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March 7, 2014

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A22-13

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion, regarding a member of the Local Board of Education (Board). The Commission will provide its advice based on the information you included in your advisory opinion request. The Commission notes that your assistant communicated to this Office that you have complied with N.J.A.C. 6A:28-5.2(b) by copying the board member who is the subject of your request. Because the Board member did not submit any additional comments within the 10-day time limit set forth in N.J.A.C. 6A:28-5.2(b), the Commission will provide its advice based on the information you included in your advisory opinion request. The Commission's authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31.

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 a Board member to negotiate the collective bargaining agreement with the local education association where the member's father-in-law is a custodian employed in the District and resides in the home he co-owns with the member.

Since a father-in-law is not considered a "relative" within the meaning of the Act, the Commission determined that your inquiry turned on the application of N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

In this instance, the Board member's "father-in-law" is considered an "other" within the meaning of this subsection, and as such, the public may view his action as an attempt to secure unwarranted privileges or advantages for him in violation of the public trust. In light of this Board member's familial relationship with his father-in-law, the Commission has determined that he may not be involved or present for the Board's negotiation since doing so would violate N.J.S.A. 18A:12-24(b). Moreover, such participation in employment discussions involving the Superintendent may also create a justifiable perception that the public trust has been violated. Since the Superintendent evaluates and makes recommendations about the father-in-law's continued employment, the Commission determined the Board member would be in violation of

the Act and foster the perception that the public's trust has been violated as some privilege, advantage or continued employment may inure to him.

Moreover, a portion of N.J.S.A. 18A:12-24(c) is pertinent to your question. It provides in part:

...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.

You have noted that the Board member and his father-in-law co-own and reside in the same house. In light of these facts, there appears to be a personal involvement which may create some benefit to them. The Legislature set forth that a school official shall not participate in a matter in which he has a "personal involvement" that is or creates some benefit to the school official or member of his immediate family. While the father-in-law is not a part of the Board member's immediate family under the definition set forth at N.J.S.A. 18A:12-23, the question is whether the Member has a personal involvement with his father-in-law's employment contract that is or creates some benefit to the Board member.

The Commission considers an involvement personal whenever a school official has a relationship that the public may perceive as being predominant to the best interest of the District.¹ Therefore, a benefit can be something of intrinsic value, but no monetary worth. In this set of facts, co-owning a home and sharing a close familial bond establishes a sufficient dual nexus to suggest that there is a personal as well as financial benefit to the Board member. The Commission finds that such a relationship prohibits the Board member from negotiating a collective bargaining agreement when his relative is a member of the District union because the personal involvement might reasonably be expected to impair his objectivity. It is clear that the public trust would be violated by allowing the Board member to negotiate his father-in-law's contract or to participate in any future discussions and vote concerning his father-in-law's subsequent appointments or promotions.

Therefore, the Commission finds that the Board member would violate N.J.S.A. 18A:12-24(b) and (c) if he were to negotiate with the local education association when his father-in-law is a member of that association.

We hope this answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson

¹ Advisory Opinion 16-00, p. 2.