



State of New Jersey

DEPARTMENT OF EDUCATION

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Governor

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DAVID C. HESPE
Commissioner

November 24, 2015

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A24-15

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your own behalf as President 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 October 27, 2015 meeting.

You inform the Commission that as President of the Board, you also serve as a Trustee for the Township Foundation for Educational Excellence (Foundation) in accordance with the Foundation's bylaw, which identifies the President of the Board as a Trustee. You state that the Foundation consists of approximately 20 Trustees, from which an executive board is formed. In addition to the Board President, Trustees include other stakeholders for education in the Township such as community members, retired and/or current District employees (which may include teachers, supervisors, principals, assistant superintendents and the superintendent), as well as local business owners. The mission of the Foundation is to enhance the quality of education and educational opportunities and to generate and distribute financial and other resources for the benefit of the students of the District. The Foundation is not directly affiliated with the Board and is not overseen by the Board. You ask if you may serve as a Trustee for the Foundation without violating the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq.

As stated in your request for an advisory opinion, you are concerned that Advisory Opinion A10-15 may suggest that your service as a Trustee for the Foundation could be prohibited under the Act. The Commission appreciates your interest in abiding by the Act and requesting an opinion to clarify A10-15.

Based on the facts presented, the Foundation is wholly independent from your role as President of the Board and from Board oversight, the Commission does not view your service as a Trustee for the Foundation as incompatible with the requirements of the Act, and your

continued service for the Foundation is permissible. The Commission directs your attention to Advisory Opinion A17-15, made public by the Commission at its October 27, 2015 meeting, which supplements the advice rendered in A10-15 on the issue of volunteering by Board members. Because the Foundation is an outside organization of the District, incorporated as a self-governing entity, separate from the Board and District, and not under the control or management of the Board despite their shared goals of furthering education in the District, the Act does not prohibit your involvement in such organization. An analogous organization would be similar to the Board having no oversight or control over a local “Pop Warner Football” or “Varsity” Cheerleading Camp, two well-known, private organizations. Those groups are similar to the Foundation in that your presence and involvement with those organizations may put you in the company of current District employees, which may include teachers, supervisors, principals, assistant superintendents and the superintendent. Like with the Foundation, there is no prohibition on your involvement with a private organization which may have District employees, or the parents of students, likewise involved.

However, while you are permitted to be a Trustee for the Foundation, the Commission reminds you that Board members must always be cognizant that the obligations of the Act follow them in all activities in which they engage, be it chaperoning a school trip, engaging with the public at the supermarket or serving on a non-profit board, like the Foundation. A violation of the Act may occur in any given scenario (ex: divulging Executive Session matters, not immediately forwarding a complaint about the schools to the Superintendent, or otherwise exceeding a Board member’s authority in an outside setting, etc.). The Commission, in rendering this advice, views the volunteering, as described in your advisory opinion request, as not in violation of the Act; however, should an issue involving the Foundation come before the Board in any manner, you must recuse from participation or involvement and abstain from the vote.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission