



State of New Jersey

DEPARTMENT OF EDUCATION

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Governor

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DAVID C. HESPE
Commissioner

October 27, 2015

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A18-15

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 will provide its advice based solely on the information included in your request, and its 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. Pursuant to N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its September 22, 2015 meeting.

You inform the Commission that you and your daughter have organized an LLC through which you have opened a bookstore. The bookstore is located in Town B, a community adjacent to the District where you live and where you serve as a member of the Board. You state that you were initially aware that there were ethics issues involved in the opening of the store and updated your disclosure statements to show your ownership of the bookstore and that you have taken the following precautions to avoid violating the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq.:

- Bookstore representatives do not solicit District staff in-person;
- Bookstore representatives speak with District staff only when a District staff member initiates contact;
- When such conversations do occur, the Bookstore representatives are careful not to reference your position as a Board member,
- Generalized solicitations to District schools (i.e. direct mail, media advertisements, emails, etc.) are identical to those sent to other schools and make no reference to your Board membership, and
- You do not participate in any conversations with District staff concerning possible transactions, except as required to adhere to your recusal from participating in official acts described above.

The Commission believes the precautions you have taken are in keeping with your responsibility to avoid conflicts under the Act. However, the Commission notes that to further protect yourself from a possible violation of the Act, the Commission advises against generalized solicitations to District schools and District staff members unless a District staff member, unprompted by you or your Bookstore staff, seeks to be added to the mailing list to receive communication from the Bookstore. Finally, you should continue to treat District staff who frequent the Bookstore no differently than any other patrons, including but not limited to

refraining from providing special inducements for District staff, such as a discount, not available to other similarly situated clientele.

You further inform the Commission that you:

- Do not vote on any matter related to any transactions between the District and the Bookstore,
- You refrain from any discussions with District staff or other Board members pertaining to District/Bookstore sales, and
- There are no other “official” acts that you perform or are a party to regarding matters between the Bookstore and the District.

The Commission is unclear from the facts presented as to when the District would enter into a transaction with the Bookstore and the nature of that relationship. From the facts presented, it appears District staff – on their own initiative – may choose to patronize your Bookstore. There is nothing prohibiting an individual from choosing to patronize your establishment. It is unclear how this act by an educator would lead to the District contracting with the Bookstore. With regard to partnerships with local schools, as with the discussion above, you or the Bookstore should not seek out a relationship with any school in the District. If District officials or educators propose the possibility of some form of business relationship with your Bookstore, you should refrain from any participation in that transaction. Moreover, if a list to remunerate vendors is presented to the Board, you should not vote on any item involving your bookstore.

The Commission encourages you to continue to be aware of possible ethics issues related to the operation of your Bookstore. If moving forward there is another possible issue which may implicate the Act, you may file an additional request for an advisory opinion on those set of facts and circumstances.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission