

January 29, 1997

**FOR PUBLIC RELEASE**

Subject: Advisory Opinion A16-96

You have requested an advisory opinion from the School Ethics Commission to address questions that the board has raised regarding the ability of a board member who has a spouse in the local Administrative Association to participate in negotiations and vote on a contract with the Education Association when the Administrative Association contract has provisions linking to the Education Association contract. The Commission considered your request at its meeting of December 17, 1996. After you received the opinion, you informed the executive director that there appeared to be an error in the response to question number six. Please accept this revised opinion to clarify the answer to question number six only. The Commission approved this opinion and voted to make it public at its meeting of January 28, 1997.

You have indicated that the spouse of one of your board members is the principal of one of the district's schools and is therefore, covered under the Agreement between the Board and the Administrative Association. You have provided copies of both the Education Association and Administrative Association agreements. The Administrative Association agreement contains the following provisions:

Page 10, Article V, Fringe Benefits: Fringe benefits shall not be less than those applying to other subordinate certified staff, but will include ...

Page 18, Article IX, Administrators' Schedules, Paragraph E: Administrators shall have a duty-free lunch period equivalent to that of teachers ...

Page 21, Article XIV, Salary, Paragraph 5: Any additional increase in longevity given to teachers in their contracts shall also be given to the administrators.

You have indicated that several questions have arisen regarding the forthcoming collection bargaining sessions between the board and the Education Association. The Commission will address each question below.

**1. May the board member vote on the collective bargaining agreement between the board and the Education Association?**

The board member should not vote on the collective bargaining agreement between the board and the Education Association. The provision of the School Ethics Act at issue is N.J.S.A. 18A:12-24(c). It sets forth:

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

The Commission has never ruled that a board member could not vote on an agreement with teachers when his or her spouse was a member of the administrators' association. However, the Commission did advise a superintendent that he should not negotiate a contract with a teachers' union when his salary provisions were specifically tied to the teachers' contract. *Advisory Opinion A37-95*. We advise that the situation you have set forth is similar to that in A37-95.

In the present case, the linkage between the teachers' contract and the administrators' contract means that his immediate family member has an indirect financial involvement in the outcome of the teachers' contract that might reasonably be expected to impair his objectivity when voting on the contract. If he votes for an increase in salary and/or benefits for the teachers, it will ultimately affect the administrators and thus, his spouse. Thus, he should abstain from voting on the teachers' contract.

**2. May the board member participate directly in the negotiations between the board and the Education Association?**

Subsection (c), cited above, prevents the board member from acting in his official capacity in any matter in which his immediate family member has an indirect financial involvement that one might reasonably expect will impair his objectivity. Since the Commission has already advised that the involvement exists, the board member should refrain from voting and participating in negotiations.

**3. May the board member participate in preliminary closed session discussions by the Board for the purpose of considering the general framework within which negotiations with the Education Association will take place?**

For the reasons expressed above, the Commission advises that the board member should not participate in preliminary closed session discussions by the board to consider the general framework within which negotiations with the Education Association will take place. Again, he would be acting in his official capacity in a matter in which his spouse has a financial involvement in violation of the Act.

**4. In connection with the negotiations with the Education Association, may the board member participate in closed session discussions by the board regarding those areas that are not linked with the Administrative Association contract? What about the provisions that are linked?**

As set forth in the answer to number three above, the board member may not participate in the closed session discussions. The Commission cannot discern and you have not presented any way to separate the discussions in such a fashion. More importantly, it would appear to the public that he is continuing to act in his official capacity in a matter in which he has a conflict, since the public may not attend such sessions. Thus, the Commission would advise against attempting to separate the contract provisions.

**5. After the board and the education association have reached a settlement, but before the board has voted, may the board member participate in discussions by the board subcommittee to review those areas which are not specifically linked with the Administrative Association contract?**

Since the Commission has opined that the board member cannot vote, it must caution against commenting on the contract or otherwise trying to influence the vote. Again, he should not act in his official capacity in this matter, once the Commission rules that he has a conflict under subsection (c).

**6. After the Board has voted to accept the collective bargaining agreement with the Education Association, and after the agreement has been fully executed, can the board member participate in discussions by the board of those areas that are linked to the Administrative Association contract?**

Although the board has already voted to accept the agreement and executed the agreement, the board member could still violate subsection (c) of the School Ethics Act by discussing those areas linked to the Administrative Association contract. There is a possibility that his comments will influence future arguments regarding the interpretation of the contract or the next round of negotiations with the Administrative Association or the Education Association. Once the Commission determines that the board member has a conflict, as it has done in the present circumstances, the board member should avoid all discussions regarding the provisions that are linked to the contract in order to avoid violating the School Ethics Act.

The Commission hopes this opinion answers your inquiry.

Sincerely,

Paul C. Garbarini,  
Chairman