



## State of New Jersey

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### SCHOOL ETHICS COMMISSION

February 25, 2022

#### For Public Release

Subject: Public Advisory Opinion – A02-22

The School Ethics Commission (Commission) received your request for an advisory opinion on your own behalf as a member of the Board of Education (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 a special meeting on February 4, 2022.

You inform the Commission that you have been answering questions "which were posted on various Facebook groups seeking information on a variety of topics" concerning the Board. You state that the topics addressed were not confidential, and "many of them necessitated [referral to] additional publicly available resources . . ." You also state, "After a conversation thread was deleted," you were "approached by a parent about starting a page that would index the conversation threads into sections so that members of the page could reference them and the conversations explaining the various mechanics of school operations." Consequently, the Facebook group – "[School District] Q&A between Parents & the BOE' [(Facebook group)] was formed." You note you have "repeatedly stated that [you are] speaking on [your] own behalf and not for the [B]oard," and also have "a disclaimer on [your] personal page." You further note you are "not an administrator of the account, no fees are charged, and [you are] the only current [Board] member on the page (there are former members, members from other towns, but no quorum)."

You further inform the Commission that the School District's (District) "legal advice has been to avoid any and all social media in its entirety." You state you have received "personal messages and emails" through the Facebook group, as well as "a number of questions from the public." Any questions that "deal directly with the decision making of the [D]istrict are referred to" the administration, and "[q]uestions regarding confidential information are not answered . . ." You further state "operational questions are answered since much of the feedback that [you] have received has come from just a basic misunderstanding of how schools operate." You note, "As a working school administrator with a wide range of professional expertise, these are easily

answered and explained. These are general in nature and cover subjects with publicly available resources.”

Based on the information provided in your request, you inquire whether you would violate the School Ethics Act (Act) *N.J.S.A. 18A:12-21 et seq.*, if “as a private citizen,” you “answer operational questions about how [the District] function[s] on social media.” You further inquire whether the District’s bylaw is “in conflict with the NJ School Ethics Law.”

As an initial matter, to the extent you are requesting an opinion from the Commission as to whether the District’s bylaw violates “NJ School Ethics Law,” the Commission cannot opine on this question because its authority is limited to enforcing the provisions of the Act and its implementing regulations. Therefore, the Commission cannot determine, as you have requested, whether a rule or regulation promulgated by the board of education on which you serve as a member is contrary to a state law or regulation. However, you should consult with your Board attorney for additional advice and guidance on this question.

Turning to the remainder of your request, the Commission recognizes that board members do not abdicate their fundamental rights as citizens after they become members of a board of education, and this necessarily includes the sacrosanct rights to freedom of speech and freedom of expression. However, board members, unlike most other individuals, are also public school officials subject to the provisions of the Act and, therefore, must exercise certain precautions to avoid violating, or being accused of violating, the Act. In this regard, when making comments or statements at a time and/or place other than at a public board meeting, you must ensure that the views expressed and/or information shared do not appear to be written on behalf of, or with the authorization of the Board.

Since the advent of social media, the Commission has received numerous complaints about whether a Board member’s speech, including posts on social media, violates the Act because the Board member either failed to disclaim, or insufficiently disclaimed, their speech. In a recent decision, which is informative here, the Commission stated:

... Now, more than a decade later, when use of social media and online publications has become commonplace, prolific, pervasive, and often times divisive, and given that there has been a significant influx in the number of complaints filed with the Commission regarding use (or nonuse) of disclaimers in electronic publications (not just on social media), it is now more critical than ever to underscore and emphasize that when Board members want to speak as private citizens, they must include an appropriate disclaimer that makes the capacity in which they are speaking clear and unambiguous. In addition, even if an appropriate disclaimer is used, a school official must never negate the import of the disclaimer by proceeding, under the purported protection of a disclaimer, to discuss or comment on Board business or matters in a way that leads a member of the public to believe that the individual is speaking on behalf of, and as a representative of, the Board. ...

[I/M/O Treston](#), Randolph Township Board of Education, Commission Docket No. C71-18, at 12 (emphasis added).

With the foregoing in mind, if you intend to undertake action “as a private citizen,” the Commission cannot opine on whether that anticipated action violates the Act. The Commission does not have authority to regulate private conduct, including speech and postings on social media, that is unrelated to your position on the Board and does not occur in your capacity as a school official. Said differently, the Commission cannot regulate the behavior and/or actions strictly taken as a “private citizen.”

Notwithstanding the above, although you want to provide information to the public that stakeholders (and you) feel would be useful and beneficial, because you would be providing information relating to the Board and/or your official duties and responsibilities, any attempt to disclaim your speech (as being in your personal or private capacity) would likely be futile. People in your community are aware of your status as a Board member and would likely attribute any statement from you as being from you in your capacity as a Board member, and/or on behalf of the Board. If you only ever provide links to publicly available information, it is possible that your conduct would be less precarious; however, that would not immunize you from being the subject of an ethics complaint.

The Commission would also like to caution that any activity on social media that violates a Board bylaw and/or advice from Board counsel would be problematic. As a member of the Board, you are charged with, among other things, enforcing and upholding the rules and regulations of the body, and any conduct that violates those rules and regulations, regardless of the capacity in which it is undertaken, would likely be sanctionable.

Based on the foregoing, although the catalyst for creating and maintaining a social media page has laudable intentions, it will be difficult, if not impossible for you to avoid conduct that is violative of the Act (whether actual, or perceived), particularly in light of the fact that the Facebook group you would be commenting on is entitled “[School District] Q&A between Parents & the BOE” and you are currently a member of the Board.

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 Board, and to periodically re-evaluate the existence of potential conflicts. In addition, the only way for a public 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