

February 26, 1997

FOR PUBLIC RELEASE

RE: Advisory Opinion A22-96

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of the board of education you represent and the letter of the board member in question joining in the request. The Commission considered your request at its meeting of January 28, 1997, and issued this opinion.

You have asked whether a school board member's position as a trustee of a charter school would violate the School Ethics Act. The board member is also a teacher in another district and a member of the NJEA. At the time you requested the opinion, she wished to open a charter school in the district in which she serves as a board member. Before the Commission issued this opinion, the Commissioner approved and granted a charter for her proposed school. She plans to serve as Chair of the Board of Trustees of the charter school for the initial term. Although she expects to abstain from voting on issues that directly affect the charter school, the board is concerned about the possibility of a conflict situation regarding the public funds that must be allocated to the charter school from the district schools. For the reasons set forth below, the Commission concludes that the school board member would violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq. if she served on the board of trustees of a charter school in the same district.

The school board member has already recognized that she has a personal involvement in developing the charter school, so there is no need to discuss whether she would be required to abstain on issues involving the charter school pursuant to N.J.S.A. 18A:12-24(c) of the School Ethics Act. She has already abstained from voting on any issues that directly affect the charter school. She should also recuse herself from closed session discussions regarding the charter school due to her personal involvement.

Pursuant to the Charter School Program Act of 1995, N.J.S.A. 18A:36A-1 et seq., the Commissioner of Education may approve and grant charters for the establishment of a charter school. N.J.S.A. 18A:36A-3(a). A charter school is “a public school operated under a charter granted by the Commissioner, which is operated independently of a local board of education and is managed by a board of trustees.” Ibid. In allowing for the creation of charter schools, the Legislature found that “the establishment of charter schools as part of this State’s program of public education can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom.” N.J.S.A. 18A:36A-2. The legislature stated its intent that the charter school offer a choice to parents who may want a learning experience for their child that is not being offered in the traditional classroom. Ibid. The charter school is intended to offer an alternative to parents and students in those districts where one is established. The parents can choose the traditional classroom or the charter school, dependent upon what each offers.

The board of trustees of the charter school is responsible for supervising and controlling the school. N.J.S.A. 18A:36A-3. Specifically, the board of trustees is authorized “to decide matters related to the operation of the school including budgeting, curriculum and operating procedures, subject to the school charter.” N.J.S.A. 18A:36A-14(a). Thus, it is the board of trustees that will make the decisions on how the school will operate both procedurally in matters such as daily operations and programmatically on matters such as curriculum. The board of trustees ultimately is responsible for implementing the philosophy of the charter school as set forth in the charter.

The goal of the board of trustees is to establish the charter school so that students and parents in the district have the choice the Legislature envisioned. It is this choice and the implementation of educational programs that “may not be available in the traditional school classroom” in the district that creates the appearance of a conflict under the School Ethics Act if a local board of education member were also to serve as a member of a board of trustees for a charter school.

Pursuant to N.J.S.A. 18A:12-24(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.

Both the traditional public school and the charter school are drawing the students from the same district. Thus, the determination of which school to attend will depend on an analysis of what each has to offer. Certainly, both schools are interested in attracting and maintaining students. Indeed, the charter school may be more dependent on convincing students to opt for the educational system and programs it offers. It is not unreasonable to assume that both the board of trustees and board of education will look to the other

school to aid it in evaluation of its own system. Given all of this, it certainly would be reasonable for a member of the public to have the impression that a board member who also was a member of the board of trustees, might have divided loyalties and might make decisions to benefit the charter school rather than the traditional school. This is not an impression that would be alleviated by recusal on issues relating directly to the charter school. As the Legislature stated, in allowing for the establishment of charter schools, it hoped to foster and encourage different and innovative learning methods, as well as improve education overall. Virtually, any decision a local board may make will have an impact on the education generally in the district and could affect a parent's decision on which school to send his or her children.

The Commission also considered the provision concerning per pupil payments to charter schools. This provision sets forth that:

The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district a presumptive amount equal to 90% of the local levy budget per pupil for the specific grade level in the district. At the discretion of the commissioner and at the time the charter is granted, the commissioner may require the school district of residence to pay directly to the charter school for each student enrolled in the charter school an amount equal to less than 90%, or an amount which shall not exceed 100% of the local levy budget per pupil for specific grade level in the district of residence.... The district of residence shall also pay directly to the charter school any categorical aid attributable to the student, provided the student is receiving appropriate categorical services, and any federal funds attributable to the student. [N.J.S.A. 18A:36A-12.]

Although pursuant to this provision, the local board has no input on the percentage of the local levy budget per pupil that it must pay the charter school, the local board determines the local levy budget per pupil. Thus, to the extent that the board member contributes to discussions on how much the local budget should be, she might be influenced by the fact that the amount of funds her charter school will receive rise in proportion to the amount of funds the board allocates per pupil. Abstaining on the budget vote would not remove the taint because of all the other decisions of the local board that determine the amount of the budget for that school year. Thus, there is a potential conflict under N.J.S.A. 18A:12-24(d).

Also at issue may be the provision of the Act requiring that the school district in which the charter school is located provide transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district. N.J.S.A. 18A:36-13. If applicable, this may require a local school district to add a bus route without additional funds to do so.

Further, in the present facts, the board member specifically started a charter school to meet a need in a particular grade that the district could not fulfill due to a budget shortfall. As a result, money will be taken from the district to fund the charter school and the public school in which she sits as board member may be unable to compete for those students for which the school is designed. To the extent that the local board tries to emulate the services of the charter school, the public may reasonably expect that the board member's opinions on such issues may be colored by her desire for success of the charter school. Thus, the Commission believes that her service as trustee of a charter school might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties as a board member.

Other conflicts may arise in the employment of teachers and staff depending on the school's charter. Pursuant to N.J.S.A. 18A:36A-14b, the board of trustees of a charter school is required to adopt the health and safety provisions of the collective bargaining agreement with the district employees. It may or may not offer its employees the other terms of the agreement. The charter school in question will offer the other terms of the agreement only to those employees who are taking a leave of absence from another district. The charter school will also offer employees who refuse health coverage a \$3000 cash payment at the close of the school year. Although the board member cannot participate in negotiations or vote on teacher contracts as a board member because of her NJEA membership, she may be perceived as influencing the contract with the board of education by what she is offering her employees at the charter school. If it is more than what is offered district employees, which it appears to be, once again the board will be in conflict with the charter school.

Additionally, there may be other matters regarding curriculum changes and grants available for new programs that the board member be called upon to vote as a board member, but be perceived as using to the benefit of her own charter school. Thus, the Commission finds that this board member may be in violation of N.J.S.A. 18A:12-24(d) if she serves as a trustee of a charter school in the district.

For the foregoing reasons, the Commission concludes that the board member would violate N.J.S.A. 18A:12-24(d) by serving as a trustee of a charter school in the district. Because the Commission has determined that this question is likely to arise again, it may vote to make the decision public at its next meeting. However, this opinion is based on the specific facts provided to the Commission.

The Commission hopes this sufficiently answers your inquiry.

Sincerely,

Paul C. Garbarini
Chairperson

