

April 29, 1998

FOR PUBLIC RELEASE

RE: Advisory Opinion A05-98

The School Ethics Commission considered your request for an advisory opinion at its meeting of April 28, 1998. You are the School Business Administrator/Board Secretary for the ___ Township Board of Education. You have requested an opinion on whether you may continue to serve as a member of the New Jersey Association of School Business Officials (NJASBO) if your Board participates in an investment program that the NJASBO plans to sponsor.

You have set forth that the NJASBO is in the process of sponsoring an investment program. The program, which will be open to all school districts, will provide an opportunity for school districts to collectively invest school funds. The program will be similar to other school fund investment vehicles, e.g., New Jersey Cash Management. It will be managed by a third party, a commercial bank, and will be registered under the Investment Company Act of 1940 with the Securities and Exchange Commission and the State of New Jersey. Any board of education that wishes to participate in the program has to adopt a resolution incorporating the provisions of N.J.S.A. 18A:20-37. NJASBO will receive a fee for facilitating the organization of the program. You have no interest in the NJASBO other than your status as a member.

The issue is whether your involvement with the NJASBO will create a conflict of interest in violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq. if your Board participates in the investment program. The School Ethics Act, specifically 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 her duties in the public interest. The Commission advises that your membership in the NJASBO is consistent with your duties in the public interest. The fact that the organization is sponsoring this program and is accepting a fee from boards to join does

not appear to create a professional activity in substantial conflict with the proper discharge of your duties in the public interest.

Pursuant to N.J.S.A. 18A:12-24(c), a school official is also prohibited from acting in her official capacity in a matter in which she, or a business organization in which she has an interest, has a direct or indirect personal or financial involvement that might reasonably be expected to impair her objectivity. You may be concerned that the public will perceive that you cannot objectively advise the Board whether it should enter into the NJASBO's investment program because you are a member of the association. The Commission advises that your membership in the association alone does not constitute the type of personal or financial involvement reasonably expected to impair your independence of judgment. You do not stand to gain monetarily or otherwise from your Board's participation in the program. In addition, the association may be considered a "business" under N.J.S.A. 18A:12-23 of the Act. However, it is not a business in which you have an "interest" since the Act defines an "interest" as "the ownership or control of more than ten percent of the profits, assets or stock of a business."

Thus, for the foregoing reasons, the Commission opines that you would not violate the School Ethics Act by being a member of the NJASBO if your Board were to participate in the association's investment program.

Thank you for your inquiry.

Sincerely,

Paul C. Garbarini
Chairperson

I hereby certify that this Advisory Opinion was made public by the School Ethics Commission at its public meeting on November 24, 1998.

Lisa James-Beavers
Executive Director