



After receipt of the complaints, the Commission forwarded both complaints to Ms. Funches and notified her that, pursuant to N.J.A.C. 6A:28-6.5(a), she had 20 days to submit an answer under oath to the Commission. Ms. Funches failed to answer either complaint within the 20 day time limit. The Commission then notified her that she had an additional 10 days to answer the complaint and that the complaint was scheduled for the June 28, 2005 meeting. Ms. Funches never submitted an answer to the complaint.

The Commission invited Mr. Monte to attend its June 28, 2005 meeting to present witnesses and testimony, but did not require that he be present. Neither party attended the hearing. At its June 28, 2005 meeting, the Commission consolidated C09-05 and C10-05 and voted to find probable cause to credit allegations one through five that Ms. Funches violated N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-25 of the School Ethics Act (Act), and N.J.S.A. 18A:12-24.1(a), (e) and (g) of the Code of Ethics for School Board Members in the Act. The Commission also voted to find no probable cause to credit allegations six and seven that Ms. Funches violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f) and N.J.S.A. 18A:12-24.1(a).

The Commission found that the material facts were not in dispute with respect to the allegations upon which it found probable cause and, therefore, the Commission advised Ms. Funches that it would decide the matter on the basis of written submissions. Ms. Funches was invited to provide a written submission to the Commission by August 30, 2005, and set forth why the Commission should not find her in violation of N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-25 of the Act, and N.J.S.A. 18A:12-24.1(a), (e) and (g) of the Code of Ethics for School Board Members in the Act. Ms. Funches was also told that her written submission should include her position on an appropriate sanction should the Commission determine that the Act was violated. Ms. Funches did not provide a written submission in response to the Commission's probable cause determination.

## **FACTS**

The Commission based its finding of probable cause on the following facts.

At all times relevant to these complaints, Ms. Funches was Vice-President of the Board and co-signed, with the Board President, checks issued by the Board. Ms. Funches' husband owns Professional Maintenance and Carpeting, which is a company that was under contract with the Board from July 26, 2004 through February 13, 2005. Ms. Funches' husband and son were both employed by Unique Maintenance and performed work at the school. At all times relevant to the complaints, complainant was employed by the Board.

### **(1) March 17, 2005 Closed Executive Meeting**

On March 16, 2005, Ms. Funches sent an e-mail to all Board members asking if they were going to attend the closed Board meeting to be held the following evening. The closed executive meeting of the Board was held on March 17, 2005. The public was not provided with any type of notice of the meeting.

### **(2) Personal/Financial Disclosure Statement**

On March 4, 2005, Ms. Funches filed a Personal/Financial Disclosure Statement as required by N.J.S.A. 18A:12-25 and 26. Ms. Funches indicated "N/A" in response to all questions asking for financial information for the previous calendar year. The only section in the form that she completed was the section requesting personal information such as name and address.

### **(3) Check Signing**

Ms. Funches co-signed several checks that were not authorized by the Board, which included several made out to a company owned by her husband, as follows:

1. Ms. Funches co-signed check No. 7087 dated June 5, 2004 in the amount of \$4,375; check No. 7169 dated September 14, 2004 in the amount of \$5,000; and check No. 7241 dated November 11, 2004 for \$3,500, which were all made out to her husband's company, Professional Maintenance and Carpeting;
2. Ms. Funches co-signed the following checks without Board approval: 7104-7127; 3024-3025; 3020-3023; 7128-7165; 7166-7167; 7169-7193; 7208-7240 and 7241-7242; and
3. At the January 10, 2005 Board meeting, the Board authorized 23 checks, but Ms. Funches co-signed 32 checks, thus, 9 checks were not approved by the Board.

### **(4) Unique Maintenance**

At the March 21, 2005 Board meeting, Ms. Funches voted to hire Unique Maintenance to strip and polish the floors at Gateway Charter School. Unique Maintenance is owned by her brother-in-law. Ms. Funches' husband and son are employees of Unique Maintenance and they performed the work that was done at the school. The minutes indicate that Unique Maintenance was the lowest bidder. However, the actual bids show that Unique Maintenance submitted a bid that was approximately \$1,124.00 more than the lowest bid from Capital Contractors, Inc.

### **(5) Vote on Bill Lists**

Ms. Funches voted on bill lists which included payments to her husband's company, Professional Maintenance and Carpeting, during the Board meetings for the months of July 2004, October 2004, December 2004 and January 2005.

## ANALYSIS

### **(1) March 17, 2005 Closed Executive Meeting**

The Commission found probable cause that Ms. Funches violated N.J.S.A. 18A:12-24.1(a) when she participated in a March 17, 2005 closed executive meeting of the Board of which the public had no knowledge. N.J.S.A. 18A:12-24.1(a) provides:

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to the schools. Desired changes shall be brought about only through legal and ethical procedures.

The OPMA at N.J.S.A. 10:4-9 requires all public bodies to provide adequate notice of meetings that are held by the public bodies. The Board falls within the definition of “public body” at N.J.S.A. 10:4-8, which, in part, defines the term as meaning “a commission, authority, board... organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function...” Furthermore, N.J.S.A. 18A:36A-6 requires the board of trustees of a charter school to comply with the provisions of the OPMA. “Adequate notice” is also defined, in part, at N.J.S.A. 10:4-8 to mean, “written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any regular, special or rescheduled meeting...” The March 17, 2005 closed executive meeting of the Board was held without the provision of a 48 hour written advance notice giving the time, date, and location of the meeting. Based on the foregoing, the Commission finds that, by participating in this meeting, Ms. Funches violated N.J.S.A. 18A:12-24.1(a) because she failed to uphold and enforce all laws pertaining to the schools.

### **(2) Personal/Financial Disclosure Statement**

The Commission found probable cause that Ms. Funches violated N.J.S.A. 18A:12-25(c)3 when she filed a personal/financial disclosure statement that failed to include information that her husband owned Professional Maintenance and Carpeting, which was under contract with the Board from July 26, 2004 through February 13, 2005. N.J.S.A. 18A:12-25(c)3 provides, in part:

A school official who fails to file a statement or who files a statement containing information which the school official knows to be false shall be subject to reprimand, censure, suspension, or removal pursuant to the procedures established in [N.J.S.A. 18A:12-29]....

Pursuant to N.J.S.A. 18A:12-25(a)2 a school official is required to disclose relatives who are a party to a contract with the school district with which the school official holds office. Ms. Funches’ personal/financial disclosure statement for 2004 indicated “N/A” in all of the sections requesting financial information. Specifically, she

indicated that no relative by marriage is employed by the charter school, is party to a contract with the charter school, or receives compensation or has any interest in any business which is a party to a contract with the charter school. Ms. Funches' husband owns Professional Maintenance and Carpeting, which was a party to a contract with the Board from July 26, 2004 through February 13, 2005. Ms. Funches failed to indicate that her husband's company was a party to a contract with the charter school. Thus, she knowingly provided false information on her 2004 personal/financial disclosure statement. Therefore, the Commission finds that Ms. Funches violated N.J.S.A. 18A:12-25 when she filed her 2004 personal/financial disclosure statement without providing information that her husband's company, Professional Maintenance and Carpeting, was a party to a contract with the charter school.

The Commission found probable cause that Ms. Funches violated N.J.S.A. 18A:12-24.1(g) when she filed a personal/financial disclosure statement that was inaccurate. N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

When Ms. Funches failed to disclose her husband's company's contract with the charter school on her 2004 personal/financial disclosure statement, she did not provide accurate information on the form. Therefore, the Commission finds that Ms. Funches violated N.J.S.A. 18A:12-24.1(g) when she did not list her husband's business on her 2004 personal/financial disclosure form.

### **(3) Check Signing**

The Commission found probable cause that Ms. Funches violated N.J.S.A. 18A:12-24.1(a) and (e), which are set forth above, when she signed certain checks without Board authorization, including several made out to her husband's company. Pursuant to N.J.S.A. 18A:19-1(d), prior to expenditure of Board funds, the Board must approve the expenditure by resolution. The evidence shows that Ms. Funches co-signed several checks that had not been approved at the January 10, 2005 Board meeting. The evidence also shows that Ms. Funches co-signed other checks that were not approved by the Board, including several made out to her husband's company. Based on the foregoing, the Commission finds that Ms. Funches violated N.J.S.A. 18A:12-24.1(a) and (e), when she signed checks without Board approval in violation of N.J.S.A. 18A:19-1 et seq., and when she failed to recognize that the authority to expend school funds lies with the entire Board.

The Commission also found probable cause that Ms. Funches violated N.J.S.A. 18A:12-24(b) when she signed certain checks made out to her husband's company without Board authorization. N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others; and

Ms. Funches' husband falls within the definition of "member of immediate family," which is defined at N.J.S.A. 18A:12-23 to mean, "the spouse or dependent child of a school official residing in the same household." Ms. Funches co-signed checks made out to her husband's company, Professional Maintenance and Carpeting, without Board approval. She co-signed the checks as part of her duties as Board Vice-President. In doing so, Ms. Funches used her official position as Board Vice-President to secure the unwarranted privilege or advantage of obtaining funds from the Board for her husband without Board approval. Therefore, the Commission finds that Ms. Funches violated N.J.S.A. 18A:12-24(b).

The Commission also found probable cause that Ms. Funches violated N.J.S.A. 18A:12-24(c) when she signed certain checks made out to her husband's company without Board authorization. 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;

Ms. Funches and her husband have a direct financial involvement in the checks that were made out to Professional Maintenance and Carpeting because the company is owned by her husband. The public could reasonably perceive that her objectivity and independence of judgment would be impaired in that matter. The Commission finds that Ms. Funches violated N.J.S.A. 18A:12-24(c) when she acted in her official capacity as Board Vice-President in a matter where she had a direct financial involvement that might reasonably be expected to impair her objectivity or independence of judgment.

#### **(4) Unique Maintenance**

The Commission found probable cause that Ms. Funches violated N.J.S.A. 18A:12-24(b), which is set forth above, when, on March 21, 2005, she voted to approve the bid of Unique Maintenance to strip and polish the floors at the school. The Board minutes show that Ms. Funches voted to approve the bid of Unique Maintenance. Her husband and son were employed by Unique Maintenance and they performed the work at the school. The approval of Unique Maintenance was unwarranted because their bid was over \$1,000 more than the lowest bid. This gives the impression that Ms. Funches voted to approve Unique Maintenance because her husband and son were employed by that

company. In N.J.S.A. 18A:12-22(a), the Legislature declared that board members must avoid conduct which is in violation of the public trust or which creates a justifiable impression among the public that such trust is being violated. When Ms. Funches voted to hire a company that employed her husband and son, which was not the lowest bidder, it created a justifiable impression that the public trust was being violated and that the approval of Unique Maintenance was unwarranted. Based on the foregoing, the Commission finds that Ms. Funches violated N.J.S.A. 18A:12-24(b) when she used her official position to secure unwarranted employment for her husband and son.

The Commission also found probable cause that Ms. Funches violated N.J.S.A. 18A:12-24(c), which is set forth above, when she voted to approve the bid of Unique Maintenance to strip and polish the floors at the school. Ms. Funches has a direct financial involvement in the employment of her husband. There is no evidence to show that her son was a dependent residing in the same household. However, she has a personal involvement in ensuring the employment of her son. When she voted to approve the bid of Unique Maintenance, she was acting in her official capacity as a Board member on a matter where she has a direct financial involvement that might reasonably be expected to impair her objectivity or independence of judgment and a personal involvement that created a benefit to her. Therefore, the Commission finds that Ms. Funches violated N.J.S.A. 18A:12-24(c) when she voted to hire Unique Maintenance.

#### **(5) Vote on Bill Lists**

The Commission found probable cause that Ms. Funches violated N.J.S.A. 18A:12-24(c), which is set forth above, when she voted on bill lists that included payments to a company owned by her husband. Board minutes show that Ms. Funches voted on bill lists that included payments to her husband's company at four different Board meetings. As noted above, she has a direct financial involvement in Professional Maintenance and Carpeting because the company is owned by her husband. Therefore, the Commission finds that Ms. Funches violated N.J.S.A. 18A:12-24(c) when she acted in her official capacity as Board Vice-President on a matter in which she had a direct financial involvement that might reasonably be expected to impair her objectivity or independence of judgment.

### **DECISION**

For the reasons discussed above, the Commission finds that Rose L. Funches violated N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-25(c)3 of the Act, and N.J.S.A. 18A:12-24.1(a), (e) and (g) of the Code of Ethics for School Board Members in the Act. Because of the multiple, flagrant violations of the Act, the Commission recommends that the Commissioner of Education impose a penalty of removal.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was

mailed to the parties, Ms. Funches may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

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Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision – C09-05 & C10-05**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof; and

**Whereas**, at its meeting of September 27, 2005, the Commission found that Rose L. Funches violated N.J.S.A. 18A:12-24(b) and (c) and N.J.S.A. 18A:12-25(c)3 of the School Ethics Act (Act), and N.J.S.A. 18A:12-24.1(a), (e) and (g) of the Code of Ethics for School Board Members in the Act and recommended that the Commissioner of Education impose a sanction of removal; and

**Whereas**, at its meeting of September 27, 2005, the Commission reviewed a draft decision prepared by its staff and agrees with the decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission’s decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 27, 2005.

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Lisa James-Beavers  
Executive Director