



State of New Jersey

DEPARTMENT OF EDUCATION

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November 28, 2017

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A32-17

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 meeting on October 31, 2017.

You inform the Commission that you are a member of the Board's negotiations committee. You also note that through your employment with the State of New Jersey, you are a member of the Commercial Workers of America (CWA) 1038 (CWA 1038). You state that the Board President informed you that, because of your membership in the CWA 1038, you may be precluded from negotiating with the Local Education Association (LEA). You further state that the LEA and the CWA 1038 are not affiliated, and that you do not believe you have a conflict of interest. As a result, your inquiry seeks to determine whether you, as a member of the CWA 1038, can negotiate with the LEA, or whether this would violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq.

The Commission notes it recently issued Advisory Opinion A24-17 (A24-17),<sup>1</sup> which the Commission believes is responsive to your inquiry. As detailed in A24-17, absent another conflict, a Board member who is also a member of any statewide public teachers' union, but in another school district, cannot participate in any aspect of negotiations until the memorandum of agreement, including salary guides and the total compensation package, has been attained.

However, based on the information you provided, you are *not* a member of a statewide public teachers' union, and the CWA 1038 and the LEA are not affiliated in any way. Therefore, in keeping with the reasoning in A24-17, and based solely on the information provided in your request, the Commission does not believe it would be a violation of the Act for you to negotiate with the LEA.

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<sup>1</sup> See <http://www.state.nj.us/education/legal/ethics/advisory/>.

Notwithstanding the above, the Commission notes that there are some public school teachers that are members of non-traditional teachers' unions, i.e., they are not members of the New Jersey Education Association or the American Federation of Teachers. In those instances, if there is some financial relationship or nexus between the local education association and the union of which the Board member is a member, then the Board member would be unable to participate in any aspect of negotiations until the memorandum of agreement, including salary guides and the total compensation package, has been attained. However, based on the information you have provided, and because there is no financial relationship or nexus between the LEA and the CWA 1038, this limitation on your Board member activity does not apply.

In summary, the Commission advises that you may remain on the negotiations committee, and participate in all issues and votes that involve the LEA, without violating the Act. The Commission reiterates that the nature of advisory opinions are determined by and limited to the facts presented before the tribunal; therefore, should additional facts arise or facts exist that have not been disclosed to the Commission, such as a change in union affiliations on behalf of the teachers or yourself, a violation may indeed occur.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission