



State of New Jersey

DEPARTMENT OF EDUCATION

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June 25, 2013

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A08-13

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your behalf as a member of the Local Board of Education (Board). 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. It will provide its advice solely based on the information you included in your advisory opinion request.

As a Board member, you have stated that you own and operate a private business, which provides consulting services to high school students, including juniors and seniors in your District's high school. You also assert that, although you would not be paid for your services as a volunteer, in the past you have left your business cards in the classroom, and you do generate business by word of mouth or client referrals. You have asked whether you may continue to volunteer your services to the students from your community *pro bono* for those who are in need without violating the School Ethics Act. N.J.S.A. 18A:12-21 et seq.

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 Act if you were to offer your writing services **for profit**.

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;

N.J.S.A. 18A:12-24(a) 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. Here, the Commission finds a substantial conflict.

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:12-22. If you were to charge for your services, it could create a justifiable impression that the public trust was being violated since it would be reasonable

for the public to perceive that you were using your position to obtain employment with the private business. Accordingly, the Commission advises that you would violate N.J.S.A. 18A:12-24(a).

Further, in your position as Board member, you are in a position to evaluate and vote on the recommendations for vendors who are providing such goods and services to your District. 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 the very services that competing vendors may be contending for the same type of service contract in your 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.

Moreover, 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 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, the Commission finds that providing a writing skills course for profit, would likely violate N.J.S.A. 18A:12-24(a), (c) and (d) of the School Ethics Act.

The Commission recognizes that, here, you seek to **volunteer** your services rather than charge for them. However, the analysis as set forth above is the same even as a volunteer. The purpose of the Act seeks to preserve the public's trust and confidence in the Board and its members. The public's perception of your actions could undermine that very trust and confidence. Therefore, based on the facts provided in your correspondence, the Commission finds that providing a writing skills course, even as a volunteer, would likely violate N.J.S.A. 18A:12-24(a), (c) and (d) of the School Ethics Act.

Accordingly, 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 volunteer your writing services in your District. Be advised, also, that should other similar vendors come before the Board to discuss a potential contract for these services, you must recuse yourself from the deliberations and abstain on the vote.

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson