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SCHOOL ETHICS COMMISSION

March 25, 2025

For Public Release

Subject – Public Advisory Opinion A04-25

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of your client, the Board of Education (Board). You verified that you copied the subject of your request, Board member A, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that Board member A did not submit a response to your request, and therefore, the Commission will issue its advice based solely on the information included in your request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any prospective conduct or activity would constitute a violation of the School Ethics Act. *N.J.S.A. 18A:12-31*. Pursuant to *N.J.S.A. 18A:12-28(b)*, the Commission preliminarily discussed your request at its advisory opinion committee meeting on March 12, 2025, and again at its meeting on March 25, 2025.

You inform the Commission that Board member A is currently employed by the Community College (CC) as the Business Coordinator (Coordinator). You state, as the Coordinator Board member A "is part of the college's professional staff collective bargaining unit." You further state "all the paperwork for the [CC] union indicates that the bargaining unit that [he/she] is a member of is represented by the [(New Jersey Education Association (NJEA)-National Education Association (NEA)]." You note that you have "reviewed the professional staff contract on behalf of [Board member A's] union, which did not indicate a linkage to the terms and conditions of negotiated agreements in school districts, and particularly in" the same town as where the Board is located.

You further inform the Commission that your "research has not revealed any public advisory opinions or decisions of the Commission that deal with this issue." You indicate that you found an article, "Impact of the School Ethics Act on Negotiations," on the New Jersey School Board Association's (NJSBA) website that referenced *Advisory Opinion A59-95* (A59-95); however, you note A59-95 is not "accessible to the public." Nonetheless, the NJSBA article "appears to discuss whether a conflict arises from a board member who is employed by a college." You further indicate the "NJSBA article states that in [A59-95], no conflict was found because there was little opportunity for the negotiations of the board to influence the negotiations at the college, and the college and board were located in different counties, among other reasons." You state that unlike the circumstances outlined in the article, "the [Board] and the [CC] are located in the same county, with the main campus located" within the same town.

Based on the information provided in your request, you inquire whether Board member A's "membership in the [CC's] professional staff collective bargaining unit, which is largely represented by the NJEA, and participation in negotiations for the" public school district (District) would violate the School Ethics Act (Act), *N.J.S.A. 18A:12-21, et. seq.*, namely *N.J.S.A. 18A:12-24(c)*.

As an initial matter, the Commission notes that A59-95 is not accessible on the Commission's website, and therefore, is not a public advisory opinion. The Commission notes that more recent public advisory opinions, namely *Advisory Opinion A24-17* (A24-17), address the matter of board members who are also members of a statewide union.

Although the subject of your request, Board member A, is employed at the CC, a post-secondary/higher education institution, and despite your review of Board member A's "professional staff contract on behalf of [Board member A's] union, which did not indicate a linkage to the terms and conditions of negotiated agreements in school districts, and particularly in" the District, the CC is represented by the NJEA-NEA, which is the same statewide union that represents the staff of the District. To clarify, your request indicates that unlike other post-secondary/higher education employees, who are represented by a separate union, e.g., the American Association of University Professors, American Federation of Teachers, AFL-CIO, your request further indicates that Board member A is an employee of the CC; belongs to the NJEA-NEA, which is the same union that represents the District's staff; the CC and the District are located in New Jersey; and the CC's main campus is located in the same town as the District. The Commission notes the public might reasonably perceive that these common factors have the potential to prejudice or interfere with Board member A's independence of judgment in the exercise of his/her official duties as a board member or could create a justifiable impression that the public trust has been violated.

Therefore, based on the specific facts and circumstances set forth in your request, as well as previously issued guidance, the Commission advises that Board member A cannot participate in any aspect of negotiations with the local union until the memorandum of agreement, including the salary guides and the total compensation package have been attained. After the memorandum of agreement, including salary guides and the total compensation package have been attained, Board member A can, absent another conflict, vote on the collective bargaining agreement.

School officials must always be cognizant of their responsibility to protect the public trust, to honor their obligation to serve the interests of the public and the Board, and to periodically reevaluate the existence of potential conflicts of interest. In addition, the only way for a school official to truly safeguard against alleged violations of the Act is to avoid any conduct which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission