

April 17, 2012

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A04-12

Pursuant to your request for an advisory opinion filed on behalf of members of the Board of Education (Board), and consistent with its authority under N.J.S.A. 18A:12-28(b), the School Ethics Commission (Commission) discussed this matter at its March 27, 2012 meeting. Initially, the Commission notes that you properly verified that the Board members whose conduct is the subject of the advisory opinion request were copied on the request, thus complying with N.J.A.C. 6A:28-5.2(b). Because the Board members did not submit comments, the Commission bases its advice on the facts included in your request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act (Act). N.J.S.A. 18A:12-31.

You have asked whether it would be a violation of the Act if Board members participated on interview committees for any administrative or supervisory position, particularly upper level positions such as Assistant Superintendent or Business Administrator. Please be advised that the Commission discussed your request at its meeting on March 27, 2012 and determined that a Board member's participation on an interview committee which was established to interview candidates for high-level administrative and supervisory positions would not violate the School Ethics Act, provided that such participation met the conditions set forth below.

Your inquiry turns on N.J.S.A. 18A:12-24.1(c) and (d), which provide, respectively:

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.

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.

The Commission reasons that participation on an interview committee is fairly considered "board action" within the intent of the statute, and finds that such action may be considered within a Board member's policy making, planning, and appraisal duties, as provided by N.J.S.A. 18A:12-24.1(c) and would not run afoul of N.J.S.A. 18A:12-24.1(d), provided that the committee has no

more than one or two Board members, the committee is coordinated by a member of the administrative staff and the Board participant is strictly limited to offering his/her observations and assessments with full knowledge that final recommendations are wholly within the purview of the Superintendent.¹

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender,
Chairperson

¹ For an analysis of how a Board member may violate N.J.S.A. 18A:12-24.1(c) and (d) by failing to stay within these guidelines, see Jennifer Dericks et al., v. Michael Schiavoni, Sparta Township Board of Education, Sussex County, C45-07 (April 28, 2009), Commissioner of Education Decision No. 294-09SEC, decided September 15, 2009.