

November 23, 1999

FOR PUBLIC RELEASE

SUBJECT: School Ethics Commission Advisory Opinion A15-99

You have requested an opinion from the School Ethics Commission as to whether your law firm, which represents a district board of education, may represent or do business with a charter school in the same municipality. You also ask whether the answer would be different should the firm or its members serve as special counsel only. Your second question is whether the law firm or any of its members is required to complete a disclosure statement if the firm or one of its members becomes general counsel to a school district. The Commission rendered a determination on your request on November 23, 1999. It concluded that it could not advise you as to whether you could serve as general or special counsel to a district board of education and a charter school in the same municipality because you do not appear to be a school official subject to the School Ethics Act and entitled to an advisory opinion pursuant to N.J.S.A. 18A:12-31. Likewise, because you do not appear to be a school official, the Commission advises that the members of the firm need not file a disclosure statement.

Pursuant to N.J.S.A. 18A:12-23, "school official" is defined as a board member or an administrator. An "administrator" is defined as an officer, other than a board member, or employee of a local school district who: 1) holds a position which requires a certificate that authorizes the holder to serve as a school administrator; 2) holds a position which does not require that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district; or 3) holds a certificate that authorizes the holder to serve as a supervisor. An attorney who is general or special counsel to the board is generally not an officer or employee of the local school district, which is the first requirement. Rather, he is an employee of the law firm in which he practices.

The Commission recognizes, however, that there are board attorneys who are employees either because they are hired as in-house counsel in large districts or because

they stipulate in their contract that they will receive a salary in order to be a contributor to the pension system. In such cases, the question becomes whether they meet definition two, which is the only one that does not require a school official to hold a certificate. The second definition requires that the employee be responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the district to be considered a school official. The role of a board attorney is generally not to make such recommendations. While it is possible that an attorney has such a role, an attorney's responsibility is customarily to provide legal advice and counsel. If an attorney goes beyond providing advice and actually recommends candidates for employment and vendors from which to purchase, then he is a school official under the act is required to file a disclosure statement like the other administrators.

For the foregoing reasons, the Commission cannot provide an advisory opinion to you unless you indicate that you anticipate making recommendations as to hiring or the purchase or acquisition of property or services by the district and therefore are a school official under the act. The Commission therefore recommends that you inquire with the Office of Attorney Ethics as to whether you may represent a charter school and a school board in the same municipality. The Commission will not require that you or the members of your firm file disclosure statements unless you are serving as school officials under the Act.

Because the Commission has not previously set forth in a public advisory opinion that board attorneys are generally not school officials subject to the School Ethics Act, it is making this opinion public. The Commission thanks you for your inquiry.

Sincerely,

Robert W. Bender,
Acting Chairperson

I hereby certify that this advisory opinion was made public by the School Ethics Commission at its public meeting on November 23, 1999.

Lisa James-Beavers
Executive Director
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