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DEPARTMENT OF EDUCATION

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May 1, 2013

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A03-13

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on behalf of and with the consent of two Local Board of Education (Board) members: Member A and Member B. The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the Board members, who are the subjects of your request. Because the Board members did not submit any additional comments within the 10-day time limit set forth in N.J.A.C. 6A:28-5.2(b), the Commission will provide its advice based only on the information you included in your advisory opinion request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31.

You have asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., for these Board members to participate in the search, employment discussions and decisions involving the future Superintendent. You have noted that Member A's mother is employed by the Organization¹, which is self-sustained by the other programs run by the same Organization; however, his mother's paychecks are issued by the Board and the Board must annually approve her continued employment.

The Commission discussed your request at its March 19, 2013 meeting and has determined that the decision in Martinez v. Albolino, et al., Hackensack Board of Ed., Bergen County, C45-11, 6/26/12, adequately governs the situation articulated herein regarding both Board Member A and Board Member B as the ruling applies to the search and post-hire personnel issues involving the new Superintendent.

Further, you have stated that Board Member B's, brother-in-law is a custodian for the District and that he reports to the Supervisor of Buildings and Grounds, whose supervisor reports to the Superintendent. You have correctly noted that the situation may be different from the previous circumstances since a brother-in-law is not a "relative" within the meaning of N.J.S.A. 18A:12-23. Here, however, your inquiry turns on the application of N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

¹ The Organization is a program service for the community which runs pre- and after-school activities for students/parents as well as summer programs. The Organization operates out of school buildings owned by the District.

In this instance, the brother-in-law is considered an “other” within the meaning of this subsection. Additionally, the very purpose of the Act as set forth in N.J.S.A. 18A:12-22(a) states:

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust **or which creates a justifiable impression among the public that such a trust is being violated.** [Emphasis added.]

In view of this Board member’s familial relationship with his brother-in-law, the Commission has determined that should he become involved in the pre-hire and post-hire Board functions in selecting and discussing personnel matters involving the Superintendent, this board member would violate N.J.S.A. 18A:12-24(b). Moreover, such participation in employment discussion involving the Superintendent may create a justifiable perception that the public trust has been violated.

The Commission further cautions that Board Member A may be in violation of the Act should he vote for a pay increase for or vote on a resolution continuing his mother’s contracts. The Commission has ruled that a board member would be in violation of N.J.S.A. 18A:12-24(c) if he/she were to participate in negotiations or vote on the contract when the relative is in the same local bargaining unit with which the board member is negotiating. In the Matter of Russo and Scarano, C12-97 (January 27, 1998), aff’d, Commissioner Decision of Education No. 156-98, decided April 16, 1998. A similar conflict would arise for both of these Board members if there were some link between the employees’ contracts and any other association’s contract that these Board members may negotiate with the local education association and vote on. Should a direct or indirect benefit inure to these family members, whether by increase in salary or other emolument, then that link may suggest to the public that the Board member’s objectivity might reasonably be impaired when voting on those contracts.

Since both Board members are prohibited from contributing in any way in the search and post-hire personnel discussions regarding the Superintendent, they may not be present during closed session when such deliberations are taking place. However, these Board members still retain their rights as members of the public. As such, they may attend the public session since there is no risk that confidential information will be shared with the public nor inquired of any Board member at that time.

We trust this that this opinion fully answers your inquiry.

Sincerely,

Robert Bender, Chairperson