

July 26, 2012

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A14-12

In an earlier opinion from the Commission, you were informed that Board Member A, whose son is a custodial employee, may not participate in negotiations with the local association, although she may vote on the contract after the MOA is struck. You now ask whether Board Member A is precluded from participating in the negotiations for the *administrators*, who include principals, assistant principals, and directors of instruction and special services. Initially, the Commission notes that you properly verified that the Board member whose conduct is the subject of this advisory opinion request was copied on the request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. Since you did not provide any new facts, the Commission bases its advice on Board Member A's supplemental letter submitted along with your request on June 4, 2012.

Pursuant to your request for an advisory opinion filed on behalf of the board member and consistent with its authority under *N.J.S.A. 18A:12-28(b)*, the School Ethics Commission discussed this matter at its June 26, 2012 meeting and approved its recommendation at its subsequent meeting on July 24, 2012. 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 ("Act"). *N.J.S.A. 18A:12-31*.

Board Member A has stated that her son is a custodial employee and a union member of NJEA, but that no one in the Administrators' Bargaining Unit is his immediate supervisor. Moreover, the Building and Grounds Supervisor, who is her son's immediate supervisor, is not in the Administrators' Bargaining Unit nor is the supervisor represented by it. Finally, neither the Superintendent nor the Board's Business Administrator is represented by the Administrators' Bargaining Unit.

This matter implicates *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;

As already determined in the prior opinion, Board Member A's son is not a dependent child under the Act and does not fall within the definition of an "immediate family member," although he is, nevertheless, a "relative" under the Act. *See, N.J.S.A. 18A:12-23*. In Advisory Opinion A23-94 (January 23, 1996), the Commission established that a Board member may *vote* on the collective bargaining agreement when the board member has a child or son-in-law who is a member of the same statewide general union, but not a member of

the local bargaining unit. Later, in Advisory Opinion A19-05 (July 22, 2005), the Commission determined that “[t]he public could reasonably expect or perceive that a board member would have a great interest in his child’s financial well-being that would conflict with his duty to the board.”

Here, the Commission has found no such impediment. On the facts that the board member has provided, the Commission generally found no conflict with Board Member A’s involvement in negotiation procedures for administrators. There appears to be no nexus or relationship between the son and the administrators that would give rise to a public perception that the board member’s independence of judgment or objectivity may be compromised because of some financial benefit to herself or her son. However, in order to avoid a violation of *N.J.S.A. 18A:12-24(c)*, the Commission cautions that although it is not apparent from the set of facts set forth herein, there still may exist some latent financial connection between the son and administrators. As articulated in A37-95 (March 26, 1996), if any benefit by way of salary, schedules, insurance package or emolument of any kind granted to administrators also inures to the son’s benefit, then a link or an indirect financial involvement would exist. Such a link would create a conflict, which would prohibit Board Member A from engaging in all negotiations or discussions in closed session regarding the administrators. Pursuant to Advisory Opinion A10-93(b) (June 23, 1994), however, Board Member A may still provide technical assistance to the Board should no one else be available to do so.

At present, the Commission finds that Board Member A can be involved in negotiations for administrators; however, should a link currently exist or arise in the future, then Board Member A must recuse herself from any discussion, negotiation or vote wherein her son has a direct or indirect financial involvement or where there is the potential for some benefit to Board Member A or her son.

We trust that this opinion answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson

E/JMR/AdvisoryA14-12