

November 15, 2002

FOR PUBLIC RELEASE

Re: Advisory Opinion A14-02

The School Ethics Commission is in receipt of your advisory opinion request on behalf of the Board of Education that you represent ("Board"). First, you have asked whether a Board member, whose brother-in-law teaches in another school district, would violate the School Ethics Act if he participated in negotiations with the local education association. Second, you have inquired as to whether the Board may invoke the Doctrine of Necessity to permit the entire Board to negotiate, if only two or three members without conflicts are permitted to negotiate. Third, you have asked whether the Board may invoke the Doctrine of Necessity to permit the Business Administrator, who has a conflict of interest under the Act, to provide technical assistance during negotiations.

The Commission discussed your request at its meeting on September 24, 2002 and advised the following. First, the Board member whose brother-in-law teaches in another school district would not violate the Act if he were to participate in negotiations with the local education association. Second, the Doctrine of Necessity should not be invoked to allow the entire Board to participate in negotiations when there are three Board members without conflicts who may serve as the negotiating committee. Third, the Business Administrator may provide technical assistance to the Board, as necessary, without invoking the Doctrine of Necessity.

You have set forth that the Board that you represent is preparing to commence contract negotiations with the district education association ("Association"), which is a local chapter of the New Jersey Education Association ("NJEA"). You indicate that the district is a K-6 district that employs approximately 33 certified teachers who are

represented by the Association. You set forth that the Board consists of nine members, six of whom admittedly have conflicts of interest prohibiting them from participating in negotiations with the Association. You indicate that the Board president and one other member have no conflicts of interest and that the remaining board member has a brother-in-law who is a teacher in another school district, which may be perceived as a conflict. You further note that *Public Advisory Opinion A55-95 (January 23, 1996)* sets forth that if there are three members without a conflict who can negotiate on behalf of the Board, they must serve as the committee. You also mention that the Board employs a full-time Business Administrator, who is married to a teacher who is a NJEA member employed in another county.

First, you ask whether the Board member can participate in negotiations when his brother-in-law teaches in another school district. The relevant provision of the School Ethics Act is N.J.S.A. 18A:12-24(c), which provides, in pertinent part:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or 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.

The Commission has previously advised in *Public Advisory Opinion A08-98 (June 2, 1998)* that a 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). The Commission noted that the standard is what “might reasonably be expected to impair objectivity” and reasoned that the public would not reasonably expect or perceive that a board member whose spouse’s sister is in the local bargaining unit could not be objective in negotiating. The Commission finds it less likely that a Board member’s objectivity would be impaired where his brother-in-law teaches in another school district and is not a member of the local Association with which the Board will negotiate. Therefore, the Commission advises that the Board member’s participation in negotiations would not constitute a matter in which he has a financial involvement that might reasonably be expected to impair his objectivity in violation of N.J.S.A. 18A:12-24(c).

Second, you ask whether the Board may invoke the Doctrine of Necessity to permit the entire Board to negotiate, if only two or three non-conflicting members are permitted to negotiate. You indicate that the Board president and one other member have no conflict of interest. The Commission also notes, as set forth above, that the Board member, whose brother-in-law teaches in another district, would not violate the Act if he were to participate in negotiations. Thus, the Commission finds that there are three Board members without conflicts who may serve as the negotiating committee. As you set forth, the Commission has advised in *Public Advisory Opinion A55-95* that if there are three members without a conflict who can negotiate on behalf of the Board, they must serve as the committee. There is no need to invoke the Doctrine of Necessity.

Third, you set forth that the Business Administrator has a conflict of interest that prevents him from participating in the negotiating process and ask whether the Doctrine of Necessity may be invoked to permit him to provide technical assistance during negotiations.

The Commission addressed the situation of administrators in such circumstances in *Public Advisory Opinion A10-93(b) and A07-94 (June 23, 1994)*. This opinion allows administrators to provide technical information that is necessary to the collective bargaining process when no one else in a district can provide that information to the negotiating team. The Commission applied the above-referenced opinion in *Public Advisory Opinion A13-99 (September 28, 1999)*. In *A13-99*, the Business Administrator was prohibited from fully participating in negotiations with the local education association because his spouse taught in another school district and was a member of another NJEA affiliate. The Commission noted that the Business Administrator was responsible for the board's budget and was needed to answer financial and budgetary questions. The Commission, therefore, concluded that he had special knowledge that fell within the allowance for the providing of technical information. The Commission advised that the Business Administrator could participate in negotiations with the local bargaining unit for the purpose of providing his technical expertise, as long as he restricted his comments to providing financial information requested. Therefore, the Commission similarly advises that the Business Administrator, in the present matter, may participate in negotiations for the limited purpose of providing technical assistance, as necessary, limiting his comments to the financial information that he possesses, without violating N.J.S.A. 18A:12-24(c). Thus, there is no need to invoke the Doctrine of Necessity.

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