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## SCHOOL ETHICS COMMISSION

March 21, 2023

### For Public Release

Subject: Public Advisory Opinion – A04-23

The School Ethics Commission (Commission) received your request for an advisory opinion on your own behalf as a member of the Board of Trustees (Board). The Commission's authority to issue advisory opinions is expressly limited to determining whether any prospective conduct or activity would constitute a violation of the School Ethics Act. *N.J.S.A.* 18A:12-31. Pursuant to *N.J.S.A.* 18A:12-28(b), the Commission discussed this matter at its Advisory Opinion Committee meeting on March 8, 2023, and then discussed it again at its meeting on March 21, 2023.

In your request, you inform the Commission that you are a "current volunteer charter school" trustee and were "elected by [the] parents" of the Board to serve in this capacity. You note the Board is "a diverse, and highly rated and highly performing charter school that educates preschoolers to eight[h] graders." You further note that you were recently asked to "volunteer to join the founding board ..." of a newly established public charter high school, serving grades six through twelve, that is presently awaiting "final approval at the end of June" from the New Jersey Department of Education (NJDOE).

Your request references *N.J.S.A.* 19:3-5.2, *N.J.S.A.* 40A:9-4, as well as *Fischer v. Attorney Gen. of N.J.*, and you note they stand for the proposition that, an elected "public officer ... shall not hold simultaneously any other elective public office." However, you argue that the referenced statutes and case law are distinguishable from the facts and circumstances at issue here because, among other things, you were not "elected" to your position on the Board and would not be "elected" to the new public charter high school board of trustees, and charter schools operate differently from public school district boards of education, e.g. "charter trustees do not have to be residents of where the charter school is located"; "[f]ounders of charter schools can be teaching staff members"; and "founders can also include institutions of higher education or private entities ... ."

Based on the aforementioned information, you inquire whether you would violate the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.*, if you were to serve as an appointed

member of the “new founding board before the new school was approved, and remain after the new school is approved” by the NJDOE, while simultaneously serving as an appointed member of the Board.

As an initial matter, the Commission notes that it does not have the authority or the jurisdiction to determine whether your simultaneous position holding violates *N.J.S.A.* 19:3-5.2 and/or *N.J.S.A.* 40A:9-4, or whether it may be prohibited based on the ruling pronounced in *Fischer v. Attorney Gen. of N.J.* In this regard, the jurisdiction of the Commission is limited to enforcing the Act, *N.J.S.A.* 18A:12-21 *et seq.*, a set of minimum ethical standards by which all school officials must abide, and it cannot render a legal determination as to any statute beyond its purview. *N.J.A.C.* 6A:28-1.4(a). However, should a court of law or the appropriate administrative agency determine that simultaneously serving on two boards of trustees violates the law, a violation of *N.J.S.A.* 18A:12-24.1(a) could then be sustainable.

Notwithstanding the above, the Commission cautions if you choose to serve as a trustee for the “new founding board” while simultaneously serving as a trustee for the Board, should any matter, in whatever capacity, come before the Board concerning the “new founding board,” you would have to recuse yourself from any and all discussions and votes. Likewise, if any matter, in whatever capacity, comes before the “new founding board,” concerning the Board, you would have to recuse from any and all discussions and votes.

Finally, as a reminder, school officials must always be cognizant of their responsibility to protect the public trust, to honor their obligation to serve the interests of the public and the Board, and to periodically re-evaluate the existence of potential conflicts of interest. In addition, the only way for a school official to truly safeguard against alleged violations of the Act is to avoid any conduct which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission