

December 1, 2000

FOR PUBLIC RELEASE

RE: Advisory Opinion A16-00

The School Ethics Commission is in receipt of your request for an advisory opinion. You are seeking an opinion regarding your ability to negotiate a collective bargaining agreement with the local education association when your brother holds a position in the maintenance department and is a member of the local education association in the district where you serve as a board member. You have set forth that your brother is financially independent from you and that he does not reside with you.

The Commission issued this advisory opinion at its meeting on November 28, 2000. It advises that you would violate N.J.S.A. 18A:12-24(c) of the School Ethics Act if you were to participate in negotiations or vote on a contract with the local education association.

As set forth above, N.J.S.A. 18A:12-24(c) is the subsection 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.

You have noted that your brother is financially independent and has not resided with you for a very long time. These facts indicate that you have no financial involvement with your brother's employment under N.J.S.A. 18A:12-24(c). However, as set forth above, the Legislature also set forth that a school official shall not participate in a matter in which he has a "personal involvement" that is or creates some benefit to the school official or member of his immediate family. You are correct that a sibling is not a member of your immediate family under the definition set forth at N.J.S.A. 18A:12-23. Therefore, the question is whether you have a personal involvement with your brother's employment contract that is or creates some benefit to you.

The Commission finds that the benefit set forth in the Act need not be financial, otherwise, the "personal involvement" provision of N.J.S.A. 18A:12-24(c) would be redundant. The Commission considers an involvement to be personal whenever a school official has a relationship that the public may perceive as being predominant to the best interest of the district. Therefore, a benefit can be something of intrinsic value, but no monetary worth.

The Commission decided in *In the Matter of Russo and Scarano*, SEC Docket No. C12-97 (January 27, 1998), that a board member violated N.J.S.A. 18A:12-24(c) when he participated in negotiations with the local teachers' union when his brother was a teacher in the district. The Commission held that a board member was prohibited from negotiating when his relative was a member of the district union because he had a personal involvement that might reasonably be expected to impair his objectivity. This was the standard set forth at N.J.S.A. 18A:12-24(c) in 1998. The amended language, set forth above, was made effective on October 15, 1999, changing the standard from a "reasonable expectation" that a school official cannot be objective to a requirement that the involvement constitute "a benefit" to the school official.

The Commission finds that the amended law still has to be read in conjunction with N.J.S.A. 18A:12-22(a), which provides:

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

Although your brother is not a "member of your immediate family" under the Act, he falls under the Act's definition of "relative" set forth at N.J.S.A. 18A:12-23. A board member whose brother is a maintenance worker in his district would be negotiating and voting on his relative's salary and benefits by negotiating with the local education association. The Commission finds this to be an undesirable consequence of a strict interpretation of N.J.S.A. 18A:12-24(c). The Commission finds that when N.J.S.A. 18A:12-24(c) is read along with the Legislature's purpose for enacting the School Ethics Act, it is clear that the public trust would be violated by allowing a board member to

negotiate his relative's contract. Therefore, the Commission finds that you would violate N.J.S.A. 18A:12-24(c) if you were to negotiate with the local education association when your brother is a member of that association.

For the foregoing reasons, the Commission finds that you would violate the Act if you were to negotiate or vote upon a contract with the local education association. Additionally, for the same reasons as set forth above, the Commission notes that you would violate the Act by participating in discussions and votes concerning your brother's subsequent appointments or promotions.

We hope this answers your inquiry. Because this question has been asked previously and is likely to be asked again, the Commission is making this opinion public.

Sincerely,

Paul C. Garbarini
Chairperson

I hereby certify that the School
Ethics Commission voted to make this
opinion public at its meeting
on November 28, 2000.

Lisa James-Beavers
Executive Director