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School Ethics Commission

June 20, 2019

For Public Release

Subject: Public Advisory Opinion – A12-19

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'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 May 21, 2019.

You inform the Commission that you are a Board member and also serve as a member of the Land Use Board. You further inform the Commission that one of the School District's (District) buildings is located in the same town where you are a member of the Land Use Board, and that the Board is "looking at rehabilitation and renovation to the existing building...with no new construction to be done." Because no new construction is anticipated, you indicate that there "should be no reason for this to be brought to the Land Use Board for any approval."

Based on this information, you seek to determine whether, because of your membership on the Land Use Board, you need to recuse yourself from any votes (in your capacity as a Board member) related to the renovations of the building located in the same town where you are a member of the Land Use Board. You are also seeking to determine, in your capacity as a member of the Land Use Board, whether you should recuse from discussion/votes related to the Board. Finally, you are seeking to determine whether you should resign from the Land Use Board to avoid a violation of the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*

As an initial matter, the Commission notes that while you serve as both a Board member and a member of the Land Use Board, you must always be cognizant of the obligations set forth in the Act, because a violation can occur in a variety of circumstances (e.g., divulging Executive Session matters/discussions, discussing confidential information, not immediately forwarding a complaint about the schools to the Superintendent, or otherwise exceeding a Board member's authority). Therefore, the Commission advises that if *any* matter involving the Land Use Board comes before the Board, you should recuse yourself from any and all discussions and votes on those matters. Although the Commission does not have jurisdiction over your conduct in connection with the Land Use Board, it would be advisable for you to recuse yourself from any and all discussions and votes related to the

Board. Recusing yourself from both sides of the discussion/vote will help you to avoid an allegation that you have a conflict of interest because of your membership on the Board and/or your membership on the Land Use Board.

The Commission further notes that its jurisdiction is limited to enforcing the provisions of the Act, and it cannot advise whether you need to resign from the Land Use Board. Provided that a Board member is otherwise statutorily permitted to simultaneously hold both positions, which appears to be the case here, the Commission cannot determine whether you should resign from the Land Use Board.

Finally, 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