

January 11, 2008

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A30-07

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of a school board member. The Commission notes that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the board member whose conduct is the subject of the advisory opinion request. The board member 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 included in your advisory opinion request, together with additional information provided to the Commission upon request.

You have set forth that a board member's spouse serves as a security guard for the district's high school. You have further stated that the high school's assistant principal is charged with evaluating the high school's security guard. Thereafter, the assistant principal reports to the high school principal who reports to the director of education. The director of education reports to the superintendent. 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 the board member to participate in the search for a new superintendent, in that the current superintendent will be retiring effective June 30, 2008. If the board member can participate in the search, you asked what restrictions, if any, should be implemented. Additionally, you state in your request that neither the assistant principal nor the principal is expected to be a candidate for the position. When specifically asked by the Commission, you also verbally confirmed that the director of education is expected to be a candidate.

At its December 18, 2007 meeting, the Commission determined, pursuant to its authority under N.J.S.A. 18A:12-28(b), that the board member would violate the Act if s/he were to participate in the search for a new superintendent where any candidate for that position, such as the director of education, is familiar with the board member's spouse because s/he indirectly supervises the board member's spouse.

Your inquiry turns on the application of 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;

In determining whether there is a conflict with N.J.S.A. 18A:12-24(c), the Commission must first determine whether the public could reasonably perceive that the board member's objectivity or independence of judgment may be impaired because the board member, or his or her immediate family member, has some direct or indirect financial involvement in the search for a new superintendent. The Commission must next determine whether the board member has a personal involvement that is or creates some benefit to the board member or his or her immediate family. In this connection, the Commission notes that, based upon the definition of "member of immediate family" in N.J.S.A. 18A:12-23, the board member's spouse is an immediate family member.

In *Advisory Opinion A10-00*, (June 27, 2000), a board member's spouse was employed as a teacher in the district. The district was a K-8 district with 900 students and the superintendent, principal and vice-principal were located in the same building as the board member's spouse. The Commission therein advised a board member, pursuant to N.J.S.A. 18A:12-24(c), that s/he may participate in the search for a superintendent, assistant principal and principal, as well as vote on the appointments, even though these administrators could all be considered supervisors of the spouse. The Commission advised that it would not be reasonable for the public to expect that a board member, with a spouse who teaches in the district, would choose to appoint administrators who are most likely to be financially favorable to teaching staff, especially since teachers are employed pursuant to a collective bargaining agreement. The Commission also found that the board member and his spouse do not have a personal involvement in the selection of administrators that would create some benefit to them. However, the Commission specifically cautioned that "[t]his may change if the selection is for someone who already knows the board member's spouse." *A10-00* at page 2

In *Advisory Opinion A07-06*, (July 31 2006), a board member in a nine-school pre K-12 district had a spouse who worked as a teacher's assistant at the high school and was supervised by the principal who was supervised by the assistant superintendent who was supervised by the superintendent. The Commission advised the board member that s/he would violate N.J.S.A. 18A:12-24(c) if s/he participated in the hiring of the superintendent because the current assistant superintendent was a candidate to become superintendent. The Commission therein reflected on its cautionary statement in *A10-00*, as set forth above, and advised that since the assistant superintendent supervised the principal who supervised the board member's spouse, the assistant superintendent was familiar with the board member's spouse and the public could reasonably expect that the board member's objectivity and independence of judgment may be impaired if

s/he were to participate in discussions regarding the hiring of the superintendent and if s/he were to vote on the hiring of the superintendent. *A07-06* at page 3.

Similarly, in *Advisory Opinion A23-06*, (November 15, 2006), the Commission advised a board member (identified as “C”) for a K-12 district with nine elementary schools, one middle school and one high school whose spouse was a teacher’s aide in one of the elementary schools that s/he may participate in the search for a new superintendent, the interview process for potential candidates and the hiring of the new superintendent *unless* either the board member or his or her spouse had some familiarity with a potential candidate because the candidate directly or indirectly supervised the board member’s spouse. *A23-06* at page 6.

Here, the director of education supervises the principal who supervises the assistant principal, who supervises the board member’s spouse. Thus, the director of education is familiar with the board member’s spouse. If the director of education becomes a candidate for the position of superintendent, because the director of education is familiar with the board member’s spouse, who is an immediate family member, the public could reasonably expect that the board member’s objectivity and independence of judgment may be impaired if s/he were to participate in the search for, and discussions regarding, the hiring of the superintendent. Consequently, it would be a violation of N.J.S.A. 18A:12-24(c) for the board member to participate in the search for, and hiring of, a new superintendent under such circumstances.

If, however, the director of education does not become a candidate for the position of superintendent, and assuming that the board member and his or her spouse are not familiar with any of the candidates for the superintendent’s position, as set forth above, then prior advisory opinions would permit the board member to participate in the search for the new superintendent.

As to what “restrictions” would be required to be implemented, *A10-00* advised that while the board member may participate in the selection of the administrators in question, the board member would violate the Act if s/he were to participate in discussions and vote on employment issues concerning these administrators who supervise his or her spouse, after they were appointed. The Commission therein reasoned that there was an opportunity for the spouse’s employment to be affected in terms of the way the administrators treat and evaluate the spouse, although perhaps not in terms of affecting the contractually determined salary. Thus, the Commission concluded the board member would have a personal involvement in the employment issues of the supervising administrators that constitutes a benefit. *A10-00* at page 2.

Similarly, in *A23-06*, even if board member C participated in the search for a new superintendent because s/he was not familiar with any of the candidates, board member C could not participate in contract negotiations or employment issues related to the new superintendent. *A23-06* at page 6.

Also instructive in this regard is *Advisory Opinion A30-05* (March 10, 2006), wherein two board members had spouses who worked in the school district, one spouse as an instructional associate and the other spouse as a secretary in the office of the high school nurse. The Commission found that the two board members had an indirect financial involvement in their spouses’ employment under N.J.S.A. 18A:12-24(c). The Commission reasoned that since

the board members' spouses were directly supervised by an administrator, it would be difficult for the board members to be completely objective in acting on employment issues for that administrator and any administrators supervising the spouses' direct administrator. The Commission also maintained that the public could reasonably expect that the board member's involvement in employment issues could positively or negatively impact the employment of the board members' spouses. The Commission advised the two board members that they would violate N.J.S.A. 18A:12-24(c) if they were to participate in employment issues regarding the administrators supervising their spouses including the supervisors of those administrators.

Thus, the Commission determines that if the director of education becomes a candidate for the position of superintendent, because the director of education is familiar with the board member's spouse by virtue of his or her indirect supervision of the spouse, who is an immediate family member, it would be a violation of N.J.S.A. 18A:12-24(c) for the board member to participate in the search for, and hiring of, a new superintendent. Additionally, the board member could not participate in contract negotiations or employment issues related to the new superintendent. If the director of education does not become a candidate for the position of superintendent, and assuming that the board member and his or her spouse are not familiar with any of the candidates for the superintendent's position as contemplated by *Advisory Opinions A10-00, A07-06 and A23-06*, the board member may participate in the search for a superintendent, but could not participate in contract negotiations or employment issues related to the new superintendent.

We trust that this opinion answers your inquiry. Because the Commission believes that this opinion will be of interest to other board members, it is making it public.

Sincerely,

Paul C. Garbarini,
Chairperson

I hereby certify that the School
Ethics Commission voted to
make this opinion public at its
public meeting on December 18, 2007.

Joanne Boyle
Executive Director