

JENNIFER DRESSEL	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C11-07
KATHY KOLUPANOWICH	:	
<i>MONROE BOARD OF</i>	:	
<i>EDUCATION</i>	:	DECISION
<i>MIDDLESEX COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 5, 2007 by Jennifer Dressel alleging that Kathy Kolupanowich, a member of the Monroe Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. After the Commission granted her an extension, the respondent, through her attorney, Kerri A. Wright, Esquire, filed an answer. The parties were invited to appear at the Commission’s April 1, 2008 meeting to present testimony. The complainant did not attend the meeting. The respondent attended the meeting with her attorneys, Ms. Wright and Vito A. Gagliardi, Jr., Esquire. The Commission did not have a quorum for the hearing because Commission members Randy Beverly, Sr. and Mark J. Finkelstein recused themselves from the hearing¹. Commission Chairperson, Paul C. Garbarini, appointed a sub-committee consisting of himself and Commission members Robert Bender and Rosalind Frisch to hear testimony. Commission members Randy Beverly Sr. and Mark J. Finkelstein recused themselves and left the room during the testimony. The respondent presented testimony to the sub-committee. Upon conclusion of the testimony at the April 1, 2008 meeting, the Commission requested additional documentation from the respondent. Commission members Robert Copeland and Evern D. Ford who were absent from the April 1, 2008 meeting, and new Commission members Jane Hutchison and Jerome P. Amedeo reviewed audio tapes of the testimony prior to the May 27, 2008 meeting together with all documents submitted. At the May 27, 2008 meeting, the Commission voted to dismiss the complaint, finding that the complainant did not meet her burden to prove that the respondent violated the Code of Ethics for School Board Members.

¹ After a discussion with the Commission, the respondent agreed to present testimony to a sub-committee of the Commission. At the meeting, the Commission called the complainant to discuss the appointment of a sub-committee, but she could not be reached. Two days after the meeting, on April 3, 2008, the Executive Director of the Commission spoke with the complainant and explained that the Commission tried to reach her on April 1, 2008 regarding the appointment of the sub-committee. The Executive Director also explained to her why the sub-committee was necessary. She was informed that other Commission members not present at the meeting would be provided with audio tapes of the meeting and that the matter was tabled until the May 2008 Commission meeting.

THE PLEADINGS

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) when she wrote a letter to the editor, published in two newspapers in early February 2007, which clearly indicated that it was being written by the respondent as President of the Board. (Complaint at paragraph 1) The complainant alleges that the letter contained personal opinions of the respondent with several inaccurate statements and without the approval of the Board. (Id., at paragraph 1) The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) when she appeared at a meeting of the PTO and represented that she was appearing as President of the Board and told the audience that while she sometimes appeared at the PTO meeting “wearing her parent hat, this time she was speaking wearing her board president hat.” (Id., at paragraph 2) The complainant alleges that the respondent spoke at the PTO meeting without permission of the Board and she delivered a speech that provided the respondent’s personal opinions which contained several inaccurate statements. The complainant alleged that the respondent made an inaccurate statement that “the board was planning to solicit bids for various parts of a high school construction project independently.” (Id., at paragraph 2)

The complainant’s documentation consisted of: 1) A copy of *Advisory Opinion A02-06*, (March 10, 2006); 2) A copy of I/M/O Randie Zimmerman, C49-02, (July 22, 2003); 3) A copy of a letter to the editor published in the *Home News Tribune* on February 7, 2007; 4) A copy of a letter to the editor published in *The Cranbury Press* on February 9, 2007; 5) PTO minutes from the February 15, 2007 meeting; 6) PTO minutes from the February 12, 2007 meeting; and 7) Transcript from and minutes for the February 21, 2007 meeting.

In her answer, the respondent admitted that she wrote a letter to the editor, in which she identified herself as the President of the Board, but she denied the remaining allegations contained in paragraph one of the complaint. (Respondent’s Answer at paragraph 1) The respondent also admitted that she was a member of the Monroe Township High School PTO and that, on multiple occasions, she spoke at its meetings and denied the remaining allegations contained in paragraph two of the complaint. (Id., at paragraph 2)

In response to the Commission’s request at the April 1, 2008 meeting, the respondent submitted the following documents: 1) Transcript from the January 10, 2007 Board meeting; 2) Transcript from the January 24, 2007 Board meeting; and 3) Board policies regarding the provision of information to the public.

EVIDENCE

The respondent testified that the complainant filed the complaint because she was against having the new school built on park property. She then testified that she wrote a letter to the editor in February 2007 and identified herself as Board President so as not to deceive any readers. She stated that the letter contained her personal opinions and was not inaccurate. In response to a question from a Commission member, the respondent

stated that, since she identified herself as President of the Board at the beginning of the letter, she could understand that some may interpret that the letter was written on behalf of the Board. However, the respondent maintained that she used her title of Board President in the letter because the newspapers would put it in the newspaper anyway. In response to a question from her attorney, the respondent stated that the Board has a policy that the Board President speaks with the media/newspapers. She then clarified that it is the practice for the newspapers to put your name and title under any letter to the editor, but that she was speaking on her own behalf in the letter to the editor.

Regarding her attendance at the Monroe Township High School February 2007 PTO meeting, the respondent testified that she was invited to attend a PTO meeting to explain the actions of the Board regarding the construction of a school. She stated that the complainant did not attend the meeting. The respondent further stated that she never represented that she spoke on behalf of the Board and she did not provide inaccurate information. She testified that she did not make any statements that the Board was going to take bids; rather she answered questions at the PTO meeting. In response to a question from a Commission member, the respondent stated that in January 2007 the Board voted to look for options for the construction because it was waiting for Department of Environmental Protection approval of the 35 acres for the school. She stated that the Board was not changing directions, but only looking at other options for the land.

FINDINGS OF FACT

The Commission found the following facts based on the pleadings, testimony and documents on the record.

1. At all times relevant to the complaint, the respondent was President of the Board.
2. The respondent wrote a letter to the editor which was published on February 7, 2007 in the *Home News Tribune* and on February 9, 2007 in *The Cranbury Press*.
3. In the letter to the editor, the respondent begins, "As president of the Monroe Board of Education, I would like to respond to some of the statements and errors in a letter to the editor written by Harold V. Kane dated Jan. 31." The respondent then explained that, while the Board passed a resolution at the January 10, 2007 meeting to devise a backup plan to be used if the Thompson Park plan fails, the Thompson Park proposal was the backup plan. The respondent described how the ad hoc committee examined and analyzed a number of alternatives when the Thompson Park proposal was created and found that the alternatives were not viable and to revisit these alternatives would cost the taxpayers more money and time. The respondent then clarified that the vote at the January 24, 2007, Board meeting was seven to two and not six to three and explained that the vote was to continue with the Thompson Park proposal and not to explore any alternatives at this time. (*Home News Tribune* February 2, 2007 letter to the editor)

4. On January 10, 2007, the Board passed a motion with a vote of five to three that the Board would “come up with alternatives for the proposed construction” for the high school by its February meeting. (January 10, 2007 transcript at pages 88, 90-91)
5. At its next meeting on January 24, 2007, by a vote of seven to two, the Board passed a motion to hold off in researching alternative plans and to go forward with the high school plan “that...the majority of this Board supports.” (January 24, 2007 transcript at pages 43-44)
6. The respondent attended the Monroe Township High School February 2007 PTO meeting in order to clarify the apparently inconsistent votes that the Board had taken with respect to its construction project.

ANALYSIS

The Commission initially notes that it is the complainant’s burden to factually prove violations of the Code of Ethics for School Board Members. The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when she wrote a letter to the editor and when she attended a Monroe Township High School PTO meeting. N.J.S.A. 18A:12-24.1(e) and (g) provide:

(e) I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

(g) 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.

With respect to the allegation that the respondent’s letter to the editor violated N.J.S.A. 18A:12-24.1(e) and (g), the complainant relies on *Advisory Opinion A02-06*, (March 10, 2006) and *I/M/O Randie Zimmerman*, C49-02, (July 22, 2003). The complainant contends that the respondent’s letter to the editor contained the respondent’s personal opinion and was written by her in her role as President of the Board and submitted without Board approval in violation of N.J.S.A. 18A:12-24.1(e). In *Advisory Opinion A02-06*, the Commission advised that a board member would not violate the Act if he were to write a letter to the editor expressing his opinion about the budget as long as, in the letter, he did not hold himself out as a board member and the information in the letter was accurate and not confidential. The Commission notes that while the respondent’s letter to the editor begins with “As President of the Monroe Township Board of Education...,” the respondent credibly testified that she used her title of Board President in the letter because she expected the newspaper to follow a practice common in the industry by putting her name and title at the end of the letter. The Commission

also takes note that the respondent did not state in the letter that it was being written on behalf of the Board and that she used first person pronouns throughout the letter.

In Randie Zimmerman, the Commission found that a board member violated N.J.S.A. 18A:12-24.1(e) when she wrote a letter to the superintendent signed her name as Board President and copied the school principal, the county superintendent and the President of a sending district's board of education. In the letter, the board member referred to a classroom as being substandard and an obvious code violation when the classroom had previously been approved by the county superintendent. In Randie Zimmerman, the Commission found sufficient evidence that the board member created the impression that she was representing the interests of the Board in violation of N.J.S.A. 18A:12-24.1(e). The Commission therein also found that the board member had taken private action that could have compromised the board when the board member wrote to the superintendent and copied the county superintendent and the President of a sending district's board of education. The Commission found the letter could have compromised the Board's relationship with the sending district and could have resulted in the county superintendent's revocation of the use of the room. By contrast, the facts in this record as to the actions taken by the respondent are ambiguous. The record does not show and the complainant does not establish how the respondent's clarification of the Board's position on the construction issue in the letter to the editor may have compromised the Board. Based on the foregoing, the Commission finds that the complainant failed to meet her burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(e) when she wrote the letter to the editor and dismisses that allegation against her.

As to the allegation in count one that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members when she wrote a letter to the editor, the complainant alleges that the letter to the editor contained inaccurate statements.² In Randie Zimmerman, the Commission found that the board member had provided inaccurate information in her letter to the superintendent because the classroom had received approval from the Department of Education and was not a fire code violation, while in her letter she indicated that the classroom was substandard and an obvious fire violation. In *Advisory Opinion A02-06*, the Commission advised that information in a letter to the editor must be accurate. Unlike the evidence in Randie Zimmerman, there is no factual evidence before the Commission to show that the information in the letter to the editor was inaccurate. Therefore, the Commission finds that the complainant failed to meet her burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(g) when she wrote the letter to the editor and dismisses that allegation against her.

In count two, the complainant alleges the respondent's attendance at a February 2007 Monroe Township High School PTO meeting violated N.J.S.A. 18A:12-24.1(e) because she appeared at the PTO meeting without the advice or consent of the Board and

² The Commission notes that the complainant did not allege that the respondent's letter to the editor contained any confidential information; therefore, the Commission will only address the complainant's contention that the information in the letter to the editor was inaccurate.

represented that she was appearing as President of the Board. The complainant further alleges, that the respondent “told the audience that while she sometimes appeared at PTO meeting [sic] ‘wearing her parent hat’, this time she was speaking wearing her ‘board member hat’.” (Complaint at paragraph 2) While the evidence included minutes of the PTO meeting indicating that the respondent made such a statement, the Commission cannot accord much weight to this evidence; the minutes are not signed and the complainant did not present any sworn affidavits or witnesses to testify to the validity of the statements included in the minutes. However, in her testimony, the respondent denied that she appeared at the PTO meeting representing the Board and testified that she only answered questions that were asked of her. The Commission found the respondent to be a credible witness. Based on the evidence, the Commission finds that the complainant failed to meet her burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(e) when she appeared at a February 2007 Monroe Township High School PTO meeting and dismisses that allegation against her

In count two, the complainant also alleges that the respondent provided inaccurate information in violation of N.J.S.A. 18A:12-24.1(g) when she appeared at a February 2007 Monroe Township High School PTO meeting.³ Specifically, the complainant alleges that the respondent made an inaccurate statement about soliciting bids. However, the respondent specifically denied this allegation in her testimony. There is nothing in the record before the Commission to show that the respondent provided inaccurate information at the PTO meeting. Therefore, the Commission finds that the complainant failed to meet her burden to prove that the respondent violated N.J.S.A. 18A:12-24.1(g) when she appeared at the PTO meeting and dismisses that allegation against her.

DECISION

Based on the testimonial and documentary evidence, the Commission finds that the complainant has failed to prove factually that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. Consequently, the complaint is dismissed. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

³ Again, the Commission notes that the complainant has not alleged that respondent released any confidential information at the PTO meeting; therefore, the Commission will only address the complainant’s contention that respondent provided inaccurate information at the meeting.

Resolution Adopting Decision – C11-07

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

Whereas, at its meeting of May 27, 2008, the Commission found that the complainant had not established that Kathy Kolupanowich violated N.J.S.A. 18A:12-24.1(e) and (g) and dismissed the charges against her; and

Whereas, the Commission directed its staff to prepare a decision consistent with the aforementioned conclusion; and

Whereas; the Commission has reviewed the decision 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.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on June 24, 2008.*

Joanne Boyle, Executive Director

* Commission members Randy Beverly Sr. and Mark J. Finkelstein recused themselves from this matter.