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Acting Commissioner

**School Ethics Commission**

December 14, 2021

**For Public Release**

Subject: Public Advisory Opinion – A20-21

The School Ethics Commission (Commission) received your request for an advisory opinion on behalf of your client, the Board of Education (Board). You verified that you copied the Board members who are the subject of your request, thus complying with *N.J.A.C. 6A:28-5.2(b)*. The Commission notes that the subject Board members did not submit comments and, therefore, the Commission will provide its advice based solely on the information included in your request. The Commission's 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)*, this matter was preliminarily discussed at the Commission's Advisory Opinion Committee meeting on December 2, 2021, and again at its regularly scheduled meeting on December 14, 2021.

In your request, you inform the Commission that Board member A has an "aunt-in-law" who is employed as a teacher in the School District (District). You note that Board member A's "aunt-in-law" is the spouse of Board member A's spouse's uncle. You state you "are mindful of the guidance in Advisory Opinion A24-17 [(A24-17)] that the definition of 'relative' includes the broader language included in the" nepotism policy; however, that definition "appears to include the 'aunt' of an individual or the individual's spouse ... ."

You further inform the Commission that Board member B has a "distant cousin" who is employed in the District as a teacher. Once again, you note you are "aware of Advisory Opinions A35-17 [(A35-17)] and A07-18 [(A07-18)]"; however, A07-18 "specifically dealt with the board member's participation in labor negotiations and did not address the participation in issues involving the superintendent of schools."

With the above in mind, you seek to determine whether the Board members' familial relationships would "preclude them from (1) participating in labor negotiations with the local education association, and/or (2) participating in employment decision and matters related to the Superintendent including the hiring process, contract approval and evaluation of his/her performance."

As an initial matter, the Commission notes that, pursuant to the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 et seq., “Member of immediate family” is defined as the “spouse or dependent child of a school official residing in the same household,” and “Relative” is defined as the “spouse, natural or adopted child, parent, or sibling of a school official.” Therefore, Board member A’s “aunt-in-law” is neither a “Member of immediate family” nor a “Relative” within the meaning of the Act. Although Board member A’s “aunt-in-law” is neither a “Member of immediate family” nor a “Relative,” Board member A’s “aunt-in-law” falls within the umbrella of “others” as enumerated in *N.J.S.A.* 18A:12-24(b), which prohibits a school official from using or “attempting to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or *others*.” Consequently, Board member A cannot provide any “other,” including Board member A’s “aunt-in-law,” with any *unwarranted* privileges, advantages or employment. However, there is no presumption of a conflict of interest simply because Board member A has an “aunt-in-law” employed by the Board.

In addition, as discussed at length in A24-17, and as you noted in your request, regulations regarding fiscal accountability, efficiency, and budgeting procedures contain a far more expansive definition of “Relative” than the definition enumerated in the Act. More specifically, *N.J.A.C.* 6A:23A-1.2 defines “Relative” as “...an individual’s spouse or the individual’s or spouse’s parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, whether the relative is related to the individual or the individual’s spouse by blood, marriage or adoption.” Every board of education is required to incorporate this definition in its nepotism policy.

Although the Commission does not have the authority to conclusively determine whether the spouse of Board member A’s spouse’s uncle falls within the definition of “Relative” as set forth at *N.J.A.C.* 6A:23A-1.2, because “aunt-in-law” is not an enumerated familial relationship in this regulation, and for purposes of rendering its advice as set forth herein, the Commission does not regard the spouse of Board member A’s spouse’s uncle as a “Relative” within the meaning of the Act, or within the definition of *N.J.A.C.* 6A:23A-1.2.

With the understanding that Board member A’s “aunt-in-law” is only an “other,” Board member A may participate in labor negotiations with the local education association, and may vote on the collective negotiations agreement, as well as participate in all matters related to the Superintendent so long as Board member A does not extend an *unwarranted* privilege, advantage or employment for himself/herself, members of his/her immediate family or *others*, such as Board member A’s “aunt-in-law.”

Turning to Board member B, and whether a “distant cousin” presents a conflict, the Commission advises, in keeping with the analysis set forth in A24-17, A07-18 and A35-17, all of which you cited in your request, and as noted above, a cousin is neither a “Member of immediate family” nor a “Relative” and, therefore, similar to an “aunt-in-law,” a cousin falls within the umbrella of “others.” Therefore, in the same vein with the above, Board member B cannot extend an *unwarranted* privilege, advantage or employment for himself/herself, members of his/her immediate family or *others*, such as Board member B’s cousin.

In summary, the Commission advises that based on the information provided in your request, and absent another conflict of interest, Board members A and B may participate in negotiations with the local education association and in any and all matters related to the Superintendent. Although there is no presumption of a conflict based on the facts presented in your request, the Commission cannot determine if a future conflict *may* present itself, or if one of a different nature *may* develop, but is presently unknown to the Commission, Board member A and/or Board member B.

Finally, as a reminder, 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. In addition, the only way for a public school official to truly safeguard against alleged violations of the Act is to avoid any conduct, which could have the appearance, actual or perceived, of being in violation of the Act.

Sincerely,

Robert W. Bender, Chairperson  
School Ethics Commission