

April 3, 2002

FOR PUBLIC RELEASE

RE: Advisory Opinion A05-02

You have requested an advisory opinion from the School Ethics Commission on behalf of the Board of Education (Board) where you serve as Superintendent. Your Board wishes to know whether three members of the Board who have immediate family members who are employed in a school district that receives the Board's students may vote to approve the tuition contract with the receiving district without violating the School Ethics Act, N.J.S.A. 18A:12-21 et seq.

At its meeting on April 2, 2002, the Commission advised that the three board members would violate N.J.S.A. 18A:12-24(c) if they were to vote to approve the tuition contract with the receiving school district for the Board's students to attend the receiving school district.

You have set forth that the school district in which you serve is a small k-8 district. The neighboring district is a large k-12 district that receives high school students from your district. Your district also sends classified students to the neighboring receiving district for certain program needs. This year, you are also considering the option of sending your district's seventh and eighth grade students to the receiving district's middle school for the 2002-2003 school year.

The three board members in question have the following relationships. Board member one has a spouse who is a teacher at the receiving district high school. Board member two has a spouse who works as a teacher's aide in the receiving district school

system. Board member three has a spouse who works as a secretary in the receiving district school system. The Board wishes to know whether these three board members may vote on the payment of tuition to the receiving district.

Your question presents an issue as to whether the Board members would violate N.J.S.A. 18A:12-24(c) of the Act, which provides:

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 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 previously interpreted N.J.S.A. 18A:12-24(c) in connection with a question of whether a board member who had a relationship with a school to which his district sent students could vote on the tuition contract with that school. The Commission concluded that where a board member served as a principal of a vocational school to which his district sends students, the board member violated N.J.S.A. 18A:12-24(c) when he voted on the tuition payment to the vocational school. In the Matter of Bruce White, C01-01 (July 24, 2001) The Commission reasoned that the board member's employer, the vocational school, acquires funds from the tuition payment that his board paid. The funds are not specifically earmarked for any particular purpose, but go into the general fund of the Vocational School and therefore benefit the school system at large and the board member indirectly. Thus, the Commission concluded that the board member had an indirect financial involvement with the tuition payment such that his participation in the matter was a violation of N.J.S.A. 18A:12-24(c).

In White, the Commission did not base its reasoning on the fact that the board member was a principal in the vocational school, only that he was an employee of the school to which the school where he served as a board member sent students. In the facts that you have set forth, the board members each have spouses that are employed in the receiving district. N.J.S.A. 18A:12-24(c) provides that neither the school official is prohibited from acting in his official capacity in any matter where he or any member of his immediate family has an indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Therefore, the Act does not distinguish between whether the board member is employed in the receiving district or the board member's spouse is so employed.

For the foregoing reasons, the Commission must advise that the three board members whose spouses are employed in the receiving district would violate N.J.S.A. 18A:12-24(c) of the Act if they were to vote on the payment of tuition to the receiving district.

We hope this answers your inquiry. Because this issue is likely to arise again, the Commission has voted to make this opinion public.

Sincerely yours,

Paul C. Garbarini
Chairperson

I hereby certify that the School Ethics Commission voted to make this opinion public at its public meeting on April 2, 2002.

Lisa James-Beavers
Executive Director