

January 29, 2008

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion A25-08

The School Ethics Commission is in receipt of your request for an advisory opinion on behalf of two school board members. The Commission notes that you copied the board members whose conduct is the subject of the advisory opinion request, thus complying with N.J.A.C. 6A:28-5.2(b). The Commission also notes that the board members did not submit a response to the advisory opinion request within the 10-day time limit set forth in N.J.A.C. 6A:28-5.2(b). Therefore, the Commission will base its advice on the facts as set forth in your request.

You have asked whether the board members would violate the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq., if they were to participate in the discussion and adoption of the board's goals and objectives for the superintendent. You have set forth that both board members have immediate family members employed by the district. Board member A's spouse is a secretary in one of the district's elementary schools. Board member B's spouse is the district's substitute caller. You have further set forth that both board members understand that, under the Act, they may not participate in the end-of-year evaluation of the superintendent or any discussions or votes pertaining to any employment issues related to the superintendent or any administrator who may supervise their spouses.

At its December 16, 2008 meeting, the Commission determined, pursuant to its authority in N.J.S.A. 18A:12-28(b), and based on the reasoning below, that the board members would not violate the Act if they were to participate in the discussion and adoption of the board's goals and objectives for the superintendent as long as those goals and objectives do not touch upon the employment of the board members' spouses.

Your inquiry turns on the application of N.J.S.A. 18A:12-24(c), which provides:

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 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 Commission first notes that based on the definition of “member of immediate family” in N.J.S.A. 18A:12-23, the board members’ spouses are immediate family members. As you have correctly set forth, the Commission has previously advised that board members with immediate family members employed in the district may not participate in discussing or voting on the evaluation of the superintendent or any employment issues related to the superintendent. See, *Advisory Opinion A10-00*, (June 27, 2000), (where the Commission advised that a board member whose spouse was employed in the district as a teacher would violate the Act if s/he were to participate in any employment issues regarding the superintendent such as performance reviews, contract negotiations or promotions); *Advisory Opinion A30-05*, (March 10, 2006) (where the Commission advised that two board members with spouses employed in the district would violate the Act if they participated in evaluations, personnel actions and compensation for the superintendent); and *Advisory Opinion A07-06*, (July 31, 2006) (where the Commission advised that a board member whose spouse was employed in the district as a teacher’s assistant would violate the Act if he were to participate in any employment issues regarding the superintendent).

In *A30-05*, the Commission reasoned that a board member whose spouse was employed in the district would have difficulty being completely objective in acting on employment issues regarding the superintendent since the superintendent must provide a recommendation to the board regarding the employment terms of the board member’s spouse. (*Id.*, at page 3) However, that reasoning does not apply to participation in the discussions and adoption of the board’s goals and objectives for the superintendent. The Commission believes that the board members whose spouses are employed in the district would not have difficulty being completely objective in discussing and adopting the board’s goals and objectives for the superintendent where such goals are broad in scope. While the Commission can find no direct or indirect financial involvement on the part of the board members or their spouses in the discussion and adoption of the board’s goals and objectives that are broad in scope, the Commission finds that should those goals or objectives touch upon the employment of the board members’ spouses, the public could reasonably perceive that the board members’ objectivity or independence of judgment may be impaired because of their spouses indirect financial involvement

In summary, the Commission advises that the board members would not violate the Act if they were to participate in the discussion and adoption of the board's goals and objectives that are broad in scope. However, the board members would violate the Act if they were to participate in the discussion and adoption of the board's goals and objectives where those goals or objectives touch upon the employment of the board members' spouses.

We trust that this opinion answers your inquiry. Because the Commission believes that this opinion will be of interest to other board members, it is making it public.

Sincerely yours,

Paul C. Garbarini,  
Chairperson

PCG/IB/MET/advisory opinions/A25-08