

June 27, 2000

FOR PUBLIC RELEASE

RE: Advisory Opinion A10-00

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of the board that you represent. You have asked whether a board member whose spouse is employed in the same school district as a teacher may participate in discussions and votes involving the appointment of the superintendent, principal and vice principal or other employment issues regarding those positions.

At the Commission's request, you have provided that the school system is a K-8 district with 900 students. Therefore, each of the aforementioned positions is located in the same building as the spouse. You have also provided that the board is in the process of selecting a new superintendent, so you would appreciate an expedited opinion.

The Commission has reviewed your request and now advises that the board member may participate in the search for the administrators named and vote on that appointment without violating the School Ethics Act. However, once the administrators are hired and become the supervisor of the spouse, then the board member would violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq. if he or she were to participate in any employment issues regarding that person such as performance reviews, contract negotiations, or promotions.

The provision of the School Ethics Act that is applicable to your question is N.J.S.A. 18A:12-24(c), which provides:

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.

Regarding the issue of a financial involvement, because the board member's spouse is a teacher in a one building K-8 school district, the superintendent, principal and vice-principal can all be considered supervisors of the spouse. Nevertheless, the Commission believes that it would not be reasonable for the public to expect that a board member with a spouse who teaches in the district would choose to appoint administrators who are most likely to be financially favorable to teaching staff. Since teachers are employed pursuant to a collective bargaining agreement, the chance of the choice affecting the board member or the spouse financially is even more limited. Therefore, the Commission finds that the selection of the spouse's supervisor would not create a direct or indirect financial involvement for the board member or the spouse that might reasonably be expected to impair his objectivity in violation of N.J.S.A. 18A:12-24(c).

Similarly, the Commission finds that the board member and his spouse do not have a personal involvement in the selection of administrators that would create some benefit to them. This may change if the selection is for someone who already knows the board member's spouse. Then, it would not be speculative to suggest that the board member voted for someone who would be favorable to the spouse. There would be information in that regard. In so advising, the Commission is mindful that the selection of the superintendent of schools is one of the most important decisions that a board of education has to make. In a one-school district, the choice of principal is almost as important. The Commission advises that the proper accommodation of the board member's right to participate in these important appointments with the public's need to know that the selection was made based on the best candidate for the district is to allow the board member to participate. Therefore, the Commission advises that the board member would not violate N.J.S.A. 18A:12-24(c) by participating in the selection of the superintendent, principal or vice-principal.

Regarding other employment issues that may arise concerning the administrators, the Commission previously concluded in *School Ethics Commission v. Gunning*, C15-93 (September 22, 1994), that a board member violated N.J.S.A. 18A:12-24(c) of the Act when he voted on the superintendent's raise when his spouse was employed as confidential secretary to the superintendent. The Commission finds that in the present circumstances as well, there is an opportunity for the spouse's employment to be affected in terms of the way the administrators treat and evaluate the spouse, although perhaps not in terms of affecting the contractually determined salary. Therefore, the Commission concludes that the board member and his spouse will have at least a personal involvement in the employment issues of the supervising administrators that constitutes a benefit to

them. The board member and the spouse may also have a financial involvement in other issues involving the employment of his spouse's supervisors that might reasonably be expected to impair his or her objectivity if increments are based on performance evaluations. Therefore, the Commission advises that the board member would violate N.J.S.A. 18A:12-24(c) of the Act if he were to participate in discussions and vote on employment issues concerning the administrators who supervise his or her spouse after they are appointed.

For the foregoing reasons, the Commission advises that the board member may participate in the selection of the superintendent, principal and vice-principal. However, once the successful candidates fill these positions and become the supervisor of the board member's spouse, then he or she must abstain from all decisions and discussions regarding their employment.

We hope this answers your inquiry. Because the Commission believes that other school officials may seek an opinion on this issue, it is making this opinion public.

Sincerely,

Paul C. Garbarini
Chairperson