



State of New Jersey

DEPARTMENT OF EDUCATION

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January 26, 2016

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A31-15

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of the Board of Education (Board). The Commission will provide 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 discussed this matter at its December 15, 2015 meeting.

You inform the Commission that the Board seeks clarification regarding Board involvement in the interview process and the appropriate level of that involvement. You state that the clarification stems from a perceived conflict between the advice given by the Commission in Advisory Opinion—15-10 and Advisory Opinion—14-12. These advisory opinions state, in brief:

A15-10: A board member's participation in an exit interview would violate N.J.S.A. 18A:12-24.1(c) and (d) of the Code of Ethics for School Board Members.

A04-12: No more than one or two Board members may participate on a personnel committee, when it is established by the CSA and coordinated by a member of the administrative staff. However, the Board member participant(s) is strictly limited to offering his/her observations and assessments, with full knowledge that final recommendations are wholly within the purview of the Superintendent. The Board members should be mindful of their obligations under N.J.S.A. 18A:12-24.1(c) and (d), as participation in such a committee may put the Board members in situations to violate those subsections.

Each individual Board of Education may determine if it wants to have a Personnel Committee. The School Ethics Commission **does not**, however, support Board members conducting interviews for positions below that of Superintendent. As set forth in A04-12, if a Board forms a Personnel Committee, no more than one or two Board members may participate, and their role would be limited. The Board members may not conduct the interview, but may offer observations and assessments, with full knowledge that final recommendations are wholly within the purview of the Superintendent. Selecting candidates for District positions and making recommendations is the role of the Superintendent. Prior to the recommendations, Board members have no role in selecting candidates for positions other than that of the Superintendent. For Boards choosing to have a Personnel Committee, the Committee must be established and function with the approval of the Superintendent. Boards of Education and individual Board members must always understand that it is the Superintendent's authority to recommend hires to the Board. A Personnel Committee cannot supersede or usurp that authority.

The functioning of a Personnel Committee, in any capacity, invites the danger that individual Board members may violate their obligations under the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically, N.J.S.A. 18A:12-24.1(c) and (d), which limit Board member action, accordingly:

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

Further, N.J.S.A. 18A:12-24.1(h) establishes that it is a Board member's role to vote to appoint the best qualified personnel available *after* consideration of the recommendation of the Superintendent.

Thus, in the Commission's view, the role of interviewing is an administrative function not within the authority of the Board or its members. Therefore, the Commission does not advocate for any Board member's involvement in any interview process, prior to candidates first being recommended for hire by the Superintendent, except for the limited purpose outlined in A04-12. Where a Board of Education chooses to have a Personnel Committee, Board members' role in the interview process should be strictly limited, with full deference to the Superintendent.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission