



Legal Representation for School Boards

8.9.2016

Question:

Can you provide guidance regarding legal representation for school boards, specifically in situations where a board has retained legal counsel and allows individual trustees, in their capacity as trustee, to communicate with the board-retained legal counsel regarding school-related legal issues?

Answer:

If the attorney is retained by the Board, serving district board members in an official capacity, and the district is providing the compensation to legal representation, the Board remains the client of legal counsel. The individual board member is not the client of the counsel. In such a capacity, the Board is entitled to know the subject matter of the representation advice given or addressed.

Should an individual board member, as an individual, seek to have their own personal legal counsel, such counsel would have a responsibility directly to and a legal relationship with their individual client only. In such a situation, the Board would not have retained the counsel and would not be paying the bills for counsel's time.

As to the consequence of individual board members, in their official capacity, obtaining advice on official business with district retained, and district-paid legal counsel(s), it is our advice that the Board establish clear guidelines and policy/procedure to be shared with the individual board members and selected counsel informing them of the following:

1. The Board member may seek advice only on official business and as such, the attorney client relationship is between the Board, as an entity, and legal counsel.
2. A sufficient description in the legal billing shall be made of the topic of legal advice so that the Board can be kept apprised of the nature and character of the legal issues being discussed between the individual board member and the selected counsel.
3. Whereas the Board is responsible for payment and whereas the attorney client relationship is between counsel and the Board, the attorney shall be prohibited from giving advice which may be contrary to the interests and policies of the elected school board.

Through the above recommended steps, it should be abundantly clear to counsel that they are representing the organization or the entity, not an individual. This provides such counsel with a very clear understanding of their role and responsibilities.

contact us with your question:



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Ask ISBA is a service of the Idaho School Boards Association. Questions may be published online at www.idsba.org or in ISBA's quarterly magazine, the SLATE.

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