

July 26, 2004

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion A17-04

The School Ethics Commission is in receipt of your request for an advisory opinion. You have asked whether your position as an architect would create a conflict under the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., with your duties as a board member. You have set forth that you are employed by an architectural firm as an architect and that you are not a principal in the firm. The architectural firm is currently completing renovation projects for the school district. It has represented the Board for the past 10 years and will most likely work with the district in the future.

At its meeting on June 22, 2004, the Commission, pursuant to its authority in N.J.S.A. 18A:12-28(b), advised that your employment in the architectural firm does not create a conflict under the Act with your duties as a board member. However, you must recuse yourself from all discussions, actions, resolutions and votes pertaining to the area of architecture. N.J.S.A. 18A:12-24(c).

Your inquiry turns on the application of N.J.S.A. 18A:12-24(a) and (d). N.J.S.A. 18A:12-24(a) sets forth:

- (a) 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;

N.J.S.A. 18A:12-23 defines "interest" as ownership or control of more than 10 percent of the profits, assets, or stock of a business. You have set forth that you are an employee of the architectural firm and that you are not a principal. Thus, you do not have an "interest" in a business organization as defined in the Act. Therefore, for the

Commission to find a conflict of interest under subsection 24(a), you would have to be engaged in a professional activity that is in “substantial conflict” with your duties as a board member. Simple employment in a firm that is currently, has previously been, and is expected in the future to be engaged in business with the board does not rise to the level of a “substantial conflict” with your overall duties of a board member. Therefore, the Commission advises that employment in the architectural firm is not in “substantial conflict” with the proper discharge of your board member duties under N.J.S.A. 18A:12-24(c).

N.J.S.A. 18A:12-24(d) sets forth:

(d) No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

For a conflict of interest to exist under subsection 24(d), the Commission would have to find that your employment in the architectural firm would reasonably be expected to prejudice your independence of judgment in the exercise of your official duties. In *Advisory Opinion A07-01* (May 22, 2001) the Commission advised that a board member’s employment with the company leasing a building to a charter school would not impair the board member’s independence of judgment in the exercise of the board member’s duties. Similarly, under the facts as set forth here, the Commission does not find employment in the architectural firm to be inherently in conflict such that your duties as employee of the firm would impair your independence of judgment in the exercise of your official duties.

However, the Commission must consider whether your employment would prohibit you from acting on certain matters. N.J.S.A. 18A:12-24(c) sets forth:

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 involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

As noted previously, you do not have an interest in the firm. However, as an employee of the firm, you do have an indirect financial involvement that might be expected to impair your objectivity or independence of judgment. Your employment is indirectly tied to the success of the architectural firm. For that reason, you must recuse yourself from participating in your official capacity in any matter having to do with architecture or even the discussion of matters related to architecture. Recusal includes leaving the room during the discussion. The Commission noted in SEC v. Michael

Kilmurray, C12-94 (January 27, 1998) that “when a school official has a conflict of interest of which the public is aware, and that school official goes behind closed doors when that item is discussed, the situation creates a justifiable impression among the public that their trust is being violated.” Acting in your official board capacity on any matters related to architecture would violate N.J.S.A. 18A:12-24(c).

We hope that this opinion answers your inquiry.

Sincerely yours,

Paul C. Garbarini  
Chairperson