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Acting Commissioner

September 2, 2014

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A29-14

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your behalf, regarding your interest in continuing to offer an annual fundraising event with your company known as Company in co-partnership with the Local Education Foundation (Foundation). Pursuant to your request for an advisory opinion and 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 will provide its advice based on the information you included in your advisory opinion request. 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.

You explain that you own and operate a business known as Company and prior to becoming a Local Board of Education (Board) member you offered an annual event providing the students in the District an opportunity to engage in activities. For these activities, you charge \$20.00 per student from which you donate 20% of the profits to your co-sponsor, the Foundation, and retain 80% for yourself plus all of the profits from future business this event may provide. Now that you are a Board member, you inquire whether continuing to offer this fundraiser and continuing to distribute flyers for this event to all of the students in the District would violate the School Ethics Act. N.J.S.A. 18A:12-21 et seq.

In its review of your request, 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 interest¹, 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

¹ 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...."

or creates some benefit² to the school official or member of his immediate family;

It is clear that you have a direct financial and personal involvement in Company and that all the benefits inure to you as the owner, save the 20% you donate to the Foundation. This involvement is sufficient to cause the public to perceive your ownership in the business as predominant to the best interest of the District, which might reasonably be expected to impair your objectivity or independence of judgment. Moreover, under the facts that you have presented, this fundraiser could yield a substantial future benefit to you in potential new business, again sufficient to cause the public to perceive your ownership in the business as predominant to the best interest of the District, which might reasonably be expected to impair your objectivity or independence of judgment.

The Commission also finds that this matter also implicates N.J.S.A. 18A:12-24(f), which provides:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

Using the schools to distribute the advertisement, which offers the program for your personal gain, would violate subsection (f) as that avenue of dissemination is not generally available to the public. Therefore, in order to avoid a violation of N.J.S.A. 18A:12-24(c) and (f), the Commission advises that for the remainder of your term, you must cease solicitation of your business through leaflet distribution in the schools as well as forego the fundraising event. There would be no bar to the resumption of the event at the end of your term.

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson

² “Benefit” as used in the Act means advantage, profit, privilege or gain. N.J.A.C. 6A:28-1.2.