

May 22, 2001

FOR PUBLIC RELEASE

RE: Advisory Opinion A07-01

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of your Board. You have requested an opinion as to whether an executive director of a company, which is the landlord to a charter school, can be a trustee of the charter school. The company would be subletting a facility to the charter school and therefore, receive a financial gain through the relationship.

You have provided that the executive director is not a partial owner of the company. She is an employee, albeit the lead employee. You have further represented that she receives no additional compensation based on the leasing of various properties. However, her employment may be affected by a loss of revenue obtained from all the various properties.

N.J.S.A. 18A:12-24(d) is the applicable provision to determine whether the executive director has a conflict in serving as a charter school trustee. This subsection prohibits a school official from undertaking any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his or her official duties.

The Commission does not find these positions to be inherently in conflict such that the Board member's employment with the company leasing the building to the charter school would impair her independence of judgment in the exercise of his or her official duties. The Commission always considers the Legislature's statement of purpose set forth at N.J.S.A. 18A:12-22(b). In doing so, it does not believe that this is the type of conduct that creates an impression that the public trust is being violated.

The second issue however, is whether the executive director's employment would prohibit her from acting on certain matters. N.J.S.A. 18A:12-24(c) provides that:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds an interest, 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 or creates some benefit to the school official or member of his immediate family.

The executive director does not hold an interest in a business organization, but she does have an indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment. Her employment is tied to the success of her employer, although not directly. The leasing of the building to the charter school benefits the executive director's employer. For that reason, she should abstain from participating in her official capacity in any matter having to do with the lease of the property or even the discussion of purchasing property elsewhere as that could result in a loss of revenue to the employer. The executive director's acting in her official capacity in such matters would result in a violation of N.J.S.A. 18A:12-24(c).

The executive director should also be mindful that if the lease is out of line with the fair market value of the property or if no other properties are sought, then she may be accused of violating N.J.S.A. 18A:12-24(b) or (f). These sections, respectively, prohibit using one's official position to secure unwarranted privileges for others and the use of one's public office or information gained in the course of one's official duties for the purpose of securing financial gain for himself or a business organization with which he is associated. The Commission does not have any information from which to conclude that these provisions would be violated in the facts presented.

For the foregoing reasons, the Commission concludes that the executive director may serve as a trustee of a charter school that leases its space from her employer. However, she would violate N.J.S.A. 18A:12-24(c) if she were to participate in discussions or vote on matters having to do with the lease or future purchase of property.

We hope this answers your inquiry.

Sincerely yours,

Paul C. Garbarini
Chairperson

