

July 31, 1998

FOR PUBLIC RELEASE

RE: Advisory Opinion A14-98

The School Ethics Commission is in receipt of your request for an advisory opinion. The Commission reviewed your request and issued this opinion at its meeting on July 30, 1998.

You have set forth that you are counsel to a charter school whose trustees seek this advisory opinion concerning the applicability of certain statutes and regulations to membership on a charter school board of trustees. One non-voting member of the charter school's board of trustees also acts as treasurer for the board. She is also the sole proprietor of a small business that performs financial and bookkeeping services under contract with the charter school. The charter school compensates her for those services. The second non-voting member of the board of trustees functions as president of the board. He also is a salaried employee of the charter school serving as one of the two co-coordinators. The third non-voting trustee serves as vice-president of the board and is also a salaried co-coordinator. You request an opinion on whether these three trustees would violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq. by serving in these capacities. For the reasons set forth below, the Commission now advises that such conduct would violate the School Ethics Act.

You correctly note that the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq., which establishes charter schools in the State of New Jersey, does not specifically address the issue of possible conflicts of interest as they relate to members of the board of trustees of a charter school. However, it does set forth that "a charter school shall operate in accordance with its charter and the provisions of law and regulations which govern other public schools." N.J.S.A. 18A:36A-11. The School Ethics Act is such a law. There were no charter schools when the School Ethics Act was enacted in 1992, but the above provision makes it applicable to its trustees. In addition, the State Board of Education promulgated regulations pursuant to the Charter School Program Act that set forth:

For the purposes of implementation of the Charter School Program Act, the members of the 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. [N.J.A.C. 6A:11-3.1(a)].

The trustees of a charter school are exempt only from the School Ethics Act requirement that they attend new board member training within the first year of their first term on the board. They are considered “school officials” subject to all of the other provisions of the School Ethics Act, specifically those provisions requiring the filing of disclosure forms, N.J.S.A. 18A:12-25 and 26, and all the prohibited acts set forth at N.J.S.A. 18A:12-24. Neither the Charter School Program Act, nor the regulations promulgated pursuant thereto, address the applicability of N.J.S.A. 18A:12-2. However, since that provision is not part of the School Ethics Act, the Commission cannot issue an advisory opinion as to whether this section applies to charter school trustees. The question therefore is whether the above-named non-voting trustees of the charter school would violate the School Ethics Act by serving in their other capacities as vendor of services and employees of the charter school.

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 Commission believes that a vendor of services has a substantial conflict with the proper discharge of his or her duties as a charter school trustee. A vendor of services has interests that are patently contrary to those of the charter school trustee. While the Commission does not issue rulings on whether a school official would violate N.J.S.A. 18A:12-2, the Commission finds it instructive that this section of Title 18A prohibits school board members from engaging in such conduct by stating, “No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board ...” Therefore, the Commission advises that the sole proprietor that performs financial and bookkeeping services under contract with the charter school would violate N.J.S.A. 18A:12-24(a) by serving on the school’s board of trustees. The Commission also finds it troubling that she is a vendor serving as treasurer for the board. Serving on the board and as treasurer of the board would not constitute a conflict. However, a vendor of services to the board would have a substantial conflict with her duties as the treasurer for the board, as her position as treasurer may require the issuance of checks to herself, thus eliminating the system of checks and balances that are necessary to preserve the integrity of the process of handling the school’s financial obligations.

The Commission further advises that the vendor’s status as a non-voting member does not change this opinion. As the Commission has stated in prior opinions, a conflict of interest prohibits a school official from discussing a matter and participating in closed session discussions when the matter is discussed, not just voting. Clearly, a non-voting member can still

exercise great influence over decisions of the trustee board. Thus, the Commission advises that the sole proprietor who is contracted by the charter school to provide services to the board would violate section 24(a) even if she were to serve as a non-voting trustee.

The Commission draws a similar conclusion with respect to the co-coordinators. Although the Commission is mindful that the Legislature permitted charter schools to be established by teaching staff members, N.J.S.A. 18A:36A-3, this provision does not specifically allow their participation on the board of trustees once the charter school is established. An employee of the school would also be “interested in a contract with the board” under N.J.S.A. 18A:12-2 and thus, be considered to be engaging in a professional activity which is in substantial conflict with his or her duties in the public interest. There are many occasions when it would not be appropriate for an employee to be taking part in board discussions on matters such as staffing decisions, layoff decisions if necessary, budget allocations for salary, negotiated contracts, personnel evaluations, and decisions involving the employment of the co-coordinators themselves. Having such employees engage in these discussions, even though they are non-voting members, could compromise all such decisions of the board.

As in the sole proprietor’s circumstances, this opinion as to the co-coordinators does not change because the co-coordinators are non-voting members of the board of trustees. Because of their knowledge of education issues, their opinions will have great influence on the decisions of the board, whether they vote or not. This is particularly true where, as here, the co-coordinators are serving as president and vice-president of the board. Clearly, the trustees already recognized that their non-voting status would not hinder their ability to lead and set policy for the school when they chose them as president and vice-president.

For the foregoing reasons, the Commission advises that the sole proprietor who is under contract with the charter school and the two co-coordinators who are employed by the charter school would violate the School Ethics Act if they were to serve as non-voting members of the board of trustees of the charter school.

Because the Commission believes that this opinion may be of interest to other similarly situated charter school trustees, it is making it public.

Very truly yours,

Paul C. Garbarini, Chairperson

I hereby certify that the Commission voted to make the within opinion public at its meeting of July 30, 1998.

Lisa James-Beavers, Executive Director