

July 31, 2006

FOR PUBLIC RELEASE

SUBJECT: Advisory Opinion A07-06

The School Ethics Commission is in receipt of your request for an advisory opinion regarding two questions. At its June 1, 2006 meeting, the Commission provided advice, as noted below, on the first question. However, the Commission could not provide advice on the second question because you failed to copy the board member whose conduct is the subject of the advisory opinion request as required by N.J.A.C. 6A:28-5.2(b).

In your first question, you have asked whether you may participate in the hiring of the superintendent, and in any employment issues regarding the superintendent without violating the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. You have set forth that you are a board member in a nine-school pre k-12 district with approximately 6,800 students. You have further set forth that your wife is a teacher's assistant at the high school where she is directly supervised by the building principal and indirectly supervised by four assistant principals. Through a conversation with staff in our office, you also set forth that the building principal is supervised by the assistant superintendent who, in turn, is supervised by the superintendent. While, the superintendent and the assistant superintendent operate out of a building different from the high school, they regularly go from building to building. You have further set forth that the current assistant superintendent has had several interviews to become superintendent. You have also asked for a clarification of *Advisory Opinion A10-00*, (June 27, 2000) and *Advisory Opinion A30-05*, (March 10, 2006) based on the facts set forth in your advisory opinion request.

At its June 1, 2006 meeting, the Commission determined, pursuant to its authority in N.J.S.A. 18A:12-28(b), that you would violate N.J.S.A. 18A:12-24(c) if you were to participate in the hiring and any employment issues regarding the superintendent.

Therefore, the Commission advises that you must recuse yourself and not participate in any discussions or votes involving the hiring of the superintendent and any employment issues regarding the superintendent. At its meeting of July 25, 2006, the Commission adopted this advisory opinion with amendments and also voted to make the opinion public.

As you have noted in your advisory opinion request, both Advisory Opinions *A10-00* and *A30-05* apply to the situation you have described. In *A10-00*, a board member's spouse was employed as a teacher in the district. The district was a K-8 district with 900 students and the superintendent, principal and vice-principal were located in the same building as the board member's spouse. In *A10-00*, the Commission advised a board member that he or she may participate in the search for the administrators and vote on the appointments, but would violate the Act if he or she were to participate in employment decisions regarding those administrators after they became the supervisors of the spouse. The Commission reasoned that it would not be reasonable for the public to expect that a board member, with a spouse who teaches in the district, would choose to appoint administrators who are most likely to be financially favorable to teaching staff, especially since teachers are employed pursuant to a collective bargaining agreement. The Commission also found that the board member and his spouse do not have a personal involvement in the selection of administrators that would create some benefit to them. However, the Commission noted that, "This may change if the selection is for someone who already knows the board member's spouse." See *A10-00* at p. 2.

In *A30-05*, two board members served in a district with 11 school buildings. Both board members had spouses who worked in the school district, one spouse as an instructional associate and the other spouse as a secretary in the office of the high school nurse. The Commission advised the two board members that they would violate N.J.S.A. 18A:12-24(c) if they were to participate in employment issues regarding the principals who supervise the spouses, the director of elementary education (for one board member only) and the superintendent. Since the Commission was not presented with the question of hiring the principal, director of elementary education and the superintendent, that issue was not addressed. In *A30-05*, the Commission applied the principal in *A10-00*, that a board member could not participate in employment issues regarding supervisors of that board member's spouse, to multiple building districts. Thus, board members with spouses working in the same district, either large or small, would violate N.J.S.A. 18A:12-24(c) if they voted on the administrators supervising their spouse including the supervisors of those administrators.

In both *A10-00* and *A30-05*, the Commission applied N.J.S.A. 18A:12-24(c) to the questions asked in the advisory opinion requests. N.J.S.A. 18A:12-24(c) is also applicable to your question. N.J.S.A. 18A:12-24(c) 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, your spouse is an immediate family member.

The Commission will first address your question regarding your participation in employment issues involving the superintendent. Your situation is similar to *A30-05*, in that your spouse is supervised by the principal who is supervised by the assistant superintendent. The assistant superintendent is supervised by the superintendent. In *A30-05*, board member A’s spouse was supervised by the principal who was supervised by the director of elementary education, who was supervised by the superintendent. In *A30-05*, the Commission reasoned that “because of the director’s position in regards to the board member’s spouse, the public could reasonably perceive that the board member’s objectivity and independence of judgment may be impaired as it relates to employment issues regarding the director.” The Commission also reasoned that “the board member would have difficulty being completely objective in acting on employment issues regarding the superintendent since the superintendent must provide a recommendation regarding the employment terms of the board member’s spouse to the board.” In *A10-00*, where the board member’s spouse was a teacher and the superintendent, principal and vice-principal were supervisors of the spouse, the Commission found that there was an opportunity for the board member’s spouse’s employment to be affected by the board member’s vote on employment issues in terms of the way the administrators treat and evaluate the spouse. The Commission reiterates that, given your situation where your spouse is supervised by the principal who is supervised by the assistant superintendent who is supervised by the superintendent, the public could reasonably expect that your objectivity and independence of judgment may be impaired. Therefore, the Commission advises that you would violate N.J.S.A. 18A:12-24(c) if you were to participate in any employment issues regarding the superintendent.

Advisory Opinion *A10-00* addresses your question about voting on the hiring of the superintendent. As noted above, in *A10-00*, the Commission advised a board member that he or she may participate in the search for the administrators and vote on the appointments. However, the Commission noted that this advice may change if the selection was for someone who already knows the board member’s spouse. Thus, the Commission made an exception for administrators who have some familiarity with a board member’s spouse. In your situation, you have set forth that the current assistant superintendent is a candidate to become superintendent. The current assistant superintendent supervises the principal who supervises your wife. The current assistant superintendent is familiar with your spouse. Since the assistant superintendent, who is a candidate for superintendent, is familiar with your spouse, the public could reasonably expect that your objectivity and independence of judgment may be impaired if you were to participate in discussions regarding the hiring of the superintendent and if you were to vote on the hiring of the superintendent. Therefore, the Commission advises that you

would violate N.J.S.A. 18A:12-24(c) if you were to participate in discussions regarding the hiring of the superintendent and if you were to vote on the hiring of the superintendent.

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/LJB/MET/advisory opinions/A07-06