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School Ethics Commission

January 26, 2021

For Public Release

Subject: Public Advisory Opinion – A21-20

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'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), the Commission discussed this matter at its meeting on December 22, 2020.

You inform the Commission that the Board employs your "sister-in-law," the spouse of your spouse's brother, as a teacher in the School District (District). You state that the spouse of your spouse's brother "serves on the negotiations committee for the local education association (LEA). You further state you are "aware that [B]oard members who [have] relatives employed it the [D]istrict overseen by the [B]oard on which they serve may not participate in negotiations, vote on collective negotiations agreement, nor participate in the search for evaluation of and/or contract negotiations with the Superintendent." You note that you have read the definition of "Relative" and you understand it to include your sibling and your spouse's sibling; however, "it is not immediately apparent whether the definition of relative" includes the spouse of your spouse's brother.

You further inform the Commission that your spouse "co-owns a business with his/her brother," but "the business has no relationship with the Board or any connection to [D]istrict business."

Based on the above, you first seek "clarification" whether the spouse of your spouse's brother is a "Relative." You also seek to determine whether your familial relationship with the spouse of your spouse's brother, including his/her membership with the LEA, precludes you from participating in negotiations and voting on the collective negotiations agreement, as well as participating in the search for, evaluation of, and/or contract negotiations with the Superintendent. You further seek to determine whether your spouse's business relationship with his/her brother, "who is married to the in-[D]istrict employee, constitutes an indirect financial

involvement under N.J.S.A. 18A:12-24(c) such that [you are] precluded from participating in negotiations and voting on the collective bargaining agreement, as well as participating in the search for, evaluation of[,] and/or contract negotiations with the Superintendent?"

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, the spouse of your spouse's brother is neither a "Member of immediate family" nor a "Relative" within the meaning of the Act. Although the spouse of your spouse's brother is neither a "Member of immediate family" nor a "Relative," the spouse of your spouse's brother falls within the umbrella of "others" as enumerated in *N.J.S.A.* 18A:12-24(b).

In addition, and as discussed at length in A24-17, 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 your spouse's brother falls within the definition of "Relative" as set forth *N.J.A.C.* 6A:23A-1.2, because "sister-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 your spouse's brother 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 the spouse of your spouse's brother is only an "other," you may participate in negotiations with the LEA, and may vote on the collective negotiations agreement. You may also participate in all matters related to the Superintendent so long as you do not extend an *unwarranted* privilege, advantage or employment for yourself, members of your immediate family or *others*, such as the spouse of your spouse's brother.

As to whether your spouse's business relationship with his/her brother constitutes an indirect financial involvement prohibited by *N.J.S.A.* 18A:12-24(c), the Commission notes, and as you indicated in your request, that since "the business has no relationship with the Board or any connection to [D]istrict business," it does not present a conflict for you under the Act. Nonetheless, if any matters related to your spouse's business should come before the Board, you would need to recuse yourself from any and all discussions (and votes) related to those matters.

In summary, the Commission advises that based on the information provided in your request, and absent another conflict of interest, you may participate in negotiations with the local education association and in matters related to the Superintendent. Your spouse's business relationship with his/her brother also does not pose a conflict of interest under the Act. 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 unknown at this time to the Commission, involving you, the spouse of your spouse's brother, and/or the business between your spouse and his/her brother.

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