

June 2, 1998

**FOR PUBLIC RELEASE**

RE: Advisory Opinion A08-98

The School Ethics Commission has received your request for an advisory opinion on behalf of the board that you represent. You are seeking the answer to several separate questions. First, you would like to know whether a board member may negotiate and vote on a contract when her mother is a substitute cafeteria worker not included in any negotiations unit, but the cafeteria helpers are represented by the local education association. Second, you would like to know whether a board member who has a sister-in-law, who is the sister of the board member's spouse, in the local bargaining unit may participate in negotiations. Third, you would like to know whether the Commission would consider the contracts for the teachers' association, the secretaries' association and the administrators' association to be linked for the purposes of determining whether board members with relatives who work in the district may participate in negotiations on various contracts. The Commission rendered this opinion at its meeting of May 26, 1998.

The Commission renders the following advice to your board for the reasons set forth below. First, the substitute cafeteria workers' salary and benefits are not linked to the cafeteria helpers and therefore the board member whose mother is a substitute cafeteria worker may negotiate and vote on the contract with the local education association. Second, the board member whose sister-in-law is in the local bargaining unit may participate in negotiations and vote on the contract with that unit. Third, the board members who have relatives in the teachers' and secretaries' associations may not vote on contracts for the unit representing their relatives. However, they may negotiate and vote on the other units provided that the board does not have an understanding that teachers will get the same benefits as secretaries or secretaries will get the same benefits as teachers when the board is negotiating the contracts.

Regarding the first question, you indicate that one of your board members has a mother who is a substitute cafeteria worker. As such, the mother is not a member of any district bargaining unit. The cafeteria helpers are included in a collective bargaining unit represented by the teachers' association, an NJEA affiliate. You note that the substitute cafeteria worker does not receive any health benefits or paid holidays. She is paid an hourly rate, as are the cafeteria helpers. For cafeteria helpers, in 1990/91, the regular rate was \$9.67 and the substitute rate was \$8.06. In the 1991-94 collective bargaining agreement, the regular rate was set based on years of service as follows: 1st year employee received 70% of the long term employees' hourly rate; 2nd year employee, 80% hourly rate; 3rd year employee, 90% hourly rate; and 4th year and after, 100%, \$10.15. The board last increased the substitute rate in October 1991 to \$8.83. The regular rates were increased again in the 1994-97 collective bargaining agreement, but the substitute rate remains at \$8.83.

The Commission addressed the issue of linking provisions in contracts in Public Advisory Opinion A16-96 (January 27, 1997). There, the Commission advised that it would be a violation of N.J.S.A. 18A:12-24(c) of the Act for a board member whose spouse is an administrator to vote on the teachers' contract when the administrators' contract had several provisions referencing and linking to the teachers' contract. For example, regarding salary, the administrators' contract provided that, "Any additional increase in longevity given to teachers in their contracts shall also be given to the administrators." The Commission advised that linking provisions such as this created a financial involvement in the outcome of the teachers' contract that might reasonably be expected to impair the board member's objectivity when negotiating the teachers' contract, even though the spouse was an administrator. Thus, the Commission advised that the board member should abstain from such discussions to avoid violating N.J.S.A. 18A:12-24(c).

Considering the information that you have provided, the Commission does not find any similar linking provisions between the terms and conditions of the cafeteria helpers and the substitute cafeteria workers. The substitutes' salaries appear to be determined independently and the substitutes do not receive any health benefits or paid holidays that could be affected by the negotiated agreement with the education association. The fact that the substitutes' hourly rate has not been increased since 1991 is further indication that the cafeteria helpers' salaries do not affect those of the substitute workers. Therefore, the Commission cannot find in the present circumstances that the board member or her mother could receive any financial or personal benefit from the outcome of the negotiations with the local education association. Thus, the Commission concludes that the board member would not violate N.J.S.A. 18A:12-24(c) if he or she were to participate in negotiations or vote on the contract with the local education association that represents the cafeteria helpers.

The second question is whether a board member who has a sister-in-law (sister of the board member's spouse) in the local bargaining unit may participate in negotiations without violating the School Ethics Act. Again, the relevant provision of the Act is

N.J.S.A. 18A:12-24(c). The Commission previously advised that a board member who has an emancipated child or son/daughter-in-law in the local bargaining unit with which the board is negotiating has an indirect personal involvement in the contract that might reasonably be expected to impair his or her objectivity. Therefore, he or she should not participate in negotiations or vote on the contract. The standard is what “might reasonably be expected.” The Commission therefore must determine whether the public might reasonably perceive that the board member’s objectivity is impaired by the relationship. The Commission believes that a board member’s relationship with a child and thus, son or daughter-in-law, is different from that with a spouse’s sibling. The latter does not provoke the same concern that the board member has a great interest in his child’s financial well being that conflicts with his duty to the board. The Commission does not find that the public would reasonably expect or perceive that a board member whose spouse’s sister is in the local bargaining unit could not be objective in negotiating. Therefore, the Commission advises that the board member with a sister-in-law in the local bargaining unit may negotiate with that unit without violating N.J.S.A. 18A:12-24(c). Please note however, that this opinion does not address the situation whereby the sister-in-law is being considered personally for an appointment or a promotion since that question has not been asked.

