

September 30, 2004

FOR PUBLIC RELEASE

RE: Advisory Opinion A28-04

The School Ethics Commission is in receipt of your request for an advisory opinion. You have asked the Commission to clarify whether you have a conflict of interest and if so, what matters you are required to recuse yourself from when your spouse is employed as a teacher in the school district in which you serve as a board member.

You have set forth that you are a newly elected board member. Your spouse has been teaching in the district for approximately six years. Several years before you became a board member, you began to receive health and dental insurance through your spouse's policy with the district. As a result of your spouse's employment and the insurance you issue, you have asked 1) whether there is a conflict of interest in your serving on the board while receiving health benefits from the district and 2) what issues you are prohibited from voting upon in this situation.

At its meeting on September 30, 2004, the Commission determined, pursuant to its authority in N.J.S.A. 18A:12-28(b), that you do not have a substantial conflict of interest by receiving medical benefits provided through the district in which you serve as a board member that would require you to relinquish your position on the Board. The Commission further advises that you must abstain from all matters involving the local teachers' association to which your spouse belongs and all issues relating to your spouse's employment in particular.

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

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

Since your spouse is considered a member of your immediate family as that term is defined at N.J.S.A. 18A:12-23, in order to find a conflict under N.J.S.A. 18A:12-24(a), the Commission must find that you or your spouse has an interest in a business organization or engages in a professional activity which is in “substantial conflict” with the proper discharge of your duties as a board member. The School Ethics Act defines “interest” as the ownership or control of more than 10 percent of the profits, assets, or stock of a business but does not include the control of assets in a labor union, N.J.S.A. 18A:12-23. While you would be receiving benefits through your spouse, neither you nor your spouse has an interest as defined by N.J.S.A. 18A:12-23. On the other hand, your receipt of benefits through your spouse’s insurance with the district could be considered a transaction with the district. The Commission does not find it to be a transaction in substantial conflict with the discharge of your duties in the public interest; however, because the conflict can be cured by abstaining from matters involving the health benefits of teachers. Thus, the Commission does not find that receiving medical benefits provided to your spouse from the district in which you serve as a board member would be in substantial conflict with the proper discharge of your duties in the public interest.

The requirement that you abstain from matters involving the health benefits of teachers is found in N.J.S.A. 18A:12-24(c), which sets forth:

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;

Since your spouse is employed in the district in which you are a board member, your immediate family member has a direct financial interest in the contract that might reasonably be expected to impair your objectivity or independence of judgment. Therefore, you would violate subsection 24(c) if you acted in your official capacity on any matter that came before you related to the collective bargaining agreement with the local teachers’ association or your wife’s employment.

In summary, you would not violate N.J.S.A. 18A:12-24(a) by receiving medical benefits provided through the district in which you serve as a board member, but you would violate N.J.S.A. 18A:12-24(c) if you were to participate in discussions and vote on matters involving the local teachers’ association and all issues relating to your spouse’s employment.

We trust that this opinion answers your inquiry.

Sincerely yours,

Paul C. Garbarini,
Chairperson

PCG/LJB/advisory opinions/A28-04

I hereby certify that the School
Ethics Commission voted to make this
opinion public at its public meeting
on September 30, 2004.

Lisa James-Beavers
Executive Director