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Claiming a Conflict when No Conflict Exists

Shannon Cuttle's Excuse for Not Answering Questionnaire Does Not Hold Up

(Maplewood, NJ) – Our instructions on our questionnaire to all of the Board of Education candidates is below. We gladly obliged any candidate that did not make the October 12 submission deadline and conveyed that when communicating with the candidates. **We also made clear that all non-responses would be made public.**

*The following questionnaire is provided to candidates for the South Orange-Maplewood Board of Education for their completion. We ask that all responses are returned by **October 12, 2018**. Responses should be e-mailed to **blackparentsworkshop@gmail.com**. All responses will be published in the Black Parents Workshop fall Election Guide that will be distributed the week of October 29. We encourage detailed responses to the questions. All non-responses will be noted as such.*

We offer the analysis below in response to the claim of candidate Shannon Cuttle that they did not respond based upon counsel from the New Jersey School Boards Association and a possible conflict due to the Black Parents Workshop's lawsuit against the South Orange-Maplewood School District.

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Analysis

Shannon Cuttle's legal or ethical rationale for not responding to the BPW questionnaire suggests that there is some relationship with BPW or the current litigation that would present a conflict of interest.

A conflict of interest could only exist if (1) Shannon Cuttle was a party to the litigation, (2) Shannon Cuttle was a witness to actions asserted in the litigation, or (3) Shannon Cuttle enjoyed a relationship with the Black Parents Workshop.

Therefore, BPW must set the record straight that it has, at no time, had any pecuniary, monetary, financial, business or familial ties to Shannon Cuttle personally, or the Shannon Cuttle campaign, generally.

In addition, in the interest of providing balanced information to voters, BPW took the liberty to construct its own legal analysis with respect to Shannon's legal rationale for not responding to the BPW questionnaire.

Generally, the New Jersey School Ethics Commission prohibits BOE members from voting, discussing and participating in any matters that involve or have the appearance of involving a conflict of interest. If a BOE member's activities or affiliations demonstrate that there is or may be a conflict, the BOE member should or must be recused from the applicable matter. NJSEC 18A: 12-24.

If, however, there is no conflict, the BOE member is not prohibited from participating in BOE activities and is not required to recuse oneself.

The facts of this matter are as follows:

First, the New Jersey School Ethics provisions DO NOT apply to non-BOE members. Conflicts don't arise until a person actually becomes a BOE member.

Second, a BOE member must, or should, recuse oneself from certain BOE matters if there is a known, potential or perceived conflict that deals with a financial interest, familial interest or business interest. In this instance, however, those facts are not present.

In this case, Shannon does not have a financial interest in BPW as Shannon has never supported BPW financially and BPW has never donated to the Cuttle campaign.

Shannon does not have any familial ties to any member of BPW.

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Shannon has never been employed by BPW and they have never done business, or attempted to engage in business, with BPW.

Shannon is also not a plaintiff in the lawsuit between the South Orange/Maplewood School District and Black Parents Workshop.

Moreover, Shannon's legal assertion, that responding to the BPW questionnaire may result in recusal from matters regarding the topics included in questionnaire, is not true and without merit.

In fact, if we assume that their assertion is true, then the same analysis and rationale would, directly and immediately, apply to currently sitting BOE member Annemarie Maini.

However, Ms. Maini responded in full to the BPW questionnaire and there is no legal or ethical basis, based on BPW's legal analysis, that would prohibit Ms. Maini from doing so. Nor is there any basis to require, or potentially require, Ms. Maini to recuse herself from any topic involving BPW for merely responding to the questionnaire.

It should also be noted that Shannon has already responded to similar questions posed by SOMA Justice and PARES. There is no legal or ethical barrier that would permit them to respond to one group that is not a plaintiff in a lawsuit with the district while simultaneously preventing them from responding to similar questions posed by a group that is in litigation against the district.

Therefore, in our view, there is no legal or ethical risk of recusal for Shannon to answer any questions with respect to the BPW questionnaire.

We will also note that other candidates have also received legal advice with respect to this question and have received analysis consistent with BPW's analysis.

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