

March 28, 2000

FOR PUBLIC RELEASE

RE: Advisory Opinion A02-00

The School Ethics Commission is in receipt of your request for an advisory opinion. You have asked whether you may serve on your board's negotiations committee in a school district where the union is an New Jersey Education Association ("NJEA") affiliate and your spouse is a teacher employed in another district that has a contract with an NJEA affiliate. Your spouse is not a union member, has no NJEA affiliation and does not pay a representation fee to the union because there is no agency shop clause in her school district's contract. You have asked the Commission to consider whether the recent amendment to N.J.S.A. 18A:12-24(c) by P.L. 1999, Chapter 256 has a bearing on this question.

For the reasons that have been set forth in previous advisory opinions, the Commission advises that your service on the negotiations committee would violate N.J.S.A. 18A:12-24(c) of the School Ethics Act. The recent amendment to the Act would not affect the Commission's prior rulings because your spouse has an indirect financial involvement with the NJEA that might reasonably be expected to impair your objectivity. The amendment to N.J.S.A. 18A:12-24(c) changed the wording of the provision regarding a personal involvement, not a financial involvement.

N.J.S.A. 18A:12-24(c) 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 Commission first advised in Advisory Opinion A10-93 (May 26, 1994) that a board member would violate N.J.S.A. 18A:12-24(c) of the School Ethics Act if he were to serve on the negotiations committee when he or a member of his immediate family was a member of the same statewide general union with which the board is negotiating. The Commission said:

[I]t is reasonable for someone to perceive that by negotiating to increase teacher salaries in one district, a board member might influence an increase in teacher salaries in a neighboring district where that board member is employed as a teacher. Negotiating such increases would therefore, create a financial benefit to the board member.

The Commission noted that the same perception exists when an immediate family member is a member of the statewide general union as well, since such individuals contribute to the income level of the board member's household. In addition, N.J.S.A. 18A:12-24(c) clearly states that a school official shall not act in his official capacity in a matter in which "he or a member of his immediate family" has a financial involvement, thus making no distinction between a board member and his or her spouse.

You have set forth that you are a board member in a district that sits in a different county from where your spouse teaches. However, the districts are still close enough for the appearance of an influence to still apply.

The Commission also noted that because the negotiations take place in private, out of the hearing of the public, N.J.S.A. 18A:12-24(f) might also be implicated. It provides:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

A violation of subsection f would exist only if you actually used or allowed to be used information gained during negotiations to secure financial gain for you or your spouse. Nevertheless, the Commission finds that a board member who participates in contract negotiations is privy to information released or discussed during negotiations that is not generally available to the public, or even other board members. Such information could prove useful to the union that negotiates the contract of the board member's spouse

if it should negotiate with its board on similar issues. Your participation in negotiations could be construed as a violation of N.J.S.A. 18A:12-24(f) and for that reason also, the Commission advises that the Act prohibits your participation on the negotiations committee.

You have questioned the applicability of this advice when your spouse has chosen not to be a member of the union. However, Advisory Opinion A03-94 applies despite your spouse's decision not to participate in the union because your spouse's salary is still determined by the contract that the local affiliate of the statewide general union is able to negotiate. The Commission is very familiar with the NJEA newsletter that publishes the statewide averages of salary increases for the benefit of its members. The bargaining power of your spouse's local affiliate affected by the salary increases that other affiliates in the statewide general union are able to obtain.

The Commission noted in its prior correspondence to you that it was delaying advice on your request for an advisory opinion until after the State Board of Education ruled on the appeal of the Commission's decision, *In the Matter of Frank Pannucci*, C08-96. The State Board's decision, which issued on March 1, 2000, reversed the Commission's determination that a board member violated the Act when he voted on a contract with the district's NJEA affiliate when he was a member of the NJEA. The State Board did not address the issue of participation in negotiations. Therefore, the State Board's decision is not applicable to the circumstances that you have set forth.

For the foregoing reasons, the Commission concludes that you would be in violation of N.J.S.A. 18A:12-24(c) and possibly, N.J.S.A. 18A:12-24(f) of the Act if you were to serve on the negotiations committee for the teachers' contract. We hope this answers your inquiry.

Sincerely yours,

Paul C. Garbarini
Chairperson