



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

HISTINE TODD WHITMAN
Governor

HARRIET DERMAN
Commissioner

June 30, 1995

Re: Local Government Ethics Law
Advisory Opinion #LFB-95-001
Board Determination

Dear

The Local Finance Board (Board) has reviewed your request for an advisory opinion regarding the Local Government Ethics Law. Pursuant to N.J.S.A. 40A:9-22.8, the Board may issue an advisory opinion as to whether any proposed activity or conduct would constitute a violation of the provisions of the law.

You have requested an opinion as to whether a Councilperson, who is employed by the school district, is prohibited from both participating in discussions and voting on issues concerning the school budget in the event the budget is defeated.

It is understood that you have recently been elected to the [redacted] Council. You have been a teacher in the [redacted] School District for more than twenty years. The [redacted] School District has an elected school board. In the event the budget for the school district is defeated in the annual school election, the budget is required by law to be reviewed by the Mayor and Council for a determination as to what, if any, budgetary line items are to be reduced.

It is generally concluded that under common law doctrines, there are incompatibility of offices and conflict of interests. The Legislature has enacted N.J.S.A. 18A:6-8.4, which provides that no person employed by a school district is disqualified by reasons of this employment from holding any elective or appointive State, county, or municipal office, except as a member of the school board employing the person. Further, the Court in Schulman v. O'Reilly-Lange, 226 N.J. Super. 825 (App. Div. 1988), concludes that this statute permitted a school nurse/school member to fully participate as a member of the municipal governing body.



including voting on the school budget (enclosed). It appears, therefore, that the statutes specifically allow a councilperson, employed by the school district, to vote on a defected school budget.

Additionally, Council, in their deliberation on the school budget, cannot make any changes in contracts that have already been negotiated and approved by the [REDACTED] School Board. These contracts are already in place and will not be changed by the governing body. Generally speaking, it would be extremely difficult for a councilperson who is a school employee to benefit from reviewing and voting on the school budget.

It would, however, be prudent for you to abstain on any matter which might affect you more directly than other teachers or employees in the district. There is the potential for a violation of Section 5(d) of the Ethics Law, which reads as follows:

No local government officer or employee 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 or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

An example is a new program provided for in the budget that you would be responsible for or a proposed position that is not part of the union contract, but if approved, you would occupy. Also, depending on which extra curricular activities you participate in, or if you are part of any special program, there is the potential for a violation of section 5(d) by voting on the budget which would provide for these specific activities or programs. These are factors that have not been explained in the opinion request. Please also be advised that Section 5(i) of the Ethics Law provides that you would not be in conflict if you do not gain more than other members of the group by your action as a councilmember.

N.J.S.A. 40A:5-22.5(i) states:


No local government officer shall be deemed in conflict with these provisions if, by reason of his participation in the enactment of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group.

Therefore the Board opined that a school district employee, who is a councilwoman from the same municipality, is not prohibited from both participating in discussions and voting on the school budget after that budget is rejected by the voters, unless the vote results in an action where a material or monetary gain accrues to the councilmember to a greater extent than that gain could reasonably be expected to accrue to any other employee of the school district.

This opinion is limited to the specific request at issue. Due to the fact sensitive nature of each circumstance, an advisory opinion may only be applied to the question at issue.

If you have any questions regarding this matter, please feel free to contact Patricia Parkin McNamara of the Local Finance Board staff at (609) 292-0479.

Sincerely,


Beth Gates, Chair
Local Finance Board

BG:APC
0364x
Enclosure

State v. Hudson, 78 N.J. Super. 411
Quill, 228 N.J. Super. 411

[9] The State's arguments that the evidence discovered during the claimed inventory search was admissible pursuant to the inevitable discovery rule or as having been disclosed in the course of a search incident to defendant's arrest were not raised below. Sound principles of appellate procedure preclude this court from considering these contentions as they are not jurisdictional nor do they concern matters of great public interest. *State v. Sousa*, 65 N.J. 433, 460 (1981); *Nieder v. Royal Indemnity Ins. Co.*, 62 N.J. 289, 291 (1973). The presentation of new issues on appeal "is inconsistent to the spirit of our practice which contemplates that, except in extraordinary situations, as where public policy or jurisdiction are involved, a party shall make his points in the court of first instance before bringing them as grounds on appeal." *State v. Dargatzis*, 56 N.J. Super. 230, 233 (App. Div. 1959), cert. den. 30 N.J. 603 (1959), cert. den. 361 U.S. 914, 80 S.Ct. 407, 4 L.Ed.2d 363 (1960).

