



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

April 30, 1976

FILE NO. S-1060

**GOVERNMENTAL ETHICS:
Employment of School Board
Member's Spouse As Teacher**

Honorable A. Randolph Combs
State's Attorney
Bureau County
Room 200 Court House
Princeton, Illinois 61356

Dear Mr. Combs:

This responds to your request for an opinion with regard to sections 3 and 4 of "AN ACT to prevent fraudulent and corrupt practices, etc." [The Corrupt Practices Act] (Ill. Rev. Stat. 1975, ch. 102, pars. 3 and 4.) Section 3 in pertinent part provides as follows:

"§ 3. No person holding any office, either by election or appointment under the laws or constitution of this state, may be in any manner interested, either directly or indirectly, in his own name or in the name of any other person, association, trust

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or cooperation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. * * * *
(emphasis added.)

Section 4 provides for penalties and need not be quoted.

You state that in your county there is a member of a school board who is married to a teacher in the school district governed by the board of which he is a member. Your question is whether the spouse sitting on the school board violates section 3 of the Corrupt Practices Act if he takes an active part in the negotiation of and the final vote on teachers' contracts, including his spouse's, and whether a school board member violates section 3 when he abstains from voting on the contracts.

I have consistently advised that the abstention from voting is of no effect. Section 3 of the Corrupt Practices Act applies to any contract upon which an officer may be called upon to vote. In Peabody v. Sanitary District, 330 Ill. 250, the Supreme Court held that a person who did not vote was still in violation of the Act since he could have been called upon to advise the public body on the contract in which he was interested. Until recently there was no support from Illinois cases for any argument to the contrary. The Appellate Court for the Fifth District in Brown v. Kirk, 33 Ill. App.

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3d 477, 484, made a statement to the effect that a tenant commissioner of a public housing commission could avoid any conflict of interest problem by withdrawing from the discussion and vote on a matter of personal financial interest. A petition for leave to appeal has been allowed. Until the Supreme Court indicates otherwise, I shall continue to advise that abstention is of no effect.

Considering then whether the board member has a conflict of interest, I am of the opinion that he does, and have advised in other contexts that the interest of one's spouse may be attributed to one's self and be a prohibited interest. (1973 Ill. Att'y. Gen. Op. 45.) There is a natural and probable sharing of assets between spouses. This probability of sharing is sufficient to create a conflict of interest in this situation. The court in Bock v. Long, 3 Ill. App. 3d 691, held that the fact that an official's wife operated a dramshop gave the official a pecuniary interest in the sale of liquor. The court explained at pages 693 and 694:

"To hold otherwise would be to close our eyes to the natural and probable sharing of assets and liabilities which constitutes a characteristic of the family unit as it is known in our society."

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I note that a prior Attorney General advised that the wife of a school board member may enter into a valid contract with the school board, even though her husband was on the school board, provided that the husband has no pecuniary interest in the contract and it is not entered into as a subterfuge for the actual benefit of the husband. (1951 Ill. Att'y. Gen. Op. 193.) This opinion was given before the Bock decision was handed down and is not the current view of the law.

Very truly yours,

A T T O R N E Y G E N E R A L