

December 18, 2012

FOR PUBLIC RELEASE

Re: Advisory Opinion A24-12

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of the Board of Education. You have inquired as to whether the Board may invoke the Doctrine of Necessity to permit conflicted Board members to participate in its search for a Superintendent where there are fewer than a quorum to conduct the search.

At its meeting on November 27, 2012, the Commission discussed your request and advised the following. The Doctrine of Necessity should not be invoked to allow the entire Board to participate in search of a Superintendent or Chief School Administrator when there are four Board members without conflicts who may serve as the selection committee.

You have set forth that your Board is comprised of nine members, five of whom, including you, have conflicts of interest, which inhibit the Board's ability to engage in the search, application review, and interview of candidates for the position of Superintendent. To overcome this impediment, you suggest that the Board be allowed to invoke the Doctrine of Necessity not just for the vote to hire the successful candidate, but for the full vetting process as well. You further note that *Public Advisory Opinion A55-95 (January 23, 1996)* sets forth that the Commission determined that if there were three members without a conflict who can negotiate on behalf of the Board, then they must serve as the committee. The Commission concludes that the same is true in this instant matter. The conflict remains whether the Board is negotiating or hiring. Thus, the Commission finds that since there are four members on your Board who are not conflicted, then they may serve as the selection committee. There is no need to invoke the Doctrine of Necessity until the full majority of the Board is required to vote on the appointment.

The Commission further reminds the Board that in accordance with its recent ruling in Martinez v, Albolino, SEC Dkt. No. C45-11 (June 26, 2012),

“...the same concerns which give rise to a post-employment conflict of interest also have the potential to taint the Superintendent’s pre-employment/selection hiring process where the Board member has an immediate family member or relative employed in the District.”

The Commission’s determination in that case is supported by provision N.J.S.A. 18A:12-24(c) of the Act, which provides, in pertinent part:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment.

In this instant matter, the Commission has determined that the objectivity and independence of judgment of the Superintendent as well as Board members could be impaired if those, who have conflicts due to the employment of an immediate family member or relative, are permitted to search for and select the new Superintendent.

Consequently, the conflicted members are prohibited from any involvement in the pre-hiring or post-hiring employment issues of the Superintendent.

We hope this answers your inquiry.

Sincerely,

Robert W. Bender
Chairperson