

March 10, 2006

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A30-05

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

You have asked whether two board members who have spouses who are employed by the board may participate in evaluations, personnel actions and compensation for the principals, the Director of Elementary Education and the Superintendent without violating the School Ethics Act (Act) N.J.S.A. 18A:12-21 et seq. You have also asked for a clarification regarding the interpretation of the application of the principle at issue in *Advisory Opinion A10-00*, (June 27, 2000) to the facts set forth in your advisory opinion request.

You have set forth that the school district has seven elementary schools (K-4th grade), one pre-school and early childhood center, one intermediate school (5th & 6th grades), one middle school (7th & 8th grade) and one high school. You have further set forth that board member A has a spouse who is employed as an instructional associate. She is an experienced teacher who works with a classroom teacher in an elementary classroom for a specialized population. The immediate supervisor of the spouse of board member A is the principal of that school. The principal's immediate supervisor is the Director of Elementary Education, who is a central office administrator who reports directly to the Superintendent. The position of the spouse of board member A is not

included in any bargaining unit and is the subject of recommendations from the Superintendent to the board along with other non-unit employees for all terms, conditions and benefits of employment.

You have further set forth that board member B has a spouse employed in the district as a secretary in the office of the nurse at the high school. The principal of the high school is the direct and immediate supervisor of the spouse. The Superintendent is the immediate supervisor of the principal of the high school. Board member B's spouse is a member of the secretaries' union and the majority of the terms, conditions and benefits of her employment are subject to collective bargaining.

At its January 24, 2006 meeting, the Commission determined, pursuant to its authority in N.J.S.A. 18A:12-28(b), that the board members would violate N.J.S.A. 18A:12-24(c) if they were to participate in evaluations, personnel actions and compensation for the principals who supervise the spouses, the Director of Elementary Education (for board member A only) and the Superintendent. Therefore, the Commission advises that the board members must recuse themselves and not participate in any discussions regarding the above matters.

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 two board members' objectivity or independence of judgment may be impaired because the board members or their immediate family members have some direct or indirect financial involvement in the evaluations, personnel actions and compensation for the principals, the Director of Elementary Education and the Superintendent. The Commission must next determine whether the two board members have a personal involvement that is or creates some benefit to the school officials or members of their immediate family. 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 spouses are immediate family members.

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), when he voted on the Superintendent's raise when his spouse was employed as a confidential secretary to the Superintendent. In Gunning, the Commission noted that it

would be difficult for the board member to be completely objective in acting on the Superintendent's raise since he knew that his spouse worked for the Superintendent. The Commission reasoned that if the Superintendent were displeased with the board member's vote, the employment of the board member's spouse could be negatively impacted and the spouse may be treated poorly on the job or may not be recommended for a raise in the succeeding year.

In *Advisory Opinion A10-00*, (June 27, 2000), the Commission cited Gunning, when it advised that a board member would violate N.J.S.A. 18A:12-24(c) if he or she were to participate in any employment issues regarding the Superintendent, principal and vice principal when the board member's spouse was employed in the school district as a teacher. The Commission noted that the board member's spouse was a teacher in a one building K-8 school district and that the Superintendent, principal and vice-principal could all be considered supervisors of the spouse. In *A10-00*, the Commission also found that there was an opportunity for the spouse's employment to be affected by the board member's vote in terms of the way the administrators treat and evaluate the spouse, although not in terms of affecting the contractually determined salary.

Board member A has an indirect financial involvement with his spouse's employment. Since the principal directly supervises the board member's spouse, the Commission notes that, similar to Gunning, it would be difficult for the board member to be completely objective in acting on any employment issues regarding the principal. The public could reasonably expect that the board member's involvement in employment issues could positively or negatively impact the employment of the board member's spouse. Therefore, the Commission advises that the board member would violate N.J.S.A. 18A:12-24(c) if he were to participate in any employment issues regarding the principal.

The Commission now turns to board member A's participation in employment issues regarding the Director of Elementary Education and the Superintendent. The Director of Elementary Education supervises the principal to whom the board member's spouse reports and is accountable to Superintendent who ultimately makes recommendations regarding the employment terms of the board member's spouse to the board. Because of the Director's position in regards to the board member's spouse, the public could reasonably perceive that the board member's objectivity and independence of judgment may be impaired as it relates to employment issues regarding the Director of Elementary Education. Therefore, the Commission advises that the board member would violate N.J.S.A. 18A:12-24(c) if he were to participate in any employment issues regarding the Director of Elementary Education. Regarding the Superintendent, the board member would have difficulty being completely objective in acting on employment issues since the Superintendent must provide a recommendation regarding the employment terms of the board member's spouse to the board. The public could reasonably expect that the board member's objectivity and independence of judgment may be impaired in such a situation. Therefore, the Commission advises that the board member would violate N.J.S.A. 18A:12-24(c) if he were to participate in any employment issues regarding the Superintendent.

With regards to board member B, since the high school principal is the direct and immediate supervisor of the board member's spouse, for the reasoning noted above, the board member would violate N.J.S.A. 18A:12-24(c) if he were to participate in any employment issues regarding the principal. Similar to *A10-00*, since the Superintendent is the direct supervisor of the principal, there is an opportunity for the spouse's employment to be affected by the board member's involvement in employment issues related to the Superintendent in terms of the way the administrators treat and evaluate the spouse, even if such impact does not affect the contractually determined salary. Therefore, board member B has an indirect financial involvement that might reasonably be expected to impair his objectivity of judgment in violation of N.J.S.A. 18A:12-24(c).

In summary, the Commission advises that board member A would violate N.J.S.A. 18A:12-24(c) if he were to participate in employment issues regarding the supervising principal, the Director of Elementary Education and the Superintendent, and board member B would violate N.J.S.A. 18A:12-24(c) if he were to participate in employment issues regarding the principal of the High School and the Superintendent. Therefore, the Commission advises that the board members must recuse themselves from all discussions and any votes with regard to those administrators.

We trust that this opinion answers your inquiry. Because the Commission believes that this opinion will be of interest to other board members, it is making it public.

Sincerely yours,

Paul C. Garbarini,
Chairperson