

October 28, 1997

**FOR PUBLIC RELEASE**

RE: School Ethics Commission Advisory Opinion A23-97

You have asked the Commission to determine whether your proposed conduct would be in violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq. You have set forth that you are currently a board member in a regional school district. You would like to start a personal business privately advising college bound students. Your services would include researching possible college choices and helping with the application process. You plan to be paid for these services. You do not plan to include in your promotional material the fact that you are a school board member or otherwise use your position to gain clients.

The provisions of the School Ethics Act that apply to your proposed conduct are N.J.S.A. 18A:12-24(b) and (f). The Commission summarily advises that it does not view your proposed business to be in "substantial conflict" with your duties as a board member in violation of N.J.S.A. 18A:12-24(a). Nor does the Commission view the service you expect to provide as one which might reasonably be expected to prejudice your independence of judgment as a board member in violation of N.J.S.A. 18A:12-24(d).

Rather, the Commission is concerned only with subsections (b) and (f). Subsection (b) sets forth:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

You have indicated that you do not intend to promote your business by stating that you are a board member or use your board membership to obtain clients. From the information you have provided, the Commission advises that you would not violate subsection (b) by starting your proposed business. However, the Commission advises that you should beware of subsection (f), which states:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or business organization with which he is associated.

This section prohibits you from using any board records “not generally available to the members of the public” to determine whom to target for your service. Thus, you cannot, for example, obtain the addresses of potential student clients from board records nor gather lists of those in college preparatory classes. As set forth in the statute, subsection (f) does not prohibit you from obtaining information that is available to the general public.

In addition, the Commission advises that you should recuse yourself from any matter having to do with any student who uses your consultant services. If you do not, you could be perceived as acting in your official capacity in a manner in which you have a financial involvement that could reasonably be expected to impair your objectivity in violation of N.J.S.A. 18A:12-24(c).

In summary, there is no inherent conflict between your board membership and the business you plan to start that would violate N.J.S.A. 18A:12-24(a) or (d). Further, as long as you are mindful not to use your position to get clients or otherwise further your business, the Commission advises that you will not likely violate N.J.S.A. 18A:12-24(b) or (f). Last, you will avoid violating subsection (c) if you recuse yourself from matters that come before the board involving students using your consultant services.

You may seek an additional advisory opinion from the Commission after you start the business and other issues arise.

The Commission hopes this answers your inquiry.

Sincerely,

Paul C. Garbarini  
Chairperson