

June 10, 2008

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A06-08

The School Ethics Commission is in receipt of your request for an advisory opinion submitted on behalf of a school board member. The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the board member who is the subject of the request. The board member did not submit a response to the Commission within the 10-day time limit set forth in N.J.A.C. 6A:28-5.2(b). Therefore, the Commission will provide its advice based on the information included in your advisory opinion request.

You have asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., for a board member to participate in your evaluation as the Superintendent of the district. You have stated that the board member was formerly employed by the district as a technology coordinator and his employment was terminated effective February 16, 2007, as a result of a decision made by you in December 2006. You have stated that this person filed an ethics complaint against you, which was dismissed by the School Ethics Commission. You have further stated that, following his separation from employment with the district, this person was elected to the board. As his first act as a board member, he called for a vote of no confidence against you. You state that you believe his participation in your evaluation may violate the School Ethics Act.

At its May 27, 2008 meeting, the Commission, pursuant to its authority in N.J.S.A. 18A:12-28(b), advised that the board member would violate the Act if he were to participate in your evaluation.

Your inquiry turns on application of N.J.S.A. 18A:12-24(b) which provides:

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;

The Commission notes that the board member has a history with you, as the Superintendent. His employment with the district was terminated in February 2007 as a result of a decision which was made by you in December 2006. The Legislature made it clear that board members "... must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." N.J.S.A. 18A:12-22. If the board member were to participate in your evaluation, it could create a justifiable impression that the public trust was being violated since it would be reasonable for the public to perceive that the board member was using his position to secure an advantage over you as a consequence of your history with the board member.

Based on the specific facts presented in this advisory opinion request, the Commission advises that the board member would violate N.J.S.A. 18A:12-24(b) if he were to participate in your evaluation. As such, the board member should abstain from any discussion, activities and votes related to the same.

We trust that this opinion answers your inquiry. Because the Commission believes that this opinion will be of interest to other board members, it is making it public.

Sincerely yours,

Paul C. Garbarini, Chairperson
School Ethics Commission