



## State of New Jersey

DEPARTMENT OF EDUCATION  
SCHOOL ETHICS COMMISSION  
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CHRISTINE TODD WHITMAN  
*Governor*

DAVID C. HESPE  
*Commissioner*

September 28, 1999

### FOR PUBLIC RELEASE

RE: Advisory Opinion A13-99

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of the Board that you represent. The Commission discussed your request at its meeting of September 28, 1999. You are requesting an opinion as to whether certain school board members and administrators would violate the School Ethics Act, N.J.S.A. 18A:12-21 et seq., if they were to participate in negotiations with the local teachers' association. You have also asked the Commission to advise, in the event that there is a conflict of interest, whether there is any exception that can be applied to the two administrators or if the Doctrine of Necessity applies.

You have set forth that the Board of Education that you represent is in negotiations with its teachers' association, which is a New Jersey Education Association (NJEA) affiliate. The Board is requesting an opinion as to whether certain individuals have a conflict regarding the ongoing negotiations. The first is the Interim Superintendent of Schools whose spouse is a teacher in another school district and a member of an NJEA affiliate. The second is the Business Administrator/Board Secretary whose spouse is also a teacher in another school district and a member of an NJEA affiliate. The third is a Board member who formerly taught in the district and was a member of the district NJEA affiliate and President from 1985 and 1990. The fourth and last is a Board member whose emancipated daughter is a teacher in another school district and a member of an NJEA affiliate.

The first and second individuals are administrators who are similarly situated. Both the Interim Superintendent and the Business Administrator have spouses who are

teachers in other districts and members of other NJEA affiliates. The question is whether their participation in negotiations violates N.J.S.A. 18A:12-24(c) of the School Ethics Act. This provision sets forth that:

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 or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

The Commission has previously advised in Public Advisory Opinion A10-93(b) and A07-94 that its opinion that a board member would violate the Act if he were to negotiate and vote on contracts when his or her spouse was a member of the same statewide general union extended to school administrators as well. *Public Advisory Opinion A10-93(b) and A07-94* (June 23, 1994), p. 4. The Commission stated, "The School Ethics Act does not distinguish board members from school administrators in its provisions, but applies to all school officials equally." Nevertheless, the Commission noted therein that it did not intend to prevent school boards from receiving necessary technical information in the collective bargaining process. Thus, it provided an exception for administrators to provide technical information as necessary to the collective bargaining process when no one else in a district can provide that information to the negotiating team. However, the Commission did not allow for the administrators to fully participate in collective bargaining when a conflict of interest existed. The Interim Superintendent and the Business Administrator have conflicts of interest under N.J.S.A. 18A:12-24(c) of the School Ethics Act. The question is the extent to which they may participate in negotiations in accordance with the aforementioned Advisory Opinion.

You have set forth that the Interim Superintendent works closely with the State Intervention Team that is presently in the school district. As Labor Counsel, your contact with the team is through the Interim Superintendent. The State's audit report apparently set forth that the Board should look at certain items during negotiations. Thus, you indicate that it is important that the Interim Superintendent assist the district during negotiations.

As set for the above, the Commission has made an allowance for administrators to provide technical information to the negotiating team. The Commission finds that the Interim Superintendent's special knowledge falls within this allowance for technical information. Thus, the Interim Superintendent can participate in negotiations in order to impart the recommendations of the State Intervention Team during the collective bargaining process. By relaying the thoughts and recommendations of the State Intervention team, he cannot be said to be acting in a way to benefit his spouse. Thus, as long as he sits in negotiations for the sole purpose of serving out his role as liaison to the State Intervention Team, he would not violate N.J.S.A. 18A:12-24(c) by participating to this extent.

With regard to the Business Administrator/Board Secretary, you have set forth that his presence at the table is necessary because the major issues involved in negotiations are those involving financial and insurance matters. Since the Business Administrator/Board Secretary is responsible for the Board's budget, you indicate that his presence during negotiations is necessary to answer any financial and budgetary questions that arise. Your Board believes that if the Business Administrator/Board Secretary is not allowed to sit in on the negotiations, his absence will necessitate frequent interruptions to consult with him for answers whenever a financial or insurance issue arises. The Commission advises that, like the Interim Superintendent, the Business Administrator/Board Secretary has special knowledge that falls within the allowance for the providing of technical information. Thus, he can participate in negotiations in order to provide his technical expertise. If he restricts his comments to providing financial and insurance information then he cannot be said to be acting in a manner that can benefit his spouse. However, he cannot act as negotiator for the Board. As long as he participates to the limited extent set forth, he cannot be said to be acting in a matter in which he has a financial or personal involvement in violation of N.J.S.A. 18A:12-24(c).

Since the Commission has stated that the Interim Superintendent and Business Administrator/Board Secretary can participate in negotiations for the limited purposes set forth above, the Commission declines to rule on the applicability of the doctrine of necessity.

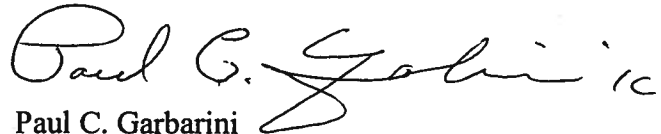
The third individual retired as an administrator from the district and now serves as a member of the Board. She was once a teacher in the district and served as President of the teachers' association from 1985 to 1990. The Commission set forth in Advisory Opinion A10-93(b) and A07-94 that its opinion does not apply to retired members of a union. *Id.* at p. 5. Since the Board member last served as President of the teachers' association in 1990, she no longer has a personal involvement that might reasonably be expected to impair her objectivity or independence of judgment. Thus, she may participate in negotiations without violating N.J.S.A. 18A:12-24(c).

The fourth individual is a Board member who has an emancipated daughter who teaches in another district and is a member of an NJEA affiliate. The Commission previously issued Public Advisory Opinion A23-94, which addressed this question. The Commission advised that the prohibition against a board member voting on the contract where he or his immediate family member was a member of the same statewide general union should not extend beyond the definition of "member of immediate family" set forth at N.J.S.A. 18A:12-23. This provision defines "member of immediate family" as "the spouse or dependent child of a school official residing in the same household." An emancipated daughter is not a member of the board member's immediate family under the School Ethics Act. Thus, this relationship would not create a personal involvement for the Board member that might reasonably be expected to impair his objectivity or independence of judgment. For the foregoing reason, the Board member may participate in negotiations without violating N.J.S.A. 18A:12-24(c) of the School Ethics Act.

In conclusion, the Interim Superintendent and Business Administrator/Board Secretary who have spouses who are members of the statewide general union with which their Board is negotiating, may sit on negotiations only for the limited purposes set forth above. Neither may actually negotiate for the Board without violating the School Ethics Act. The Commission also advises that the two Board members in question do not have a conflict of interest under the School Ethics Act that would prohibit them from negotiating.

We hope this answers your inquiry.

Sincerely,

A handwritten signature in black ink that reads "Paul C. Garbarini". The signature is written in a cursive style with a large, sweeping initial "P".

Paul C. Garbarini  
Chairperson

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