



City of Chicago
Richard M. Daley, Mayor

Board of Ethics

Mary Milano
Vice Chair
Margaret Carter
Angeles Eames
Russell Hardin
Rev. A. Patterson Jackson
Marlene O. Rankin
Suite 530
205 West Randolph Street
Chicago, Illinois 60606
(312) 744-9660

September 21, 1989

[REDACTED]
Commission on Human Relations
Suite 6A
500 North Peshtigo Court
Chicago, IL 60611

Re: [REDACTED]
Case No. 89130.A

Dear [REDACTED]

You requested an advisory opinion on the application of the Governmental Ethics Ordinance ("the Ordinance") to the participation of employees of the Commission on Human Relations in Local School Council ("LSC") elections. Specifically, you asked whether your running for community resident position on the LSC for your district would be a prohibited political activity as defined in Section 26.2-1(s) of the Ordinance.¹ The Board recently considered your request and rendered the advisory opinion set out below.

ISSUE: Whether the position of community resident of a Local School Council is an "elective public office."

OPINION: The position of community resident member of a Local School Council is an elective public office within the meaning of Section 26.2-1(s)(6). Therefore, an employee of the Human Relations Commission may not be a candidate for that office.

FACTS: In 1988 the General Assembly radically restructured the governance of Chicago public schools through amendments of Chapter 122, Article 34 of the Illinois Revised Statutes ("the Chicago School Reform Act"). The Chicago School Reform Act was designed to shift the focus of governance from the central administration to the local school site through the creation of local school councils for each elementary and secondary school in the city ("LSC").

¹ For your reference, Section 26.2-1(s) and a summary restatement of that section are attached to this letter.



1. Local School Councils

A. Composition - Each LSC will comprise six parents of children attending the school, two community residents, two teachers from the school and the principal. At high schools, a student will serve as a non-voting council member.

B. Selection of Council Members - The parent and community resident members will be elected by secret ballot. All residents of Chicago are eligible to vote in this election.

--Parents may vote at any and all schools attended by their children, casting ballots for the six parent representatives.

--Community residents vote for the community resident representatives at the schools in whose attendance boundaries they live.

--Board of Education employees vote at the schools where they work for the two teacher representatives and, when applicable, can also vote as parents and community residents.

--Principals automatically serve on the LSC of their schools.

C. Term - LSC members serve for two years.

D. Powers and Duties of the LSC

Members have the power and duty to:

--Evaluate the performance of the principal.

--Determine whether the principal's contract shall be renewed.

--Select a new principal.

--Establish additional criteria to be included as part of the performance contract of the principal.

--Approve the expenditure plan prepared by the principal in consultation with the LSC.

--Recommend textbooks to the principal.

--Request the principal to close positions and open new ones consistent with the local school improvement plan.

--Advise the principal on attendance and disciplinary policies.

--Approve a school improvement plan.

--Recommend candidates to fill any vacant teacher positions at the school.

--Evaluate the allocation of school staff to determine whether it furthers the objectives of the school improvement plan and recommend reallocation when necessary.

--Request the Board of Education to provide training and assistance to the LSC.

--Consult with the principal to develop a school improvement

- plan and approve the plan.
- Monitor implementation of the school improvement plan.
- Select a parent or community member from each LSC to serve on Subdistrict Councils.

E. Open Meetings and Freedom of Information

The School Reform Act provides that LSCs must comply with the Open Meetings Act and FOIA.

2. Subdistrict Councils

A. Composition - One parent or community member elected by and from the parent and community members of each LSC in each of the school district's subdistricts.

B. Powers and Duties of the Subdistrict Council

Subdistrict Councils have the power to:

- Evaluate the performance of the subdistrict superintendent.
- Determine whether the contract of the subdistrict superintendent shall be renewed.
- Appoint a new subdistrict superintendent.
- Establish additional criteria to be included as part of the performance contract of the subdistrict superintendent
- Elect one member (from each Subdistrict Council) to serve on the School Board Nominating Commission.

C. Open Meetings and Freedom of Information

The School Reform Act provides that Subdistrict Councils must comply with the Open Meetings Act and FOIA.

3. School Board Nominating Commission

A. Composition - The Commission comprises one parent or Community member elected by and from each subdistrict council and five members appointed by the mayor who have expertise in relevant fields.

B. Powers and Duties of School Board Nominating Commission

The Commission has the power and duty to:

- Nominate candidates for the Board of Education by choosing a slate of three candidates from whom the mayor chooses one.

DISCUSSION:

1. Public Office

Under Illinois case law, the characteristics of a public office are generally agreed upon. See Wargo v. Industrial Commission, 58 Ill.2d 155, 317 N.E.2d 519 (1974); People ex. rel. Jacobs v. Coffin, 282 Ill. 599, ___ N.E. ___ (1918); Midwest Television, Inc. v. Champaign-Urbana Communications, Inc., 37 Ill.App.3d 926, 347 N.E.2d 34 (1976). The characteristics of a public office include:

A. Creation by statute or constitution - Local School Councils have been created by state legislature through the School Reform Act of 1988.

B. Exercise of some portion of the sovereign power - Local School Councils perform certain governmental functions which were formerly performed by the Board of Education--evaluation, hiring and firing of principals; approval of the school budget; and approval of a local school improvement plan.² In addition, any parent or community LSC member might also serve on a subdistrict council and, in turn, on the nominating commission for members of the school board. From the language of the School Reform Act, one concludes that these functions are discretionary and binding, not merely ministerial or advisory.³

C. Continuing character of the position (not contractual or occasional) - LSC positions are for a two-year term. The duties of the LSC members are continuous, without regard to the person who holds the office. If an LSC member withdraws or becomes ineligible, that member is replaced.

² When the Board of Education exercised these powers, it was performing governmental functions as a body politic and corporate created by state statute. Board of Education v. Chicago Teachers Union, 26 Ill.App.3d, 326 N.E.2d 158 (1. App. Dist. 1975).

³ "The most important characteristic of an office is that it involves a delegation to the officer of some of the solemn functions of government to be exercised by him for the benefit of the public. Some portion of the sovereignty of the state, either legislative, executive or judicial, attaches for the time being to the officer, to be exercised for the public benefit." Coffin, 302 Ill. 576, 582, ___ N.E. ___.

D. Liability for misfeasance or nonfeasance - The Board of Education is required to insure or indemnify LSC members against financial loss and expense from any suit or claim arising out their discharge of their duties on the LSC. It is possible to infer from this that LSC members would run the risk of liability if they were not so insured or indemnified.⁴

E. Independence beyond that of employees - LSC members have direct authority over hiring and retention of the school principal, a school employee. They also monitor and approve the local school budget and the local school improvement plan.

The Board concludes that elected members of an LSC hold a "public office."

2. Elective Public Office

The Governmental Ethics Ordinance does not define "elective" or limit it in any way. Therefore, the commonly understood meaning of the word will be adopted. "Elective" means "chosen by election." The School Reform Act provides that LSC candidates will be nominated and chosen in elections open to every citizen of the City of Chicago.

The Board concludes that elected positions on an LSC are elective public offices under Section 26.2-1(s)(6).

3. Open Meetings Act

LSCs and subdistrict councils must comply with the Open Meetings Act. This further supports the contention that members of these councils serve in public bodies that "exist to aid in the conduct of the people's business." Ch. 102, Par. 41 et. seq.

4. Prohibited Political Activity

Section 26-30 of the Municipal Code of the City of Chicago prohibits any employee of the Commission on Human Relations from engaging in political activity as defined in Chapter 26.2 of the Municipal Code.

Section 26.2-1(s)(6) of the Governmental Ethics Ordinance

⁴ Even if this inference were not correct, LSC members could still be "public officials." To be deemed a "public office," an office need not have all the possible indicia listed in case law. People v. Brady, 302 Ill. 576, 582, ___ N.E. ___ (1922).

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provides that one form of prohibited political activity is "[b]ecoming a candidate for, or campaigning for, an elective public office in an election." The Board concludes that your becoming a candidate for or campaigning for a position on an LSC would be prohibited political activity.

The Board advises you that Sections 26-30 and 26.2-1(s) may limit your participation in the LSC elections in other ways. The attached summary sheet should help you review the portions of the Section 26.2-1 that would restrict your activities involving candidates for elective office and organizations relating to a campaign for elected office.

RECONSIDERATION: This advisory opinion is based upon the facts which are outlined in this letter. If there are additional material facts or circumstances that were not available to the Board when it considered your case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances which are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this letter.

RELIANCE: This advisory opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity which is indistinguishable in all aspects from the transaction or activity with respect to which the opinion is rendered.

The Board hopes that this opinion adequately answers your question. Should you have any questions, do not hesitate to call the Board at 744-9660.

Sincerely,



Mary Milano
Vice Chair



City of Chicago
Richard M. Daley, Mayor

Department of Law
Kelly R. Welsh
Corporation Counsel

Room 1408
180 North LaSalle Street
Chicago, Illinois 60601



October 2, 1989

Ms. Johnnie DeWilde
Interim Executive Director/Legal Counsel
Board of Ethics
205 West Randolph Street
Suite 530
Chicago, Illinois 60606

Dear Ms. DeWilde:

The Board of Ethics of the City of Chicago has rendered an advisory opinion in Case No. 89130.A in which it concluded that running for membership on a Local School Council in the upcoming elections would constitute "political activity" within the meaning of Section 26.2-1(s) of the Governmental Ethics Ordinance (Chicago Municipal Code §26.2-1(s)). Specifically, the Board concluded that the position of community representative on a Local School Council was an "elective public office" within the meaning of Section 26.2-1(s)(6) of the Ordinance. Such defined political activity is prohibited for certain officers and employees of the City.

We have reviewed the opinion and have concluded that City Council did not intend to include the position of Local School Council representative within the definition of "elective public office." We base this conclusion upon consideration of (1) the purpose of the ordinance, (2) the overall definition of "political activity" in the ordinance, and (3) the selection process for and characteristics of the position of Local School Council representative.

First, the City has a strong interest in prohibiting truly political activity on the part of its employees, especially employees in such sensitive positions as, e.g., the Office of Municipal Investigation, the Board of Ethics, the Purchasing Agent, or the Commission On Human Relations. This interest is strongest in relation to political activities relating to the election of the government of the City itself, but also extends



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to the politics of other governmental units where there are formal or informal party or factional links between the politics of different levels of government. This interest is inapplicable to an election totally divorced from the common conception of politics.

Second, the overall definition of "political activity" contained in §26.3-1(s) reflects this interest, and does not explicitly reach an election not related to political activity. Throughout the 15 subsections of this section, there are repeated references to serving as an officer of a political party, club, or organization, or otherwise acting on behalf of political parties or organizations. In fact, "[s]erving as an officer of a political party" is the very first part of the definition. There are also references to activities associated only with normal political elections, such as "acting as recorder, watcher, challenger or similar officer at the polls on behalf of a political party or a candidate in an election."

Third, the selection process for members of a Local School Council is far removed from the normal political election. Citizenship is neither necessary nor sufficient as a qualification to participate in selection of an LSC member. The members are instead selected by parents of the children in the particular school, who elect parent representatives, and residents of the school's attendance district, who elect "community representatives." Parents are not subject to an age qualification either to vote or to serve as an LSC member; residents must be 18 to vote. The elections are not subject to the Election Code, but rather are run by the existing Local School Improvement Council or the principal under regulations issued by the Board of Education.

The powers of a Local School Council are also very limited. Physically, a Council's authority is limited to a single school. Substantively, a Council's power is primarily the power to recommend and advise. A local School Council has some control only in two areas: (1) the school's principal's employment and (2) the school's budget. A Council can add particulars to the principal's performance contract (primarily drafted by the Board of Education); the Council is to decide whether or not to rehire a principal when his or her contract expires (only the Board can seek to have a principal discharged for cause during the term of this contract); and, if the principal is not rehired, the Council chooses his replacement. On budget, the Council may approve or disapprove the school's expenditure plan. This plan is prepared by the principal and is largely governed by fixed costs such as salaries set by the Board, and by state and federally mandated programs.

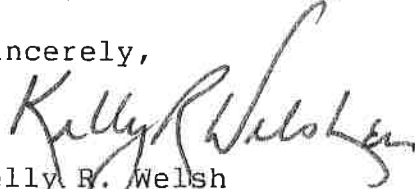
The governmental power, on the other hand, is reserved to the Board of Education. It is the Board that has the power to tax, to make contracts, to determine whether new schools should be built or old ones closed, and to determine (within legislative requirements) the curriculum of the schools. The Local School Councils are also ultimately subject to the control of the Board of Education. Where a local school has failed to develop, implement, or make adequate progress toward complying with the school improvement plan, or has otherwise failed or refused to comply with the provisions of the School Reform Act, other applicable laws, collective bargaining agreements, court orders, or with authorized Board rules, and where remediation efforts have failed, the Board may, among other things, order new Council elections, remove and replace the principal, or close the school.

The responsibilities of the Local School Councils are so limited and so non-governmental in nature that the selection of the Council members cannot be considered comparable to the general election of public officers and representatives. Rather, their selection is more like the selection of such administrative bodies as the governing boards of recipients of grants from the federal Legal Services Corporation (required to be made up of attorneys appointed or elected by local bar associations, legal service clients, and a minority of others, 45 C.F.R. §§ 964.25, et seq.) or attorney members of judicial nominating commissions in states that have them. See, e.g., Missouri Supreme Court Rule 10.02.

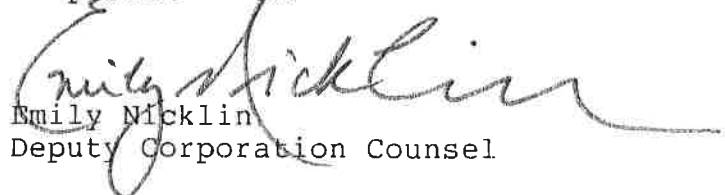
In summary, because the ordinance's purpose and relevant definitional language do not reach the selection process for members of the Local School Councils and because the powers of Local School Councils are so limited, the Office of the Corporation Counsel has concluded that membership on a Local School Council is not an "elective public office" within the meaning of Chicago Municipal Code §26.2-1(s)(6).

If you have any questions, do not hesitate to call.

Sincerely,



Kelly R. Welsh
Corporation Counsel



Emily Nicklin
Deputy Corporation Counsel