The third question is whether the Commission would consider the contracts for the teachers’ association, the secretaries’ association and the administrators’ association to be linked for the purposes of determining whether certain board members with relatives who work in the district may participate in negotiations on various contracts. You have set forth that the mother of a board member is a teacher, the spouse of another board member is a secretary and the sister of a third member is a teacher. You have provided the contracts in question and have highlighted the relevant portions.

As you know, the School Ethics Act prohibits a board member from acting in his official capacity in matter in which he has a direct or indirect personal or financial involvement that might reasonably be expected to impair his objectivity. N.J.S.A. 18A:12-24(c). The Commission has ruled that a board member who has a relative in the same local bargaining unit with which the board is negotiating would be in violation of N.J.S.A. 18A:12-24(c) if he or she were to participate in negotiations or vote on the contract. *Advisory Opinion A23-94* and *In the Matter of Russo and Scarano, C12-97 (January 27, 1998)*. Although the Commission has never expressly answered the question of whether a person whose mother is in the local bargaining unit is prohibited from negotiating, your question appears to presume that the board member whose mother is a teacher should not negotiate the teachers’ contract. The closer question is whether these three board members have an indirect personal or financial involvement that might reasonably be expected to impair their objectivity when negotiating the contracts of the other units due to linkage of terms.

The Commission has reviewed the contracts that you submitted. Regarding payment of unused sick leave on retirement, the teachers, secretaries and administrators all receive different amounts. The teachers receive \$130.00 for every two days to a

maximum of \$16,000; secretaries receive \$50.00 for every three days to a maximum of \$3,000 up to 199 days and \$4000 for over 200 days; and administrators receive 50% of their daily rate to a maximum of \$22,000. Similarly, the teachers, secretaries and administrators all receive different amounts of longevity pay, none of which is based on the other contracts. Each union also receives different stipends for advanced credits and different salary increases.

It appears that the only similarity that exists is in the area of insurance protection. The teachers' and secretaries' contracts are identical regarding health benefits. For example, both provide for the employee to pay 50% of the cost of disability insurance. The administrators' contract does not provide the same coverage, except all employees of the district are covered by the same medical plan and all have 100% of their dental premiums paid by the district. The administrators' contract provides that the employee must pay 100%, rather than 50% of the cost of disability insurance. However, it is not clear that the teachers' and secretaries' contracts are linked solely because the insurance protection is the same.

Looking at the contracts in their entirety, it appears clear that each unit negotiates its contract separately. The fact that the teachers' and secretaries' contracts are the same regarding health benefits and disability does not necessarily mean that they are linked. Rather, the Commission will ask you to advise the board members that if the board has an understanding that the secretaries receive health benefits equal to that of teachers, or the other way around, then the contracts are linked on that issue. Linkage on an important negotiated item such as health benefits suggests that the board members related to teachers also have an indirect personal involvement in the secretaries' contract such that if they were to negotiate and vote they would be in violation of N.J.S.A. 18A:12-24(c). Similarly, the board member whose spouse is a secretary would have an indirect personal or financial involvement in the teachers' contract such that he or she would be in violation of subsection c if he or she were to negotiate or vote on the teachers' contract. Again, if the contracts are negotiated separately and the two units simply negotiated for the same health benefits terms without reference to the other, then the linkage does not exist and the board members only have to abstain from negotiating and voting in the unit that represents their relative.

The Commission finds no linkage with the administrators' contract and advises that the three board members in question may negotiate and vote on that contract without violating the School Ethics Act.

In summary, the Commission advises that the board member whose mother is a substitute cafeteria worker may negotiate with the local education association representing the teachers and cafeteria helpers. Second, the Commission advises that the board member with a sister-in-law in the local education association may negotiate the with that association. Third, the Commission advises that the three board members with relatives in the teachers' and secretaries' associations may not negotiate the contracts of the associations representing their relatives. However, they may vote on the other

associations' contracts so long as the board does not have an understanding with the secretaries' or teachers' association that each should get the same level of health benefits as the other.

We hope this answers your inquiry. Because the Commission believes that other boards will raise these issues in the future, the Commission is making this opinion public.

Sincerely,

Paul C. Garbarini  
Chairperson