Accordingly, the order entered June 23, 1987 is affirmed in part and reversed in part. The matter is remanded to the Superior Court, Law Division, Essex County, for further proceedings consistent with this opinion.

MARK SCHUMANN, PLAINTIFF-RESPONDENT, v. DENA ALTEO BELLY-LANDO, JERSEY CITY BOARD OF SCHOOL ESTIMATE AND MAYOR AND COUNCIL OF THE CITY OF JERSEY CITY, DEFENDANTS-APPELLANTS.

Superior Court of New Jersey
Appellate Division

2. Paul May 4, 1988--David August 4, 1988

SYNOPSIS

Members of city board of school estimate and board of education argued for removal of school nurse, who was an elected

28 N.J. Super. 411
Shapiro v. O'Leary, Inc.,
Case 228 N.J. Super. 411

member of city council from her position on board of estimate. The Superior Court, Law Division, Hudson County, ordered nurse's removal because of conflict of interest, and also argued. The Superior Court, Appellate Division, Rem. P.J.A. 11, held that nurse was not disqualified from holding position on board, even though she was employed as school nurse in school district.

Reversed.

1. Officers and Public Employees ¶201

School nurse, who was also elected member of city council, was not disqualified from retaining school budget as member of city's board of estimate under statute providing teachers and educational professionals in public and publicly supported educational systems to hold elected or appointed state, county, or municipal offices. N.J.S.A. 18A:6 N1

2. Statutes ¶214

City council's message relating to enactment of legislation in part of legislative process and may be considered in determining legislative intent.

3. Officers and Public Employees ¶201

Common law concepts of incompatibility of offices and conflict of interests must yield to clearly expressed legislative will.

Before Judges RING, GALLAGHER and GRECCO.

Richard A. Freedman argued the cause for defendant-appellant Bernadette O'Reilly-Lando (Kushner, Buryn & Fucci), her attorneys, Richard A. Freedman and Carol Thomas, in the brief.

Paul W. Morley, First Assistant Corporation Counsel, argued the cause for defendant-appellant City of Jersey City.

Sharon L. O'Reilly-Lando 25 N.J. Super
Civ. 230, 15 Super 63

APPELLATE DIVISION

25 N.J. Super

Sharon L. O'Reilly-Lando
Civ. 230, 15 Super 63

Board of School Estimate and Mayor and Council of the City of Jersey City (Thomas Podize, Corporation Counsel attorney).

Moncy Replem Miller, Deputy Attorney General, argued the cause for the Commissioners of Education antissa curiae (W. Cary Edwards, Attorney General of New Jersey, attorney; Michael R. Clancy, Deputy Attorney General, of counsel).

No appearance for respondent Aaron Scheinman

The opinion of the court as delivered by

KING, P.J.A.D.

Plaintiff Scheinman, then a member of the Jersey City Board of School Estimate and the Jersey City Board of Education, brought this suit in March 1981 seeking the removal of Bernard O'Reilly-Lando, a member of City Council of Jersey City, from her position on the Board of Estimate. He claims that because she worked as a school nurse for the Board of Education she had an unresolvable conflict of interest in reviewing the school budget as a member of the Board of Estimate. The Law Division judge ordered O'Reilly-Lando's removal from the Board of Estimate because of this conflict of interest. Concluding that N.J.S.A. 18A:6-8 & permits O'Reilly-Lando to serve, we reverse.

O'Reilly-Lando was appointed as a school nurse by the Board of Education and works under its direction. See N.J.S.A. 18A:16-3.1. She is also an elected member of the Jersey City Municipal Council and was appointed to the Board of Estimate by City Council. The Board of Estimate is a Type I school district, such as Jersey City, has five members—the Board of Education appoints two members, the governing body appoints

The commission was made within the unit level or here that O'Reilly-Lando is "employed by" the Board of School Estimate within the meaning of N.J.S.A. 18A:6-8.

ten members, and the mayor or other chief executive officer of the municipality serves as the fifth member. N.J.S.A. 18A:22-1. The function of the Board of Estimate is to review the budget prepared by the Board of Education and "to determine" the amount of money to be appropriated for the school system. N.J.S.A. 18A:22-11.

[1] The conclusion in this case rests on the reading of N.J.S.A. 18A:6-8 & 18A:16-3.1, which states:

No person employed by a public educational system or institution which requires a certificate issued by the State Board of Education, or by a local or other educational agency, or by a school officer, is considered a public officer or employee of the State until he is designated by resolution of said commission from among any teachers or supervisors, clerks, janitors, or noncertificated members of the board or body by which he is employed.

