however, has discerned that as to the two Board members, this matter implicates N.J.S.A. 18A:12-24(b) and (c), which provide, respectively:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

c. 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;

Because the Board members and the teacher/council member will act in their respective public bodies to affect the financial interests of each other, such legitimate action may be viewed by the public as an attempt to use their positions to secure advantages for themselves or others. It is important, therefore, that the Board members recuse themselves from any negotiations, employment discussion or voting on any action that impacts the teacher/council member's financial interests, assignments, or future employment.

Moreover, as part of the Negotiation Committee, these Board members would have influence over teachers' salaries, benefit packages and other emoluments, which would directly impact this teacher/council member's financial interests. Similarly, the teacher/council member has a direct impact on the financial interests of these Board members when the Council negotiates employee union contracts and votes on municipal salaries, benefit packages and other emoluments. Because the relationship is reciprocal, the public may come to believe that the Board members' objectivity or independence of judgment may be impaired since the teacher/council member exercises the same control over the Board members' municipal salaries, as the teacher/council member does over employee contracts. Consequently, the Commission advises that Board members would violate N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24(c) if they did not recuse themselves from Board action involving this teacher/council member.

The Commission reminds the Board 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)

Permitting these Board members to vote or engage in any matter involving the teacher/council member's employment would call into question the motive for their actions and ultimately of the Board and the rest its members.

Accordingly, the Commission advises that Board members would violate N.J.S.A. 18A:12-24(b) and (c) if they were to be involved in the negotiations, employment discussions, or voting on teacher contracts for this teacher/council member individually and for all teachers since this person is a member of the group.

Sincerely,

Robert W. Bender, Chairperson