

This Advisory Opinion has been superceded by Martinez v. Albolino, C45-11 (June 27, 2012) as well as the decisions and other advisory opinions which followed; therefore, it is no longer considered valid advice.

February 26, 2008

FOR PUBLIC RELEASE

RE: Advisory Opinion A34-07

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of a school board that you represent. The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the board members who are the subject of the request. The board members did not submit a response to the Commission within the 10 day time limit set forth in N.J.A.C. 6A:28-5.2(b). Therefore, the Commission will provide its advice based on the information you provided in your advisory opinion request.

In your advisory opinion request you have analyzed the conflicts of the various members of the board and correctly concluded as follows:

- Board member C may not participate in negotiations or vote on the final contract because her/his married, emancipated daughter is a librarian in the district and a member of the New Jersey Education Association (NJEA).
- Board members A and E may not be involved in the negotiations, but may participate in discussions and vote after the Memorandum of Agreement (MOA) has been signed because both board members have a spouse who teaches in another district and is a member of the NJEA.
- Board member G may not be involved in the negotiations, but may participate in discussions and vote after the MOA has been signed because that board member teaches in another district and is a member of the NJEA.
- The remaining board members may participate in negotiations and vote on the final contract because they have no conflicts.

You have asked whether it would be a violation of the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., for board members A, E and G to participate in discussions in executive session and/or participate in any straw poll of the board members present on a

single issue that is the subject of a signed MOA. You have also asked if the conflicted board members could participate in discussions regarding the single issue if the MOA is dependent on satisfactory agreement of the single issue, such as the total package of money to be offered.

At its January 22, 2008 meeting, the Commission, pursuant to its authority in N.J.S.A. 18A:12-28(b), advised that board members A, E and G would violate N.J.S.A. 18A:12-24(c) if they were to participate in discussions or vote on the total package of money to be offered when that issue is not included in the signed MOA. However, upon resolution of that outstanding issue and its inclusion in the MOA, board members A, E and G may participate in discussions and vote on the final contract.

Previously, in *Advisory Opinion A10-93* (May 26, 1994), the Commission advised a board member that he would violate N.J.S.A. 18A:12-24(c) if he were to participate in negotiations on a contract with the local affiliate if he or his immediate family member were a member of the same statewide general union with which the board is negotiating. The Commission relied upon *A10-93* when, in *Advisory Opinion A14-00* (November 28, 2000), it advised that board members who are teachers in another district and members of the NJEA may vote on, but may not participate in negotiations on a contract with the local affiliate of the NJEA. In both advisories, the Commission reasoned that a member of the public could reasonably perceive that a board member could not be objective in negotiating for his or his spouse's fellow union members to receive a contractual reward or service, because it is a well-established practice for negotiating teams to compare salaries of neighboring and similar statewide unions.

In *A14-00*, the Commission acknowledged that, its advice that a board member may not participate in negotiations but may vote on the contract, left a void between negotiations and the vote on the contract. *Id.*, page 3. To address the void, the Commission advised that "the logical point at which to allow such board members to be apprised of the terms of the contract is after the MOA has been reached." *Id.*, page 3. The Commission noted that when the MOA has been signed, it is usually regarded as the end of negotiations although the Commission recognized that "additional details" may be added after that time. *Id.*, page 3. In this advisory opinion, you have indicated that the total package of money to be offered may be one of the "additional details" to be addressed after the MOA is signed. In *A14-00*, the Commission did not contemplate that the total package of money to be offered or the salary guide would constitute an "additional detail." The reasoning used in *A10-93* and *A14-00* would apply to the resolution of issues such as the total package of money to be offered and the salary guide. A member of the public could reasonably perceive that a board member could not be objective in the resolution of such issues for his or his spouse's fellow union members.

After further consideration and to clarify the Commission's advice, it notes that in many districts the signed MOA includes the salary guides and the total package of money to be offered. In such a situation, board members who are conflicted from negotiations but not from voting may participate in discussions and vote on any outstanding issues. However, the Commission recognizes that there are districts where the signed MOA does

not include the salary guides and/or the total package of money to be offered. In such a situation, board members who are conflicted from negotiations but not from voting would violate N.J.S.A. 18A:12-24(c) if they were to participate in discussions or vote on those outstanding issues. Once those issues are resolved and become a part of the MOA, those board members may participate in discussions and vote of the final contract.

In conclusion, board members A, E and G may only participate in discussion and votes when the signed MOA includes the total package of money to be offered and the salary guides.

We trust that this opinion answers your inquiry.

Sincerely yours,

Robert W. Bender, Acting Chairperson
School Ethics Commission