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*Acting Commissioner*

August 27, 2014

**FOR PUBLIC RELEASE**

SUBJECT: Advisory Opinion—A30-14

The School Ethics Commission (Commission) is in receipt of your request for an advisory opinion on your behalf, regarding your role as a member of the Local Board of Education (Board) and your ability to engage in certain Board functions in light of the Local School District's employment of your wife as a substitute teacher and your son as a summer student worker. Pursuant to your request and consistent with its authority under N.J.S.A. 18A:12-28(b), the Commission discussed this matter at its July 22, 2014 meeting. The Commission bases its advice on the facts included in your request, and its authority to issue advisory opinions is expressly limited to determining whether any proposed conduct or activity would constitute a violation of the School Ethics Act. N.J.S.A. 18A:12-31.

You explain that since your son is employed as a summer worker and your wife is a substitute teacher, you as a Board member may be prohibited from participating in certain Board functions in light of the Commission's determination in Martinez v. Albolino et al., Hackensack Board of Education, Bergen County, SEC Dkt. No. C45-11 (June 26, 2012).

Under the Commission's bright-line decision in Martinez, a conflicted Board member may not participate in any discussion pre- or post-hire, may not be a part of any aspect of the vetting process or any evaluation and contract discussion post-hire regarding the Superintendent. That would include, but not be limited to, voting on who should be on the selection committee or which firm will conduct the search. Conflicted Board members may not be in the room when discussions are underway, and they should not be privy to any information regarding those discussions. Participation in any of those actions would be a violation of N.J.S.A. 18A:12-24(c). Conflicted Board members do retain their rights as members of the public and no more.

To the extent your son's summertime employment creates a conflict for you, the Commission has determined that as long as you refrain from engaging in any of the Board activities listed above and avoid any actions regarding those in the supervisory chain for your son, including the Superintendent, you would not be in violation of the School Ethics Act. N.J.S.A. 18A:12-21 et seq. This bar exists for as long as your son is employed.

The Commission, however, wishes to address the issue of your wife's status as a substitute teacher. The classification of a spouse who is an employee does not change the

application of statutory and regulatory prohibitions on the conduct of the school official. Based on the reasoning in Martinez, the same proscriptions inure to Board members whose spouses are so employed. These Board members would violate N.J.S.A. 18A:12-24(c) if they were to participate in any employment or personnel issues of those who have influence over or affect their spouses' employment in any manner. Such involvement would reasonably be expected to impair the Board members' objectivity or independence of judgment in violation of N.J.S.A. 18A:12-24(c). In light of the Martinez decision, A14-06 has been reversed.

We hope this answers your inquiry.

Sincerely,

Robert W. Bender, Chairperson