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School Ethics Commission

March 23, 2021

For Public Release

Subject: Public Advisory Opinion – A01-21

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of your client. You verified that you copied the Board member who is the subject of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that the Board member submitted a response to your request and, therefore, the Commission will provide its advice based on the information included in your request, as well as on the information detailed in the Board member's response. 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 meetings on January 26, 2021, and February 23, 2021.

You inform the Commission that the Board member, is employed as an accountant. Following the Board member's election to the Board, the Board member started an accounting firm, and is the owner and operator of that accounting firm. You state that the Board member has "at least one client who is an employee of the Board and pays for accounting services."

You further inform the Commission that the Board is party to a collective negotiations agreement (CNA) with the local education association (LEA), and the LEA is a "mixed unit that represents the non-supervisory staff" within the School District (District). You state that the CNA will expire on June 30, 2021, the parties have recently entered into negotiations for a successor agreement, and the Board member is currently a member of the Board's negotiations committee. You further state, "At the first meeting of the respective negotiating teams on or about November 19, 2020, the Board member discovered that one of the accounting clients was on the Association's negotiating team." Thereafter, the Board member informed the Board President "of the potential conflict," and the Board President contacted you. You note that you advised the Board President that the Board member should "refrain from involvement in negotiations until you could obtain guidance from the Commission." The Board member explained that he/she would like to continue representing District staff at the accounting firm, and referenced *Advisory Opinion A18-15 (A18-15)* to support the belief that his/her representation of District staff does not present a conflict for him/her as a Board member. You

note that you advised the Board member that A18-15 “appears to be distinguishable, and recommended the advice in *Advisory Opinion* A08-13 (A08-13) as more pertinent. Furthermore, the Board member offered to abstain from any specific matters directly involving his/her clients, but you are concerned whether that would sufficiently address any issues potentially raised by *N.J.S.A.* 18A:12-24(a), *N.J.S.A.* 18A:12-24(b), *N.J.S.A.* 18A:12-24(c), *N.J.S.A.* 18A:12-24(d) and/or *N.J.S.A.* 18A:12-24(f).

Following submission of your request, the Board member submitted a response indicating the “precautions” he/she has taken to avoid a violation of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Board member notes that the business does not “solicit District [s]taff”; does not offer “discounts or special pricing” to District staff; does not have “any relationship with the ... District or [Board] and does not conduct any business with either entity”; and does not provide volunteer services nor free services to any member of the District. The Board member further notes that he/she does not use his/her position as a Board member in any advertisement on behalf of the business, the employees only “speak or work with District staff if the staff member initiates contact,” neither the Board member nor the employees participate in conversations that involve the Board or the Board member’s role on the Board, the Board member does not discuss the business with any Board members, or employees of the District or any other school district, and none of the actions that the Board member takes “as a member of the [n]egotiating committee would provide a material benefit to [the Board member] or [the Board member’s] business, as customers are charged based on a set schedule of fees that does not change based on anything that could be impacted by the negotiations.”

Subsequent to the Board member’s response, you provided supplemental information indicating that, as the Chairperson for the finance committee, the Board member discussed various issues regarding District aides at meetings on July 29, 2020, and August 19, 2020, and then on August 26, 2020, the finance committee “made a recommendation to the Board regarding the aides.” You note that on September 23, 2020, the Board passed a resolution to “reduce the hours of certain aides,” based upon the recommendations made by the finance committee; however, the Board member abstained from the vote regarding the resolution. You further note that the Board member “advised the Board President that [the Board member] abstained because [he/she] had a relationship with one of the aides.” The Board member did not indicate the nature of the relationship at that time as you submitted in your initial request. In addition, although the Board member no longer serves as the Chairperson for the finance committee, the Board member remains a member.

Based on the information included in your request, as well as the information provided in your supplemental correspondence, you inquire whether the Board member’s professional representation of District employees raises any ethical concerns regarding his/her Board membership, namely an involvement in labor negotiations and grievances and/or participation in employment decisions, in addition to issues related to the Superintendent and other District administrators.

As an initial matter, the Commission agrees with your analysis that A08-13 is more applicable than A18-15 to the facts and circumstances here. As noted in A08-13, “The Legislature made it clear that board members ‘... 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:22-22*. Because the Board member owns an accounting firm, and the Board member provides accounting services to at least one District employee (and the employee(s) may provide accounting services to other District employees and/or families), the Board member and the company financially benefit from the professional services that are provided in the District for which the Board member serves as a publicly elected member of the Board; as such, the Board member’s continued provision of accounting services *in the District* creates a justifiable impression that the public trust is being violated, or that the business is in substantial conflict with the proper discharge of the Board member’s duties. In addition, it would be reasonable for the public to perceive, even if not actually occurring, that the Board member is using his/her position as a Board member to obtain financial benefit for the Board member, the employees, and/or the accounting firm.

Therefore, the Commission advises that based on the facts and circumstances provided in this request, including the supplemental information provided, the Board member would violate the Act if the Board member, a member of the accounting firm, and/or the business provides accounting services to any District employees and/or families. In addition, and moving forward, the Board member must recuse from any matter specifically involving employees of the District for whom the Board member, a member of the accounting firm, and/or the business has provided or is providing accounting services. To the extent that the Board member is still a member of a Board committee(s), and the Board member’s membership on same causes the Board member to “sit across the table” from a client(s) and/or take any action which directly impacts a client(s), the Board member should cease serving as a member of that committee(s).

As a reminder, school officials must always be cognizant of their responsibility to protect the public trust, to honor their obligation to serve the interests of the public and Board, and to periodically re-evaluate the existence of potential conflicts. In addition, the only way for a public school official to truly safeguard against alleged violations of the Act is to avoid any conduct, which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission