

SUSAN E. FERRARA	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	
JEFF HEWITSON HAMILTON TOWNSHIP BOARD OF EDUCATION MERCER COUNTY	:	Dkt. No. C01-11 DECISION
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	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on January 14, 2011 by Susan E. Ferrara alleging that Jeff Hewitson, a member of the Hamilton Township Board of Education (“Board”) violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(b) and (c) of the Code of Ethics for School Board Members. An answer was filed on behalf of the respondent on February 9, 2011. The answer alleged that the complaint was frivolous. N.J.S.A. 18A:12-29(e). On February 21, 2011, the complainant submitted a reply to the allegation of frivolousness, in accordance with N.J.A.C. 6A:28-7.2(b).

The parties were notified by letters dated February 23, 2011 that the Commission would consider this matter at its March 22, 2011 meeting in order to make a determination pursuant to N.J.A.C. 6A:28-10.8(a) and to consider the allegation of frivolousness. At its meeting on March 22, 2011, the Commission voted to find that the above-captioned complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Additionally, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain this complaint for hearing. When the Commission retains a complaint for a hearing, such hearing shall be conducted in accordance with the rules of the Office of Administrative Law, N.J.A.C. 1:1. N.J.A.C. 6A:28-10.8(c). The complainant has the burden to factually prove a violation under the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4.

By letter dated March 25, 2011, the parties were notified that this matter appeared to be ripe for summary decision in that there is no genuine issue of material fact that would require an evidentiary hearing. (See, N.J.A.C. 1:1-12.5; N.J.A.C. 1:1-14.6(p).) Thus, the Commission established a briefing schedule with an opportunity for the parties to submit reasons why the Commission should not resolve this matter on a summary basis or, in the alternative, reasons why the Commission should or should not find a violation of the Act. The parties were advised that all timely submissions would be reviewed at the Commission’s meeting on May 24, 2011. The complainant filed her submission on April 14, 2011 and a response was filed on behalf of the respondent on May 6, 2011. All papers were considered by the Commission at its meeting on May 24, 2011. The Commission voted to dismiss the complaint.

SUMMARY OF THE RECORD

In Count 1, the complainant alleges that the respondent sits on the Hamilton Township Zoning Board of Adjustment and, on January 13, 2011, he voted for a project that will potentially bring in 52 new homes at a time when the District's schools are already overcrowded and the schools have not attained required federal benchmarks for achievement standards. The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(b).

In Count 2 of the complaint, the complainant asserts that the respondent's position on the Hamilton Township Zoning Board of Adjustment "puts him in direct conflict with the needs of the district." (Complaint at p. 1) The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(c).

In his answer, the respondent admits that he is a member of the Hamilton Township Board of Education, as well as a member of the Hamilton Township Zoning Board of Adjustment. (Answer at p. 1) However, he asserts that the complaint herein alleges no (school) Board action, as contemplated by N.J.S.A. 18A:12-24.1(c) and the vote in question was cast while in his role as a member of the Hamilton Township Zoning Board of Adjustment. (Id. at p. 2)

In her April 14, 2011 submission, the complainant does not assert that material facts are in dispute. Rather, the complainant argues that the respondent's position on the Hamilton Township Zoning Board conflicts with his position as a Board member. In this connection, the complainant notes that N.J.S.A. 18A:12-24(d) prohibits a school official from undertaking any employment or service which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. (Complainant's Brief at p. 1) The complainant asserts that the two positions are incompatible. She reasons that the respondent has also violated N.J.S.A. 18A:12-24.1(a) and (b) of the Code of Ethics for School Board Members. (Id. at p. 3)

In his reply brief, the respondent noted that the complainant "failed to submit any factual evidence to support her initial allegations that [he] violated N.J.S.A. 18A:12-24.1(b) & (c), as required by N.J.A.C. 6A:28-6.4a(2)&(3)." (Reply Brief at p. 2) Rather, the respondent observes that the complainant for the first time alleges a violation of N.J.S.A. 18A:12-24(d), as well as N.J.S.A. 18A:12-24.1(a). Yet, the respondent asserts that the complainant has not sought leave to file an amended complaint. (Id. at p. 3) The respondent underscores that the complainant at no time alleges that he took any board action, but only that he took action as member of the Hamilton Township Zoning Board. In this connection, the respondent argues:

There is no statutory authority or case law that supports the proposition that decisions made by individual board members in their day to day lives constitute board action. Simply, Mr. Hewitson did not violate the Code of Ethics for School Board [M]embers by casting a vote as a member of the Hamilton Township Zoning Board of Adjustment. The Complainant's response is wanting of any evidence supporting her original allegations that 1) the respondent's vote for a project in the

township violates N.J.S.A. 18A:12-24.1(b), or 2) the respondent's position on the Hamilton Township Zoning Board of Adjustment violates N.J.S.A. 18A:12-24.1(c). (Id. at p. 5)

The respondent does not object to the resolution of this matter on a summary basis.

FINDINGS OF FACT

The Commission finds the following to be undisputed facts:

1. The respondent is a member of the Hamilton Township Board of Education, as well as a member of the Hamilton Township Zoning Board of Adjustment.
2. In January 2011, as a member of the Hamilton Township Zoning Board of Adjustment, the respondent voted in favor of a construction project for the township.

ANALYSIS

The complainant has the burden to prove factually a violation under the Code of Ethics for School Board Members as provided by N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(b), which 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 Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(b) shall include evidence that the respondent(s) willfully made a decision contrary to the educational welfare of children, or evidence that the respondent(s) took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing. N.J.A.C. 6A:28-6.4(a)2.

It is undisputed that the vote which is the subject of this complaint was cast by the respondent in his role as a member of the Hamilton Township Zoning Board of Adjustment. However, the Code of Ethics for School Board Members is a standard of conduct to be upheld *as a Board member or charter school trustee*.¹ There is no basis on which to hold this respondent to a standard of conduct for actions taken outside of his role as a Board member. Accordingly, the

¹ N.J.S.A. 18A:12-24.1 states, "[a] school board member shall abide by the following Code of Ethics for School Board Members."

Commission finds that the complainant has failed to factually establish a violation of N.J.S.A. 18A:12-24.1(b).

The Commission next considers the complainant's claim that the respondent's position on the Hamilton Township Zoning Board of Adjustment "puts him in direct conflict with the needs of the district" in violation of N.J.S.A. 18A:12-24.1(c). (Complaint at p. 1) N.J.S.A. 18A:12-24.1(c), states:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

As the respondent notes, the complaint herein alleges no (school) Board action. The Commission finds nothing on this record to factually support a finding that the respondent failed to confine his Board action to policy making, planning, and appraisal, or took Board action to effectuate policies and plans without consulting those affected by such policies and plans. Consequently, and for the reasons stated above in the discussion of N.J.S.A. 18A:12-24.1(b), the Commission finds that the complainant has failed to factually establish a violation of N.J.S.A. 18A:12-24.1(c).

Finally, as the respondent correctly noted, the complaint herein solely alleges a violation of N.J.S.A. 18A:12-24.1(b) and (c) of the Code of Ethics for School Board Members. The Commission's regulations state, in pertinent part:

Once an answer or other responsive pleading is filed, an amendment to a complaint may be made by the complainant only with the consent of each respondent or by leave of the Commission upon written application. N.J.S.A. 6A:28-6.7(c)

The complainant did not seek to amend her original complaint in accordance with the regulations so as to additionally claim that the respondent violated N.J.S.A. 18A:12-24(d) and N.J.S.A. 18A:12-24.1(a). Notwithstanding the complainant's failure to properly allege

violations of N.J.S.A. 18A:12-24(d)² and N.J.S.A. 18A:12-24.1(a)³, the Commission herein summarizes its past decisions on these statutory provisions.

In cases involving the application of N.J.S.A. 18A:12-24(d), the Commission has considered whether a school official's "other" employment or service would conflict with his/her official duties so as to be prohibited under the Act.⁴ For instance, in I/M/O David W. Fuller, Irvington Twp. Bd. of Ed., Essex County, C32-95 (November 25, 1997), Commissioner of Education Decision No. 19-98SEC decided January 21, 1998, the Commission found that a board member violated N.J.S.A. 18A:12-24(d) by serving on the Board while also serving as the Township Business Administrator based on the extent to which the duties can overlap in a Type I district; and in Irvington Municipal Council v. Michael Steele and the Irvington Board of Education, Essex Co., 95 N.J.A.R. 2d (EDU) 123, aff'd, State Bd. Dkt. #30-95, September 6, 1995, the Commission found that the respondent violated N.J.S.A. 18A:12-24(a), (c) and (d) when he was employed by the Board as Business Administrator in a Type I school district while he served as Mayor for the Township. Where there is not a "fundamental incompatibility" between the duties (see, Irvington Municipal Council, State Bd. Decision, September 6, 1995 at p. 3), the Commission has not found a violation, although it may find that serving in dual capacities necessitates recusal on particular matters.⁵

Furthermore, in complaints involving the application of N.J.S.A. 18A:12-24.1(a) the Commission has underscored that its regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(a) shall include a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent(s) failed to enforce all laws, rules and regulations of the

² This provision states: "No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties."

³ This provision states: "I will uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures."

⁴ In this regard, the respondent's argues there is no conflict of interest since, pursuant to N.J.S.A. 18A:11-1, the Board has the duty "to perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district." Whereas, the Board of Zoning Adjustment, according to the respondent, ensures that "[n]o variance and other relief may be granted *** unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinances." (Reply Brief at p. 6)

⁵See also, Robert Merola v. Anthony Schaible, Monmouth Regional High School Bd. of Ed., Monmouth County, C22-10 (October 26, 2010); I/M/O Susan Ciallella, Spring Lake Hts. Bd. of Ed., Monmouth County, C01-98 (May 26, 1998); I/M/O James Famularo, Asbury Park Bd. of Ed., Monmouth County, C04-98 (September 22, 1998); I/M/O Abdi Gass, Chesilhurst Bd. of Ed., Camden County, C13-98 (November 24, 1998); Gunther v. Alberti, Howell Twp Bd. of Ed., Monmouth County, C08-99 (July 27, 1999); Reggio et al., v. Randazzo & Stead, Berlin Borough Bd. of Ed., Camden County, C24-99 (May 23, 2000); Graham v. Roman, East Newark Bd. of Ed., Hudson County, C25-02 (November 26, 2002)).

State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical procedures. N.J.A.C. 6A:28-6.4(a)1.

Thus, the Commission has consistently dismissed complaints where the complainant does not include, or indeed reference, a copy of a final decision from any court of law or administrative agency of this State demonstrating that the respondent failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent brought about changes through illegal or unethical means. See, David Hollander v. Judith Millman, et al., Springfield Board of Education, Union County, C33-07 (January 22, 2008); Denise Bouyer v. Rita Owens and Oscar McCoy, Willingboro Board of Education, Burlington County, C37-09 (December 15, 2009); Martha Oramas-Shirey v. Gallo et. al., Bethlehem Twp. Bd. of Ed., Hunterdon County, C43-10 (March 22, 2011). It is worth noting that the complainant's submissions are similarly lacking the required factual evidence.

DECISION

The Commission finds that the complainant did not factually establish that the respondent violated N.J.S.A. 18A:12-24.1(b) and (c) 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).

Robert W. Bender
Chairperson

Mailing Date: June 29, 2011

Resolution Adopting Decision – C01-11

Whereas, the School Ethics Commission has considered the documents filed by the parties; and

Whereas, at its meeting of May 24, 2011, the Commission found that the complainant had not established that the respondent violated N.J.S.A. 18A:12-24.1(b) and (c) of the Code of Ethics for School Board Members and therefore dismissed the complaint; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on June 28, 2011.

Joanne Boyle, Executive Director