

This Advisory Opinion has been superseded by Martinez v. Albolino, C45-11 (June 27, 2012) as well as the decisions and other advisory opinions which followed; therefore, it is no longer considered valid advice.

October 19, 2006

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A14-06

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of a school board member. The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the board member whose conduct is the subject of the advisory opinion request. The Commission also notes that the board member did not submit a response to the advisory opinion request within the 10 day time limit set forth in N.J.A.C. 6A:28-5.2(b).

You have asked whether a board member would violate the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., if he or she were to participate in discussions and votes on the employment and compensation of the superintendent and building principals when that board member has a spouse who serves as a substitute teacher in the school district where he or she serves. You have also asked for clarification regarding application of the principle at issue in Advisory Opinion A30-05, (March 10, 2006) to the facts set forth in your advisory opinion request.

You have set forth that the board member's spouse is not in any bargaining unit and is the subject of recommendations from the superintendent to the board, on an annual basis, for all terms, conditions and benefits of employment. You have further set forth that the board member's spouse is on a substitute teacher list submitted annually to the board for approval. Upon the Commission's request for more information, you set forth that a potential substitute candidate must fill out various forms, is interviewed by one of the district principals, is recommended for hire and then placed by the superintendent on the board agenda for approval. The substitutes are picked and called for service by the school secretaries. Teachers or building principals can state a preference for a particular substitute. You further set forth that the substitutes are evaluated each time they enter a school/classroom and report for service by the principal as well as the absentee teacher.

At its September 26, 2006 meeting, the Commission advised, pursuant to its authority in N.J.S.A. 18A:12-28(b), that the board member would not violate the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., if he or she were to participate in discussions and votes on the employment and compensation of the superintendent and building principals since his or her spouse serves as needed as an on-call substitute teacher.

Your inquiry turns on the application of N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has 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;

In determining whether there is a conflict with N.J.S.A. 18A:12-24(c), the Commission must first determine whether the public could reasonably perceive that the board member's objectivity or independence of judgment may be impaired because the board member or his or her immediate family members have some direct or indirect financial involvement in discussions and votes on the superintendent and the building principals. The School Ethics Act at N.J.S.A. 18A:12-23 defines "member of immediate family" as the spouse or dependent child of a school official residing in the same household. Therefore, the board member's spouse is an immediate family member.

In A30-05, two board members had spouses who worked in the school district, one spouse as an instructional associate and the other spouse as a secretary in the office of the high school nurse. The Commission found that the two board members had an indirect financial involvement in their spouses' employment. The Commission reasoned that since the board members' spouses are directly supervised by an administrator, that it would be difficult for the board members to be completely objective in acting on employment issues for that administrator and any administrators supervising the spouses' direct administrator. The Commission also reasoned that the public could reasonably expect that the board member's involvement in employment issues could positively or negatively impact the employment of the board members' spouses. The Commission advised the two board members that they would violate N.J.S.A. 18A:12-24(c) if they were to participate in employment issues regarding the administrators supervising their spouses including the supervisors of those administrators.

The situation presented in this advisory opinion request can be distinguished from the situation in A30-05, because the board member's spouse is not a full time employee, but only serves as needed on an on call basis. Since the board member's spouse is not a permanent employee, he or she is not subject to increments or pay increases based on collective bargaining. The board member's spouse is also evaluated by the absentee teacher and the building principal each time he or she reports for service. There is also no direct line of supervision over the substitute teachers. The Commission finds that, in this situation, the board member's

involvement in employment issues would not positively or negatively impact the employment of his or her spouse. The Commission also finds that since the board member's spouse is an at will part time employee, that it would not be reasonable to expect that the board member's objectivity or independence of judgment would be impaired.

Therefore, the Commission advises that the board member would not violate the Act if he or she were to participate in discussions and votes on the employment and compensation of the superintendent and building principals since his or her spouse serves as needed as an on-call substitute teacher.

We trust that this opinion answers your inquiry.

Sincerely yours,

Paul C. Garbarini,
Chairperson

PCG/LJB/MET/advisory opinions/A14-06

I hereby certify that the School Ethics
Commission voted to make this opinion public
at its public meeting on November 28, 2006.

Lisa James-Beavers
Executive Director