

June 26, 2012

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A05-12

Pursuant to your request for an advisory opinion and consistent with its authority under N.J.S.A. 18A:12-28(b), the School Ethics Commission once again discussed the issue posed in your letter dated February 10, 2012 at its May 29, 2012 meeting. 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 ("Act"). N.J.S.A. 18A:12-31.

You have asked whether it would be a violation of the Act for you, as an Assistant Superintendent and Interim Superintendent, to serve as an educational consultant to Teachscape, a technology software company, for a monthly retainer of \$2,500, plus an opportunity for additional commission based on professional introductions and presentations you make on their behalf. You state that all consulting work would take place on personal and/or vacation time and will never take place during the performance of any contracted duties in the district. You also state that the district presently utilizes Teachscape's software and services and plans to continue such use in the future. Additionally, you have asked whether it would be a violation of the Act for you to serve as an educational consultant to MapEverywhere, a software company. You state that you would be paid a monthly retainer for such consultation, as needed. You further state that the district presently utilizes MapEverywhere's software and services and plans to continue such use in the future. For the reasons set forth below, you are advised that it would be a violation of N.J.S.A. 18A:12-24(a), (c) and (d) of the School Ethics Act if you were to accept a consulting position with either company.

The Commission begins its analysis with N.J.S.A. 18A:12-24(a), which provides:

- a. No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

The Act defines "business" as "any corporation, partnership, firm, enterprise, franchise, association, trust, sole partnership, union political organization, or other legal entity, but shall not include a local school district or other public entity." The act further defines "interest" to mean the "ownership or control of more than 10% of the profits, assets, or stock of a business but shall not include the control of assets in a labor union." N.J.S.A. 18A:12-23. You have provided no facts that would indicate that you would have an interest in either company within the intent of the statute.

However, N.J.S.A. 18A:12-24(a) also prohibits a school official from engaging in any business, transaction, or professional activity which is in substantial conflict with the proper discharge of his duties. In this analysis, the Commission looks for an actual conflict between the substantive duties of the school

official and the proposed activity. Turner v. Sacco, North Bergen Township Bd. of Ed., Bergen Co., C24-95 (February 20, 1996). The Commission has found that in order to violate N.J.S.A. 18A:12-24(a), there would have to be “substantial conflict” between the proposed activity and the school official’s duties. Lackland v. Graves, Pleasantville Bd. of Ed., Atlantic County, C04-05 (April 25, 2006). Here, the Commission finds a substantial conflict.

In your position as the Assistant Superintendent/Interim Superintendent, it is presumed that you have general supervision over the schools in the district, which necessarily means that you are the final authority for not only contracting for the provision of all goods and services, but for evaluating those vendors that are already providing such goods and services. Thus, on the one hand, you are in a position to assess the quality of the goods and services used by the district while, at the same time, you would be receiving compensation from two of the very companies that are, or should be, seeking favorable evaluations and competing for contracts in the district. This conflict implicates not only N.J.S.A. 18A:12-24(a), but also N.J.S.A. 18A:12-24(d), which prohibits a school official from undertaking any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. See, Irvington Municipal Council v. Michael Steele and the Irvington Board of Education, Essex Co., 95 N.J.A.R. 2d (EDU) 123, *aff’d*, State Bd. Dkt. #30-95, September 6, 1995, establishing that where there is a “fundamental incompatibility” between the duties (see, Irvington Municipal Council, State Bd. Decision, September 6, 1995 at p. 3), the school official may not engage in the other employment or service.

Moreover, to the extent that you actually approved, or in any manner sanctioned, the continued use of Teachscape and MapEverywhere in the district, you could potentially violate N.J.S.A. 18A:12-24(c), which prohibits a school official from acting 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.

Therefore, based on the facts provided in your correspondence and even granting that the proposed consultation would take place on personal or vacation time, the Commission finds that serving as a consultant to Teachscape and MapEverywhere, two companies that specifically do business with the district, would likely violate N.J.S.A. 18A:12-24(a), (c) and (d) of the School Ethics Act. We trust that this opinion answers your inquiry.

We trust that this opinion answers your inquiry. Because the Commission believes that this opinion will be of interest to other school officials, it has voted to make the opinion public.

Sincerely,

Robert W. Bender, Chairperson