



State of New Jersey  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

DAVID C. HESPE  
*Acting Commissioner*

August 27, 2014

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A32-14

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your behalf in your capacity as Board Secretary for the Regional School District (District). By email of July 16, 2014, you verified that you copied the Board member whose conduct is the subject of the request, thus complying with N.J.A.C. 6A:28-5.2(b). Because the Board member did not submit comments, the Commission bases its advice on the facts included in your request. Consistent with its authority under N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its July 22, 2014 meeting. The Commission's authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31.

Your letter states that you and the Board member seek advice regarding in which District-sponsored volunteer activities a member may permissibly engage under the direction of his/her spouse, who is employed by the District as a teacher and theater advisor without violating the Code of Conduct for School Board Members (Code). N.J.S.A. 18A:12-24.1. You specifically provide that this Board member seeks to regularly volunteer in a production in which he will assist in casting, rehearsals, lighting for the fall play and spring musical, as well as serve as advisor to students for the school festival.

Additionally, you provide that the Board member's spouse would be responsible for supervising, directing and managing the Board member as he would also be subject to the supervision, direction and management of other Board personnel, supervisors or administrators, including building administration. Additionally, the Board member/volunteer would be in regular contact with students, parents, and other staff as well as maintaining an active presence in the school.

Finally, you express your concern that the roles of a volunteer and the position of an elected official are inherently incompatible since one is a subordinate while the other is considered an executive who serves the community in a leadership role. You have inquired whether such conduct of a Board member would violate N.J.S.A. 18A:12-24.1(b), (c), (d), (e), (g), (i), and/or (j).

In its review of your request, the Commission agrees that service as a volunteer in this setting is internally inconsistent with the Board member's executive role as an elected official. In reaching its determination, the Commission focused on the subsections of the Code that the

Board member would immediately violate by the simple undertaking of his role as volunteer. In doing so, the Commission considered N.J.S.A. 18A:12-24.1(c), (d), and (e). The Commission declines to further advise on N.J.S.A. 18A:12-24.1(b), (g), (i), and/or (j), since these subsections concern the Board member's conduct once he becomes a volunteer.

It is the Commission's view that the official seeks to participate in school activities from which he would be prohibited as a Board member by simply renaming the position of "volunteer." The Commission first considers N.J.S.A. 18A:12-24.1(c), which provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

As you describe in your request, the Board member would become involved in a variety of functions associated with school-sponsored theatrical events, which far exceed the scope of authority as a Board member. Under Subsection (c), he shall not take action unrelated to his duties as a Board member. In his official capacity under this subsection, his actions are limited to the following by Code:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(3)

As you outlined in your request, this Board member would assist in casting, rehearsals, lighting for the fall play and spring musical, as well as serve as an advisor to students for the school festival. Additionally, the Board member/volunteer would be in regular contact with students, parents, and other staff as well as maintaining an active presence in the school. This heightened involvement in these school-sponsored, school-run activities are clearly not those Board functions enunciated in the Code to which Board members are confined. Consequently, the Commission determines that such participation is a violation of N.J.S.A. 18A:12-24.1(c).

Your inquiry also turns on the application of N.J.S.A. 18A:12-24.1(d), which provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

In order to comply with the dictates of Subsection (d), the Board member must avoid giving a direct order to school personnel or becoming directly involved in activities or functions that are the responsibility of school personnel or the day-to-day administration of the school district. N.J.A.C. 6A:28-6.4(4). In this setting, that would be an impossibility. As you state in your request, the Board member would be in regular contact with students, parents, and other staff as well as maintaining an active presence in the school. Given his responsibilities to assist with casting, rehearsals, and lighting *inter alia*, there is no way to avoid giving orders to school

personnel. Moreover, the very nature of these projects includes activities which demand direct and close day-to-day involvement in the school-sponsored event. Consequently, the Commission determines that such participation is a violation of N.J.S.A. 18A:12-24.1(d).

Finally, your inquiry also turns on the application of N.J.S.A. 18A:12-24.1(e), which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

In order to comply with the dictates of Subsection (e), the Board member must avoid making personal promises or taking action beyond the scope of his duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(5). As you advise in your letter, as a volunteer, this Board member will be supervised not only by his wife, who is a teacher in the District and the District-paid theater advisor, but also subject to the supervision, direction and management of other Board personnel, supervisors or administrators, including building administration. As mentioned, *supra*, the Board member would also be in regular contact with students, parents, and other staff as well as maintaining an active presence in the school.

The Commission finds that by assuming this volunteer position, this Board member is taking private action, which has the potential to compromise the Board. The member's significant involvement in these school events may come under scrutiny when he returns to the Board room, engages in discussions, participates in negotiations, or votes on contracts and salaries for the very individuals with whom he worked so closely on these projects. The potential to compromise the Board and the integrity of its decisions is profound. Such involvement between these two arenas blur the line between colleague and official and may have a chilling effect on the Board members relationships with those he meets socially and those over whom he can exercise his power as an official. Consequently, the Commission determines that such participation is a violation of N.J.S.A. 18A:12-24.1(e).

Accordingly, the Commission advises that board member would violate N.J.S.A. 18A:12-24.1(c), (d) and (e) if he were to become a volunteer in these school-sponsored theatrical events.

We trust this advisory opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson