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December 19, 2017

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion—A35-17

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 November 28, 2017.

You inform the Commission that you have a cousin who is employed as a teacher in the School District (District), and that she was hired before you were elected to the Board. You further inform the Commission that you have been advised that this familial relationship is a conflict under the School Ethics Act (Act). N.J.S.A. 18A:12-21 et. seq. Based on these facts, you first seek clarification on Advisory Opinion A24-17 (A24-17),¹ and how it pertains to board members who, like you, have a cousin employed by the Board. Second, you seek to determine whether you do, in fact, have a conflict under the Act because of your cousin's employment.

Before more fully responding to your inquiry, the Commission notes that, pursuant to N.J.S.A. 18A:12-23, "Member of the 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 "cousin" does not fall within the definition of "member of immediate family" or "relative" under the Act.

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 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,

¹ A24-17 can be read at the following link: <http://www.state.nj.us/education/legal/ethics/advisory/>

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.” As a condition of receiving State aid, all Boards, including yours, are required to implement a nepotism policy that contains, among other things, provisions regarding what school officials can, and cannot do, when they have a relative or immediate family member who is employed by the Board.

Based on the definitions in the Act and in the fiscal accountability, efficiency, and budgeting procedures regulations, a cousin is neither a “member of immediate family” nor a “relative.” Therefore, your cousin falls within the umbrella of “others” as set forth in N.J.S.A. 18A:12-24(b). N.J.S.A. 18A:12-24(b) 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*.” Therefore, as a Board member, you cannot provide any “other,” including your cousin, with any *unwarranted* privilege, advantage, or employment. However, there is no presumption of a conflict simply because you have a cousin who works in the District.

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 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 cousin. Such a conflict would exist, for example, if you and your cousin became financially involved in some way, or if, as stated above, you were to extend to your cousin an *unwarranted* privilege, advantage, or employment. 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 summary, the Commission advises that absent another conflict, you do not have a conflict simply because your cousin is employed by the Board. The Commission reiterates that advisory opinions are determined by, and are limited to, the facts presented before it; therefore, should additional facts arise or facts exist that have not been disclosed to the Commission, a violation may indeed occur.

Sincerely,

Robert W. Bender, Chairperson
School Ethics Commission