

April 24, 2001

**FOR PUBLIC RELEASE**

RE: Advisory Opinion A03-01

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of a school board member whose board you represent. You have asked whether the board member would violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq., if she were to participate in decisions regarding your reappointment or the payment of your bills when you have prepared a simple will and powers of attorney for her and her spouse.

The Commission provided this answer at its meeting on April 24, 2001, advising that the board member would violate N.J.S.A. 18A:12-24(c) of the School Ethics Act if she were to participate in discussions and vote on your reappointment as board attorney or the payment of your bills under the above circumstances.

You have set forth that you have been board attorney for over two years. During the time in which you have served in that capacity, you prepared simple wills and powers of attorney for the board member and her spouse. You further state that you charged your usual and customary fee for the preparation of the documents.

N.J.S.A. 18A:12-24(c) is the section of the Act that is pertinent to your question. It provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds 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.

The board member engaged in a business transaction with you as her private attorney. You have stated that she paid the usual and customary fee for the services. Therefore, based on the facts you have presented, she does not have a financial involvement with your continued appointment or the payment of your bills. However, the Commission does believe that your representation of the Board member in her personal capacity does create a personal involvement with you that constitutes a benefit to her. The other board members may perceive that she desires your continued representation of the board because you have served as her personal counselor and may provide opinions that favor her viewpoint. Even if the perception is not true, a reasonable person could believe that she could benefit from her vote, albeit not financially. Therefore, the Commission advises that the board member would violate N.J.S.A. 18A:12-24(c) if she were to participate in discussions and vote on your reappointment and the payment of your bills.

In your request, you noted the Commission's decision, In the Matter of Huber, C19-96 (May 27, 1997). In that case, the Commission held that a board member did not violate the Act by voting on the appointment of an attorney as board solicitor who had prepared closing papers for the board member eleven years earlier. The Commission believes that Huber is distinguishable, since, in present situation, the representation occurred while the board member was in office and while you were serving as board attorney. In addition, the votes in question to reappoint and to pay attorney fees will be much closer in time to the representation than in Huber.

The Commission cautions against such private representation of board members in the future since board attorneys represent the full board, not individual board members.

Thank you for your inquiry. Because the Commission believes that other board members could benefit from this opinion, it is making it public.

Sincerely,

Paul C. Garbarini,  
Chairperson

I hereby certify that the School  
Ethics Commission voted to make this  
opinion public at its public meeting  
on April 22, 2001.

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Lisa James-Beavers  
Executive Director