



State of New Jersey

DEPARTMENT OF EDUCATION

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Acting Commissioner

May 28, 2014

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A20-14

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of a member of the Board of Education (Board) for the Local School District (District). You have verified that you copied the Board member, whose conduct is the subject of the advisory opinion request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission notes that this Board member did not submit comments and, therefore, the Commission will base its advice on the facts included in your request dated March 21, 2014 and its attachment.

You state in your request that the Board member is the owner of Company, which for the past two years has provided the District with all of its signage needs. As a new Board member, he wishes to continue this business relationship with the Board and has inquired if he may do so without violating the School Ethics Act (Act). N.J.S.A. 18A:12-21 *et seq.*

It is not clear from the Board member's letter whether he has an actual contract with the Board for these services for a term of years or if each new sign is a separate transaction. In either event, the Commission finds that this matter implicates N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest<sup>1</sup>, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit<sup>2</sup> to the school official or member of his immediate family;

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<sup>1</sup> N.J.S.A. 18A:12-23 defines "interest" as the "ownership or control of more than 10% of the profits, assets, or stock of a business...."

<sup>2</sup> "Benefit" as used in the Act means advantage, profit, privilege or gain. N.J.A.C. 6A:28-1.2.

It is clear that the Board member has a direct financial and personal involvement in the Company, and the benefits inure to him as the owner. This involvement is sufficient to cause the public to perceive his ownership in the business as predominant to the best interest of the District, which might reasonably be expected to impair his objectivity or independence of judgment.

Under the facts that you have presented, any signage project would be significant, yielding a substantial benefit to this Board member. Therefore, in order to avoid a violation of N.J.S.A. 18A:12-24(c), the Commission advises that in the event each signage project is itself a single, severable transaction, then the Board member must cease from offering his services or engaging in any solicitation for new signage business with the Board. If, however, there is a pre-existing contract in which he is the sole vendor for District signs, then the Board member may continue to honor the terms of his contract until it expires, but he may not vote on any invoices in payment for his signs. Further, should the pre-existing contract end during the Board member's tenure on the Board, he may not enter into a new contract for signage with the Board.

Finally, if the Board does business with other signage companies, and the Board would not be in breach of the Board member's contractual rights with the Board, the Act is better served if the Board avoids the continued services of the Company. The Commission is mindful that the very purpose of the Act, as set forth in N.J.S.A. 18A:12-22(a), states:

In our representative form of government, it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust **or which creates a justifiable impression among the public that such a trust is being violated.** [Emphasis added.]

The Act requires each board of education and its members to protect that trust and safeguard the public's respect and confidence in those they elect or those appointed to govern on its benefit.

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson