

April 1, 1998

FOR PUBLIC RELEASE

RE: School Ethics Commission Advisory Opinion A03-98

You have requested an advisory opinion on behalf of the Board of Education of a County Special Services School District that you represent. Your Board would like to know which of its members can serve on the negotiating team and vote on the contract when four of the five members who are presently able to vote have a conflict of interest. The Commission rendered this opinion at its meeting of March 30, 1998.

You have set forth that you represent a Board that will soon begin negotiations with its education association, an affiliate of the New Jersey Education Association (NJEA). The Board consists of: the County Superintendent; six persons appointed by the Director of the County Board of Chosen Freeholders; and the Chair of the County Mental Health Board's designee. Pursuant to N.J.S.A. 18A:46-35, the designee who represents the County Mental Health Board may not vote on any matter before the Board.

There currently exist two vacancies on the eight-member Board. Of the six seats that are filled, one member of the Board is a member of the NJEA and a local affiliate. Three other members of the Board have spouses who are members of the NJEA and local affiliates. Of the two members of the Board remaining, one is the County Mental Health Board designee who is a non-voting member. The other member is a recent appointee to the Board and has served on the Board for less than two months.

As you have set forth, the Commission has advised that a board member who belongs to the same statewide general union as the union with which the board is negotiating or who has a spouse who belongs cannot participate in negotiations or vote on a contract without violating N.J.S.A. 18A:12-24(c) of the School Ethics Act. See In the Matter of Frank Pannucci, SEC Docket No. C08-96 (currently on appeal to the State Board of Education) and Advisory Opinion A10-93(b) and A07-94. The question is who may negotiate and vote on the contract when four of five voting board members are

subject to the above prohibition. The Commission has previously ruled that when more than a quorum of the board members has a conflict preventing the board from negotiating or voting on a contract, the entire board may vote on the contract pursuant to the Doctrine of Necessity. In the Matter of Vernon Township Board of Education, SEC Docket No. C07-96. However, the Commission would not extend the Doctrine of Necessity to allow all members to participate in negotiations where three of nine board members did not have a conflict, but their terms could conclude during the course of negotiations. Advisory Opinion A55-95.

In the circumstances you have described, only one Board member is able to negotiate and he has only been on the Board for two months. The other Board member is a non-voting member and thus, not capable of negotiating on behalf of the Board. Thus, this is a different circumstance from the situation in Advisory Opinion A55-95. There, the Commission opined that if you have three members without a conflict who can negotiate on behalf of the board, they will have to serve as the committee. However, one board member does not constitute a committee. In the present situation, the one board member should be on the negotiations committee since he does not have a conflict of interest. The Board will have to invoke the Doctrine of Necessity in order to allow the other Board members to participate in negotiations. When they do so, they should state publicly that they are invoking the Doctrine of Necessity and the reason that they are invoking it. Then, the Board could either determine to act as a committee of the whole or to choose a committee from among any of its members to participate in the negotiations. Again, the Commission so opines only because the present circumstances would render the Board unable to negotiate a contract if it did not invoke the Doctrine of Necessity.

Regarding the second part of your inquiry asking which of the Board members may vote on the contract, the Doctrine of Necessity will again have to be invoked publicly. This will allow all of the Board members to vote on the contract.

The Commission hopes this answers your inquiry.

Sincerely,

Paul C. Garbarini
Chairperson