

January 23, 2001

**FOR PUBLIC RELEASE**

RE: Advisory Opinion A01-01

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of two members of the Board of Education that you represent. You have asked whether two members of the Board would violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq. if they were to negotiate and vote on a contract with the local teachers' association when their spouses are employed as full-time teacher aides in the District. Aides are not members of the teachers' association. You have further asked whether the Board member who is Board President may appoint members and/or the chairperson of the negotiations committee, if he is found to have a conflict. For the reasons set forth below, the Commission advises that the Board members would violate N.J.S.A. 18A:12-24(c) if they were to participate in negotiations and vote on the contract with the teachers' association. However, the Board member who is also Board President would not violate N.J.S.A. 18A:12-24(c) by appointing the chairperson and/or members of the negotiations committee.

You have set forth that the spouses of the two Board members are employed as full-time teacher aides in the District. One spouse is a classroom aide and the other spouse is an instructional aide. Both are paid an hourly wage, but the instructional aide is required to have substitute certification. Each aide is offered a contract for one year in the form of a letter from the Superintendent.

You further provide that the current contract of the local teachers' association, which you have attached to your request, will expire on June 30, 2001. The Board is therefore planning negotiations for a successor contract. The local teachers' association contract does not include aides within the definition of employees that the teachers' union represents. Aides are, however, supervised and evaluated by teachers who are members

of the local education association. The Board sets the salaries and benefits of aides each year by a vote. In contrast, you note that the education association contracts are generally for three years. Therefore, there is no formal contractual link between the salary and benefits of the aides and those of the members of the education association.

Nevertheless, you have set forth that your investigation has demonstrated that, “in general the raises for aides have been the same percentage as the raises negotiated by the ... Education Association.” Your investigation further revealed that, in some years, the percentage raise for aides might have been somewhat greater than that of teachers. You indicate that, to confirm with certainty the accuracy of the recollection of those to whom you spoke, would involve considerable research. You do state that, “It is accurate to say that the percentage increases in salary in the union contracts historically have set minimum percentage increases which aides receive.”

Members of the local education association receive a package of health benefits that includes medical, prescription, dental and eye care benefits. Full-time aides receive health benefits limited to medical coverage.

Based on the foregoing circumstances, you have asked the following questions: 1) May the Board members negotiate a collective bargaining agreement with the local education association?; 2) May the Board members vote on the ratification of a collective bargaining agreement reached with the local teachers association; and 3) If one of the Board members who is currently serving as Board President is found to have a conflict of interest, may he still appoint other Board members to chair the negotiations committee and negotiate a collective bargaining agreement with local education association as is his responsibility?

Each of these questions turns on the application of N.J.S.A. 18A:12-24(c) of the School Ethics Act, which provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. 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.

The first question is whether the Board members may negotiate with the Education Association. You have set forth that aides are not represented by the Education Association and are not covered by its collective bargaining agreement. They receive an individual contract of employment each year and are compensated by the hour. They receive benefits that are limited to the medical coverage that the teachers receive only. You also noted that aides generally receive the same percentage salary increase as the members of the Education Association, or, more specifically, they historically have

received no less than members of the Education Association have on a percentage basis. The question thus becomes whether the aforementioned link between the spouses' aide salaries and the Education Association member salaries sufficiently ties the Board members to the Education Association contract such that they would have a financial involvement in the Education Association contract that might reasonably be expected to impair their objectivity when negotiating. The Commission must also determine whether the Board members or their spouses have a personal involvement in the Education Association contract that is or creates some benefit to them or their spouses.

In *Advisory Opinion A55-95*, the Commission advised that a board member with a spouse who was a teacher's aide in the district would violate N.J.S.A. 18A:12-24(c) by negotiating with the teachers' union if his spouse's salary were determined based on the salaries provided to teachers in the district. The Commission said that if the spouse's compensation will be affected by the outcome of the negotiations, the board member would violate N.J.S.A. 18A:12-24(c) by negotiating since he would have an indirect financial and personal involvement in the percentage increase that the teachers obtained.

The Commission finds that its reasoning and conclusion in *Advisory Opinion A55-95* is applicable here. Although the spouses are not members of the union and do not work under a collective bargaining agreement, they still indirectly benefit from the negotiated contract because they will likely receive a percentage increase in pay that is equal to or more than that of the Education Association members. Although it is not a formal link, the Education Association contract is certainly instructive in determining the percentage raises of the aides. Therefore, the Board members have an indirect financial involvement that might reasonably be expected to impair their objectivity and an indirect personal involvement that constitutes a benefit to themselves and their spouses. For the foregoing reasons, the Commission advises that the Board members would violate N.J.S.A. 18A:12-24(c) if they were to participate in negotiations for a collective bargaining agreement with the Education Association.

As to whether these Board members may vote on the contract with the Education Association, the Commission does not believe that there is a distinction under the Act. The Act requires that a member not act in his official capacity in any matter in which he has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity. The Commission has found that the Board members have an indirect financial involvement and an impermissible personal involvement; therefore, they would be acting in their official capacity in a matter from which they are prohibited whether they are negotiating or voting on the contract. Based on the foregoing, the Commission advises that the Board members would violate N.J.S.A. 18A:12-24(c) if they were to vote on the collective bargaining agreement with the Education Association.

The Commission's opinion is not based on the fact that the aides report to teachers who are members of the Education Association. This fact would prevent the Board members from participating in decisions on matters regarding the specific teachers who supervise their spouses. However, it would not per se prevent the Board members

from participating in negotiations and voting on the contract with the Education Association.

The last question is whether the Board member who serves as President of the Board may appoint the members and/or the chairperson of the Board's negotiating committee. The Commission must determine whether the Board President has a financial involvement with the appointment of the chairperson and negotiations committee members such that a reasonable person may expect that he cannot be objective or whether a personal involvement exists that would constitute a benefit. The Commission views the appointment of persons to serve on the negotiations committee differently than it views participation in negotiations. The act of appointing members to the committee is different from participating in negotiations because the Board President has no control over the appointees after he appoints them. They are free to negotiate however they please. The President's responsibility is to appoint members to committees who would best serve the District. The Commission cannot conclude that a reasonable person would expect that the Board President could not be objective in fulfilling this task as it pertains to choosing the chairperson and members to serve on the negotiations committee solely because his spouse is an aide. Therefore, the Commission advises that the Board President would not violate N.J.S.A. 18A:12-24(c) if he were to appoint the chairperson and the members of the negotiating committee to bargain with the Education Association to reach a collective bargaining agreement.

In summary, the Commission advises that the Board members would violate N.J.S.A. 18A:12-24(c) of the Act if they were to participate in negotiations and vote on the contract with the Education Association since their spouses generally receive an increase in their hourly rate of pay that is equal or greater in percentage to that of the members of the Education Association. However, the Board member who is also Board President would not violate N.J.S.A. 18A:12-24(c) by appointing the chairperson and members of the negotiations committee.

We hope this answers your inquiry.

Sincerely yours,

Paul C. Garbarini  
Chairperson

I hereby certify that the School Ethics Commission voted to make this opinion public at its public meeting on October 23, 2001.

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Lisa James-Beavers  
Executive Director