O'Reilly-Lando contends that N.J.S.A. 18A:16-3.1 remains her in fact a position on the Board of Estimate even though she is employed as a school nurse in the Jersey City school district. She also thins that there is no violation of the common law principle of incompatibility in holding dual offices.

We conclude that O'Reilly-Lando's situation fits within the broad terms of the statute. She is employed by a public educational system, and, as a school nurse, is required to have a certificate issued by the State Board of Education. N.J.S.A. 18A:16-3.1. N.J.A.C. 6:11-12.9. The plaintiff and the Commissioner of Education urge a "benign" or "less literal" interpretation of the statute upon us because of the possibility of conflicting interests. While we are not insensitive to these concerns as a matter of policy, we are restrained by the reality that the policy decision has been made by the legislature.

"If the statute is clear and unambiguous on its face and admits of only one interpretation, we need defer to the legislative intent. State v. Butler, 89 N.J. 230, 236 (1982); Hyndman v. Fowler,

Schulman v. O'Reilly-Lamb, 226 N.J. Super. 626
Cite as: 226 N.J. Super. 626

Companics, 217 N.J. Super. 126, 129 (App. Div. 1987), aff'd o.b.
110 N.J. 67 (1988); Decuzzo v. Edgys, 19 N.J. 443, 451 (1965);
2A Sutherland Statutory Construction, (4th ed. 1984) § 46.01
at 73

[2.3] The extant legislative history consists of Governor
Cahill's message upon signing the legislation. It reads

Governor William T. Cahill today signed legislation permitting teachers and
educational professionals in public and publicly supported educational systems
to hold elective or appointive state, county or municipal offices.

The Governor at the signing of Assembly Bill 135 sponsored by Assembly
man Thomas H. Kean (R. Essex) noted, however, that no one may serve as a
member of the board of a body by which he is employed.

The Governor said the bill will resolve questions raised by recent court
decisions on the legality of teachers serving in governmental positions. It
provides a safeguard to prevent a teacher from serving on the same board by
which he is employed. "New Jersey has been fortunate in many instances in
which teachers have served with distinction in various phases of government.
They are very well qualified to do so and this legislation will permit them to
continue such service."

The legislation grew out of a Newark County case in May of this year in
which it was ruled that a teacher may not serve as a member of a municipal
governing body because of the potential review of that teacher's salary by the
municipal governing body in the event that a school budget has been reported
by the voters. (Probably see situation in *Wiscotsky v. City Council of Fairfield*,
113 N.J. Super. 363 (App. Div. 1971), or perhaps *Kaufman v. Pomeroy*, 121
N.J. Super. 27, 31 (App. Div. 1972).)

The Governor's message is part of the legislative process and
may be considered in determining legislative intent. *McFlyn v.*
New Jersey Public Broadcasting Authority, 88 N.J. 112, 159
(1981). The intent appears clear: to permit teacher staff
members to participate fully in the process of government
excepting only membership on the board of education by which
they are employed. Common law concepts of incompatibility of
offices and conflict of interests, see *Billy v. Ozzard*, 38 N.J.
529, 543 (1960), must yield to the legislative will as so clearly
expressed.

Reversed.

226 N.J. Super. Courts at Beachgate v. Bond
Case No. 226 N.J. Super. 631

THE COURTS AT BEACHGATE, A CONDOMINIUM PLANTIFF,
v. DAVID H. BIRD, IV, AND CAROL BIRD, JOINTLY,
SEVERALLY AND IN THE ALTERNATIVE, DEFENDANTS.

Superior Court of New Jersey
Chancery Division Atlantic County

Decided January 29, 1988.

SYNOPSIS

Condominium association brought action to enforce provi-
sion in condominium master deed, requiring unit owners to
remove and replace certain windows installed in unit. The
Superior Court, Chancery Division, Atlantic County, Enam,
J.T.C., temporarily assigned, held that: (1) unit owners' prede-
cessor in title was not justified in presuming that condominium
manager had authority to give oral permission to install differ-
ent windows given existence of bylaws to contrary, and (2)
association was entitled to enforce bylaws.

(Ordered accordingly.)

1. Condominium \leftrightarrow 3, 7

Condominium unit owner's rights are both protected and
limited by master deed and bylaws incorporated in it. N.J.S.A.
46:8B-1 et seq., 46:8B-3, subd. n, 46:8B-9(f)

2. Condominium \leftrightarrow 13

Condominium owners' predecessor in title was not justified
in presuming that condominium manager had authority to give
oral permission to make structural change in unit, given exist-
ence of bylaws which specified detailed procedure to be fol-
lowed for obtaining written permission from board of directors
to make such change.