

August 27, 2003

FOR PUBLIC RELEASE

Subject: Advisory Opinion A19-03

The School Ethics Commission is in receipt of your request for an advisory opinion. You are the president of a Board of Education as well as a member of the New Jersey Education Association (NJEA), by virtue of your employment. Your spouse is a District employee and member of the local NJEA affiliate. You request an advisory opinion as to whether you may sign off on the following documents: the retainer agreement with the law firm representing the Board in negotiations, the monthly bill list which includes payment to the attorneys handling labor negotiations, the payroll certification authorizing payment to district employees, and the collective bargaining agreement between the Board and the local NJEA affiliate.

You state that you did not vote on the appointment of the law firm representing the Board in the aforementioned labor negotiations, you will not participate in the negotiations process, nor will you vote on the collective bargaining agreement itself. However, you are concerned about performing your signatory obligations as president of the Board and ask who should sign these documents if you are unable to do so under the School Ethics Act.

The Commission has reviewed your request and advised at its meeting of August 26, 2003, that you may sign the retainer agreement for the law firm negotiating the collective bargaining agreement, the collective bargaining agreement itself, the monthly bill list which includes payment to the labor negotiators, and the payroll certification which authorizes payment to district employees. In reaching this determination, the Commission found that signing these documents would not violate N.J.S.A. 18A:12-24(c), the applicable provision of the School Ethics Act.

N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter where he or a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity 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 ethical standard denoted in subsection (c) looks to whether you have a direct or indirect financial involvement that might reasonably be expected to impair your objectivity of judgment. Additionally, the subsection looks to whether you have a personal involvement that might create some benefit to you. Here, it is unlikely that a financial or personal benefit would run to you if you were to sign off on any of the documents you mention since your signing is simply the ratification of board action. The board must vote to retain a law firm for negotiations, to pay that firm, to enter into a collective bargaining agreement, and to pay its employees. You are not signing these documents without board authorization or resolution. Further, it is unlikely the public would perceive this action as a financial or personal benefit to you. Thus, the Commission finds no potential violation of subsection 24(c) in your signing of these documents.

In reaching this determination with regard the propriety of your signature on the collective bargaining agreement, the Commission looks to the reasoning set forth in Advisory Opinion, A14-00 (November 28, 2000). In that advisory opinion, the Commission determined that there would not be a conflict with N.J.S.A. 18A:12-24(c) if board members voted on a collective bargaining agreement with the local teachers' affiliate in the district in which they serve after they had been apprised of the terms of the agreement, and after the memorandum of agreement had been reached. This is so because a board's vote on the collective bargaining agreement must take place in a public meeting after the terms have been negotiated. See, In the Matter of Bruce White (Decision on Return), SEC #C18/C22-99 (March 28, 2000), Commissioner, (June 1, 2000). As noted in A14-00, this Commission considers voting to be distinguishable from participation in collective bargaining negotiations, or being present at the collective bargaining negotiations, where a board member might not be objective in negotiating for his, or his spouse's, fellow union members to receive a contractual award or service. Similarly, the Commission finds that the perfunctory act of signing the collective bargaining agreement would not violate subsection 24(c) of the Act. The signature of the Board president is required to represent that which has already been negotiated and agreed upon by the Board.

For these reasons, the Commission determines that you may sign off on the collective bargaining agreement between the Board and the local education association.

Additionally, you may sign the retainer hiring the law firm to negotiate and you may sign to certify the bill list that pays the law firm. Lastly, the Commission finds that you may sign off on the monthly payroll authorizing payment to District employees, even though your wife is employed by the District, since the ministerial act of signing is necessary to ratify the board's action. You are reminded to continue to abstain, as you have done in the past, from voting on the monthly payroll with regard to your spouse.

Because the Commission opines that you are able to sign the documents in question, it needs not reach to the question as to who should sign if you are prevented to do so under the Act.

We trust this answers your inquiry. Because the Commission believes that this question may arise again, it is making this opinion public.

Sincerely,

Paul C. Garbarini
Chairperson

(PCG/LJB/PSC/:m:advisory opinions/A19-03pub)