

August 23, 2004

FOR PUBLIC RELEASE

Subject: Advisory Opinion A23-04

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of the district board of education that you serve as superintendent. You have asked whether two of your board members who are retired members of the New Jersey Education Association (NJEA) may serve as members of the Negotiations Committee. Next you asked whether they should serve in light of public perception and whether the board has a right to exclude a retired member even if the Commission's opinion is that a retired member could serve on the Negotiations Committee. You have provided the permission of the board members in question.

The Commission advised at its meeting of July 27, 2004, pursuant to N.J.S.A. 18A:12-28(b), that the retired board members of the NJEA may serve on the Board's Negotiations Committee without violating the School Ethics Act provided that they are not actively participating in the NJEA. The Commission declined to answer the second and third questions since the questions do not relate to whether an individual's actions would violate the School Ethics Act.

You have set forth that the Board is considering adopting a policy that was taken from a sample from the New Jersey School Boards Association Critical Policy Reference Manual. The policy essentially sets forth the prior rulings of the School Ethics Commission regarding negotiations. Before adopting this policy, the Board would like clarification of part of the policy with regard to its applicability to retired NJEA members.

The Commission finds that N.J.S.A. 18A:12-24(c) pertains 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.

Since a union is not a business organization in which a school board member can hold an interest, the Commission must determine whether the board members have a direct or indirect financial involvement that might reasonably be expected to impair their objectivity regarding the local education association contract. The Commission has previously ruled that the indirect financial involvement that exists when a school official is currently employed and an NJEA member dissipates when one is a retired NJEA member. See *Advisory Opinion A10-93* (May 26, 1994). In *A10-93*, the Commission said that retired members of a union have extremely limited financial and personal interest in the outcome of negotiations. Thus, similarly, the personal involvement that a school official may have with the contracts of the NJEA affiliates that creates a benefit while he or she is employed dissipates when the person is retired so long as the person is no longer actively participating in the NJEA. Therefore, the Commission finds that a board member who is a retired member of the NJEA does not have a financial involvement that might reasonably be expected to impair his or her objectivity or a personal involvement that creates a benefit to him that would prevent him or her from serving on the Negotiations Committee so long as the board member is no longer actively participating in the NJEA.

For the foregoing reasons, the Commission advises that the board members may serve on the Negotiations Committee. The Commission does not address the Board's inquiry as to whether the Board should appoint them to the Committee.

Because the Commission believes that other school officials may be interested in this opinion, it is making this opinion public.

Sincerely,

Paul C. Garbarini
Chairperson