

April 28, 1999

FOR PUBLIC RELEASE

RE: Advisory Opinion A05-99

The School Ethics Commission is in receipt of your request for an advisory opinion. You have asked whether the law firm in which you are a partner may represent a charter school in which you serve as a member and President of the Board of Trustees. For the reasons set forth below, the Commission rendered an opinion at its April 27, 1999 meeting that you would violate the School Ethics Act if you were to serve as a charter school trustee and your firm were to serve as counsel to the Board.

You have set forth that in March you were elected President of the Board of Trustees of a charter school. You are also a partner in a law firm. Prior to your appointment to the Board of Trustees, school officials approached another partner of your law firm to represent the school in seeking a variance before the city zoning board. On the same day that you were elected President, the board proposed a resolution to retain your firm for the zoning matter. However, the resolution was tabled pending receipt of an advisory opinion from the Commission.

You have provided a copy of the by-laws of the charter school; however, the Commission must determine whether the proposed conduct will violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq., not the by-laws of a school. In 1995, the Legislature created charter schools. The Charter School Program Act of 1995 set forth that charter schools are public schools and are subject to the statutory constraints of public schools. Thus, the administrative code governing charter schools sets forth at N.J.A.C. 6A:11-3.1 that:

- (a) For the purposes of implementation of the Charter School Program Act, the members of a board of trustees of a charter school shall be "school officials" as defined in the School Ethics Act (N.J.S.A. 18A:12-

23). The trustees shall comply with the provisions of the School Ethics Act and the rules promulgated pursuant thereto at N.J.A.C. 6:3-9.

Therefore, you are a school official who is subject to the School Ethics Act.

The Commission has determined that the following provisions of the School Ethics Act apply to the situation you have posed.

First, N.J.S.A. 18A:12-24(a) provides:

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 School Ethics Act defines an “interest” as ownership or control of more than 10% of the profits, assets, or stock of a business. N.J.S.A. 18A:12-23. It appears that you have 11 partners and you may control less than 10% of the profits of the firm; therefore you may not have an “interest” in the firm. Nevertheless, your status as a partner means that you would profit from the firm’s work for the school. The Commission believes that if the Board were to contract with your firm, resulting in a profit to your firm and thus, to you personally, then you would be engaging in a business which is in substantial conflict with the proper discharge of your duties in the public interest. Thus, the Commission advises that you would be in violation of N.J.S.A. 18A:12-24(a) if your firm were to represent the school while you were serving as a member or President of the Board of Trustees.

N.J.S.A. 18A:12-24(c) also applies. It provides:

No school official shall act 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 or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

As previously set forth, although your law firm may not constitute a business organization in which you have an interest, you and your firm have a direct financial involvement with the Board’s decision on which firm to retain as counsel before the zoning board. Clearly, this involvement might reasonably be expected to impair your objectivity in all matters involving the representation and the consequential bills for legal fees and other issues that may arise out of the representation such as consent orders, appeals, or additional work for the firm. As President of the Board, it would be very difficult for you to abstain from discussions and votes pertaining to those issues that are integral to the initial set-up and functioning of the charter school. Therefore, whereas

section 24(c) would usually only require a school official to abstain on issues specifically directed to the matter in which he has the conflict of interest, your conflict is so pervasive in this situation in which you have an interest in a law firm representing the Board of which you are a member, that it may reasonably be expected to impair your objectivity on so many issues as to render you ineffective as a trustee and President to the Board.

The Legislature set forth in its findings and declarations that board members must avoid conduct which is in violation of the public trust or which creates a justifiable impression among the public that such trust is being violated. N.J.S.A. 18A:12-22(a). The Commission believes that a lawyer serving on a charter school Board of Trustees while his law firm represents the charter school creates a justifiable impression that the public trust is being violated.

For all the foregoing reasons, the Commission advises that if your law firm were to represent the charter school, you would violate N.J.S.A. 18A:12-24(a) and (c) of the School Ethics Act.

We hope this answers your inquiry. Because other charter school trustees may be faced with similar situations, the School Ethics Commission is making this opinion public.

Sincerely,

Paul C. Garbarini
Chairperson

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