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School Ethics Commission

March 27, 2019

For Public Release

Subject: Public Advisory Opinion – A01-19

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of your client. You verified that you copied the Board members who are the subject of your request, thus complying with *N.J.A.C.* 6A:28-5.2(b). The Commission notes that the Board members who are the subject of your request did not submit comments and, therefore, the Commission will provide its advice based solely on the information included in your request. The Commission's 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 February 26, 2019.

You inform the Commission that the City has recently approached the Board about the possibility of a land transfer. You state that three Board members are employed by the City in the following capacity:

- Board member A is currently employed as the Deputy Department Head of the Office of Housing and Social Services (OHSS) for the City. In this role as Deputy Department Head, Board member A reports to the Director of Human Services, who reports to the City's Business Administrator (CBA) and ultimately the Mayor.
- Board member B is currently employed by the City as a Community Organization Specialist for the City's Business Improvement District (BID). BID has its own board of directors and operates autonomously. In this role, Board member B reports to the CBA, who reports to the Mayor.
- Board member C is currently employed by the City as a Special II Police Officer. In this role, Board member C reports directly to the Sergeant of Community Policing, who ultimately reports to the Police Director, who is the Mayor.

You also inform the Commission, that the land transfer in question was proposed by the City's Director of Human Services, and is "wholly unrelated" to Board member A's current position in OHSS. You state that although the three Board members currently work for the City, their connection to the proposed land transfer is attenuated.

Based on the facts as set forth above, you are seeking an advisory opinion as to whether the employment status of the above-referenced Board members creates a conflict of interest under the School Ethics Act (Act), *N.J.S.A. 18A:12-21 et seq.*, that prohibits them from participating in discussions and/or votes regarding any potential land transaction. More specifically, you seek to determine whether the Board members' participation would violate *N.J.S.A. 18A:12-24(b)*, *N.J.S.A. 18A:12-24(c)*, and/or *N.J.S.A. 18A:12-24(d)*.

With the above in mind, the Commission advises that because of their employment relationship with the City, Board members A, B and C would violate *N.J.S.A. 18A:12-24(b)* and *N.J.S.A. 18A:12-24(c)* if they were to participate in the discussions and/or votes regarding the potential land transaction. First, if they engaged in such actions it would appear that the Board members were using their positions as Board members to secure an unwarranted privilege, advantage, or employment for their employer (the City), an "other" within the meaning of *N.J.S.A. 18A:12-24(b)*. It would also appear that they were acting in a matter in which they had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgement in violation of *N.J.S.A. 18A:12-24(c)*. However, based on the facts and information set forth in your request, it does not appear that the Board members would violate *N.J.S.A. 18A:12-24(d)*.

The Commission notes that although the at-issue Board members would violate the Act if they participated in discussions and/or votes on the potential land transfer, it appears that there are still a sufficient number of non-conflicted Board members who could participate in the discussion and vote on this matter, thus precluding the Board from needing to invoke the Doctrine of Necessity.

As a reminder, the Commission cautions that other considerations not known or disclosed may implicate the Act, and all Board members, those who were included in this request and those who were not, should be mindful of public perceptions and must always be cognizant of the responsibility to protect the public trust and the obligation to serve the interests of the public and Board, and periodically re-evaluate the existence of potential conflicts.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission