



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DAVID C. HESPE
Acting Commissioner

August 27, 2014

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A34-14

The School Ethics Commission is in receipt of your request for an advisory opinion, regarding a member of the County Vocational-Technical School District Board of Education (Board). Pursuant to your request for an advisory opinion and consistent with its authority under N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its July 22, 2014 meeting. Initially, the Commission notes that you properly verified that the Board member whose conduct is the subject of the request was copied on the request, thus complying with N.J.A.C. 6A:28-5.2(b). Because the Board member did not submit comments, the Commission bases its advice 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 asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.*, for a Board member to be appointed to the Board's Negotiations Team, participate in Board deliberations with the local NJEA affiliate on issues raised by the negotiations and vote on the agreement once the Memorandum of Understanding (MOU) is settled. You have stated that this Board member has a 45-year history of involvement with the NJEA: He was a teacher and member of the NJEA for 26 years and the union President for 20 of those years. While teaching, he was employed as a part-time labor consultant for the NJEA, and after his retirement from teaching, he worked for seven years for the NJEA as a field representative. After that, the Board member worked for the NJEA for another seven years as an organizing representative, covering the entire state, and his last employment with the NJEA ended in June 2010. On behalf of the Board member, you inquire whether he would violate the Act if he were to serve on the Board's negotiating Committee given his long history with the NJEA and current informal contact with his NJEA colleagues.

Your inquiry turns on the application of N.J.S.A. 18A:12-24(b), which provides:

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;

In review of the this matter, the Commission considered whether this Board member could be confronted with a situation where he may have to negotiate or vote on modifications or

cessation of benefits, which might impact his retirement health plan through the NJEA affiliate. In its assessment, the Commission determined that because the benefits for the retired members may be linked to benefits for the active members, there are no preventive measures which the Board member could take to protect him from the view that he may be attempting to secure an unwarranted advantage for himself in violation of N.J.S.A. 18A:12-24(b).

Your inquiry also turns on the application of N.J.S.A. 18A:12-24(c), which provides:

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;

At its meeting on July 22, 2014, pursuant to its authority in N.J.S.A. 18A:12-28(b), the Commission advised that given the 45-year relationship between the NJEA and this Board member, he would violate N.J.S.A. 18A:12-24(c) if he were allowed to negotiate or participate in discussions regarding collective bargaining agreements. The link or nexus between the union and the Board member has not been severed. More specifically, he maintains a further nexus with the NJEA on which he relies for those benefits. Such a close link might reasonably be expected to impair his objectivity or independence of judgment.

This Board member continues to be a recipient of the lifetime health and prescription drug plans paid for entirely by the NJEA. Moreover, his reliance on these benefits may interfere with his ability to negotiate on the Board's behalf since deciding how to fund these benefits for active members of the NJEA may also impact retirees' health benefits. His actions may be viewed as an attempt to ensure the solvency and success of the NJEA fund, which may pay those benefits from the support of the active membership. In short, this Board member may appear to have a vested interest in the endurance of the source that provides his NJEA lifetime health benefits, and the union, which must be strong enough to survive the demands placed on it. The bond between the NJEA and this Board member remains constant.

On the facts that you have provided, the Commission found that it would be impossible for this Board member to avoid a violation of N.J.S.A. 18A:12-24(c), as his financial dependence on lifetime union benefits creates a conflict of interest that might reasonably be expected to impair his objectivity or independence of judgment. Therefore, this Board member is prohibited from engaging in all negotiations or discussions regarding its members or participating in Board deliberations with the NJEA affiliate. Moreover, should the Board member have a hand in negotiating those benefits that ultimately redound to him further, an additional violation is certain to be found. This prohibition should extend for this Board member's entire term or however long he is a member of the Board.

The Commission is mindful that the legislative purpose of the Act is set forth in N.J.S.A. 18A:12-22(a) and states:

In our representative form of government, it 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 a trust is being violated.** [Emphasis added.]

The Act requires each board of education and its members to protect that trust and safeguard the public's respect and confidence in those they elect or those appointed to govern for its benefit. Therefore, the Commission finds that the Board member would violate N.J.S.A. 18A:12-24 (b) and (c) if he were to participate as a member of the Negotiating Team.

We trust this answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson