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| CRAIG GUINTA | : | BEFORE THE SCHOOL |
| | : | ETHICS COMMISSION |
| v. | : | |
| | : | |
| CINDY TRUBIN | : | Docket No. C46-05 |
| CHERRY HILL TOWNSHIP | : | |
| BOARD OF EDUCATION | : | DECISION |
| CAMDEN COUNTY | : | |
| | : | |

PROCEDURAL HISTORY

This matter arises from a complaint filed on November 10, 2005 by Craig Guinta alleging that Cindy Trubin, President of the Cherry Hill Township 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(b), (e) and (f) of the Code of Ethics for School Board Members because she opposed efforts to build a stadium, utilized her position to place her personal opinions above the educational welfare of the children of the Cherry Hill School District (District) and sent an e-mail in which she alleged that more than one person is afraid of the complainant.

For good cause shown, the Commission granted the respondent an extension of the time to file a response. On January 19, 2006, the respondent, through her attorney, Joseph R. Lang, Esquire, filed a motion to dismiss the complaint and asked the Commission to find the complaint frivolous and impose sanctions on the complainant. In the motion to dismiss, respondent argued that the complainant misunderstood the respondent's opinion regarding the new stadium. Respondent argued that the complainant has failed to establish any facts to support the allegations. In her certification, which was submitted with the motion to dismiss, the respondent certified that she attended the September 6, 2005 meeting of the Policy and Legislation Committee. She further certified that the Committee voted three to one that the issue of a new stadium would not yet be raised at a full Board meeting because the Committee had concerns and questions on forwarding the discussion to the full Board. The respondent certified that the reason she sent the e-mail was to comply with the request of the Board to forward all e-mail she receives to the full Board and to advise the Board members of the concerns that had come to her attention. The respondent certified that the e-mail does not reflect her own personal opinion regarding the respondent and his committee's business.

In complainant's response to the motion to dismiss, he asserted that the respondent made unsubstantiated allegations, which claimed that more than one person was afraid of complainant and his approach to conflict resolution. He pointed out to the Commission that the complainant's e-mail was forwarded to over five hundred families making up the Cherry Hill Midget Football Program.

The Commission considered the complaint, motion to dismiss, certification of the respondent and the complainant's response to the motion to dismiss at its February 28, 2006 meeting. During the public portion of the meeting, the Commission granted the motion to dismiss the complaint. The Commission also voted to find that the complaint was frivolous and the complainant should be fined \$100.

FACTS

The Commission was able to discern the following facts based on the pleadings and the documents submitted. In considering whether to grant a motion to dismiss, the Commission reviews the facts in the light most favorable to the complainant.

The respondent is President of the Board and has held that position since April 2005. Complainant is the President of the Cherry Hill Midget Football League, and a member of the committee to build a new football stadium for the Cherry Hill East High School. On October 9, 2005, the complainant forwarded an e-mail she received to the full Board. Respondent certified that she had received the e-mail from an individual who was concerned about the behavior of complainant. The individual's e-mail to the respondent included an original e-mail message from the complainant, which he sent to approximately 500 or more individuals about building a stadium at the Cherry Hill East High School. The complainant's e-mail stated, in part, that, "...it's about time we make this school board get moving on things..." The respondent's e-mail to the full Board stated:

I had this e-mail sent to me by someone concerned over the content of this e-mail. It would appear that more than one person is afraid of Mr. Guinta and his approach to conflict resolution. I was given permission to forward this without the name of the person who sent it to me.

ANALYSIS

The Commission initially notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of proving factually any violations of the Code of Ethics for School Board Members.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(b) of the Code of Ethics for School Board Members because she is adamantly opposed to efforts to build a new stadium and places her personal opinions above the educational welfare of the children of the district. N.J.S.A. 18A:12-24.1(b) provides:

I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race creed, sex, or social standing.

The complainant has provided no factual evidence to prove his allegations. He makes blanket statements regarding the complainant and her position regarding the building of a new stadium without offering any proof. Even if the respondent was opposed to the building of a new stadium, it is within her right and duties as a Board member to make decisions regarding the facility needs of the District. A decision regarding school facilities is a policy decision to be made by the Board. See, State v. Lally, 80 N.J. Super 502 (Law Div. 1963).

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent failed to make decisions in terms of the educational welfare of children or failed to seek, develop and maintain public schools that meet the individual needs of all children regardless of their ability, race creed, sex, or social standing. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(b).

The complainant also alleges that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members because the complainant utilized her position to impose her own opinions on the residents of the district. N.J.S.A. 18A:12-24.1(e) provides:

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.

To prove a violation of N.J.S.A. 18A:12-24.1(e), the complainant argues that when the respondent sent the October 9, 2005 e-mail she took a private action that could have compromised the Board. He further argues that it was a private action because she sent the e-mail to over five hundred families making up the Cherry Hill Midget Football Program. The respondent attached the actual e-mail to her certification as Exhibit B. In reviewing the e-mail, the Commission is concerned about complainant's claim that the respondent sent the e-mail to over five hundred families making up the Cherry Hill Midget Football Program. In reality, it was the complainant who sent the original e-mail to over five hundred individuals. The Commission notes that, as President of the Cherry Hill Midget Football League, he could identify those in the original e-mail list as the families of the Cherry Hill Midget Football Program. The complainant has presented no factual evidence to support his claim that the respondent's e-mail actually went to over five hundred families making up the Cherry Hill Midget Football Program. Furthermore, the only evidence before the Commission shows that it was the complainant and not the respondent who sent an e-mail to over five hundred individuals.

The respondent actually sent the October 9, 2005 e-mail to the full Board sharing concerns that had been raised with her by individuals in the district. She sent the e-mail in her role as Board President. She took a Board action regarding a policy issue.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent took a private action that

may have compromised the board. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(e).

N.J.S.A. 18A:12-24.1(f) provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The complainant makes no arguments as to why the respondent's e-mail violates N.J.S.A. 18A:12-24.1(f). The complainant offers no factual evidence to substantiate a violation of N.J.S.A. 18A:12-24.1(f). The Commission cannot discover how N.J.S.A. 18A:12-24.1(f) would apply to the facts presented by the complainant.

In viewing the facts in the light most favorable to the complainant, the Commission can find no factual evidence that the respondent surrendered her independent judgment to special interest or partisan political groups or used the schools for personal gain or for the gain of friends. Therefore, the Commission grants the motion to dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(f).

DECISION

For the reasons expressed above, the Commission grants the respondent's motion to dismiss the complaint.

REQUEST FOR SANCTIONS

Respondent has asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

The complainant offered no factual evidence to prove the allegations. He only made blanket statements regarding the respondent's opinion of the new stadium. The only factual evidence that the Commission received was from the respondent. That evidence showed that the respondent's e-mail did not go to 500 individuals as alleged. The Commission finds that the complainant knew or should have known that the

complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. Therefore, the Commission finds that the complaint was frivolous and imposes a sanction on the complainant of \$100.

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

Resolution Adopting Decision – C46-05

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

Whereas, the Commission grants the respondent's motion to dismiss the complaint; and

Whereas, The Commission finds that the complaint is frivolous and imposes the sanction of a \$100 fine on the complainant; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision to grant the respondent's motion to dismiss and the find the complaint frivolous and fine the complainant \$100 as its final 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 the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on March 28, 2006.

Lisa James-Beavers
Executive Director