



State of New Jersey

DEPARTMENT OF EDUCATION

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Acting Commissioner

March 28, 2018

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A07-18

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your own behalf as a member of the Board of Education (Board). The Commission will provide its advice based solely on the information included in your request, and its authority to issue advisory opinions is expressly limited to determining whether any prospective conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31. Pursuant to N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its meeting on February 27, 2018.

You inform the Commission that your wife's cousin works in the School District (District) and is a member of the local education association and the New Jersey Education Association (NJEA). You also inform the Commission that your wife's cousin does not hold a leadership position in either union and is not a member of the bargaining team of the local union.

Your inquiry seeks to determine whether you have a conflict under the School Ethics Act (Act), N.J.S.A. 18A:12-21 et. seq., because of your wife's cousin's employment in the District, which would prohibit you from participating in negotiations between the Board and the local education association and whether you may continue to serve on the Board's finance committee, considering that one of your tasks is to assist with the salary guide analysis and development at the conclusion of negotiations.

The Commission advises, in keeping with the analysis set for in both Advisory Opinion A24-17 (A24-17) and Advisory Opinion A35-17 (A35-17),¹ that because your wife's *cousin is not defined as a family member* by any controlling authority, your wife's cousin is considered an "other" under the Act's N.J.S.A. 18A:12-24(b) provision, under which no board of education member may extend any "unwarranted privileges, advantages or employment for himself, members of his immediate family or others." Therefore, there is no presumption of a conflict for you on any board activity because of the fact that your wife's cousin is employed by the Board, and you may participate in negotiations between the Board and the local education association and you may continue to serve in your role on the Board's finance committee. This is because no "cousin," including a first-cousin not by marriage, is not defined as a family member by any

¹ See <http://www.state.nj.us/education/legal/ethics/advisory/>.

controlling authority. It would be different if an individual who *was* defined as a family member was employed in the District. See: A24-17 and A35-17.

Therefore, you may engage in the activities relating to negotiations with the union, including development of the salary guide, so long as you do not extend an *unwarranted* privilege, advantage or employment for yourself, members of your immediate family or *others*, such as your wife's cousin. Unlike with individuals defined by controlling authority as family members, the Commission cannot advise that participation in any of matters you inquired about would *per se* constitute an unwarranted privilege or advantage for your wife's cousin, or any other individual not defined by a controlling authority as a member of one's family.

The nature of your inquiry makes it clear that there is confusion regarding the limitations of a Board member's activity with regard to both having a "cousin" who is employed in the District, and what it means for a privilege, advantage of employment to be "unwarranted."

As stated above, any allegation that a Board member is acting in a way that could benefit an "other," such as a cousin or as indicated in this request, your wife's cousin, implicates N.J.S.A. 18A:12-24(b). Although "others" is not defined by the Act, *any individual* can be an "other," such as a Board member's cousin or their spouse's cousin. For these "others," a school official is prohibited from using his/her official position to secure an *unwarranted* privilege, advantage or employment. Consequently, in your capacity as Board member, you are prohibited from securing any unwarranted privilege, advantage or employment for your wife's cousin's benefit as your wife's cousin is an "other."

The Commission cannot predict any and all possible conflicts which *may* arise for a Board member; however, obvious *possible* conflicts could emerge for you with regard to your wife's cousin. Therefore, the Commission will take this opportunity to present hypothetical potential conflicts in order to provide clarity on what constitutes "*unwarranted* privileges, advantages or employment." You would provide your wife's cousin with an unwarranted privilege, advantage or employment if, for example, a position became available in the District to which your wife's cousin applied, but was not the most qualified candidate and/or was not recommended by the Superintendent, and you used your position on the Board to nonetheless secure her employment by hiring your wife's cousin for that position – that would be unwarranted; if your wife's cousin came before the Board for a disciplinary action which was justified and you convinced the Board to not take action based on your relationship with your wife's cousin – that would be unwarranted; or if your wife's cousin was a coach in the District and you, as a Board member, sought and/or obtained an additional stipend for coaches without cause, but not for other staff who served in a similar extracurricular capacity – that would be unwarranted. Conversely, if you negotiated with the local union and ultimately agreed to raises for staff and your wife's cousin thus benefited, it would not be unwarranted because *all* staff received an agreed upon, and thus warranted, benefit. The inquiry with respect to an analysis under N.J.S.A. 18A:12-24(b) is if the action is *unwarranted*. That is, whether the Board member engaged in action that does not have adequate support or justification. Therefore, on matters that come before you on the Board that concern your wife's cousin and an action *is warranted*, such as negotiating with the union on matters which affect all union members, you may participate in those discussions and votes.

The Commission is encouraged that you are taking the obligations of the Act seriously by asking for advice. We recommend you continue to reference limitations on school officials in the prohibited acts at N.J.S.A. 18A:12-24 and on Board members in the Code of Ethics for School Board Members at N.J.S.A. 18A:12-24.1, to ensure you meet your ethical responsibilities and protect the public trust.

In summary, the Commission advises that based on the information provided in your request and absent another conflict, you do not have a conflict simply because your wife's cousin is employed by the Board and you may continue to participate in negotiations between the Board and the local education association and you may continue to serve as a member of the Board's finance committee. Although there is no presumption of a conflict based on the facts presented in your request, the Commission cannot determine if a conflict involving you and your wife's cousin **may** present itself, or if one of a different nature may develop, but is unknown at this time to the Commission, you and/or your wife's cousin. School officials must always be cognizant of their responsibility to protect the public trust, to honor their obligation to serve the interests of the public and Board, and to periodically re-evaluate the existence of potential conflicts.

To the extent that previously issued advisory opinions (public and private) and decisions are contrary to the Commission's position as set forth above, they are now superseded and abrogated as necessary to conform with the advice in A24-17, A35-17, and this Advisory Opinion.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission