
JAMES LIABRAATEN

v.

**PETER EMERY,
WEST MORRIS REGIONAL BOARD
OF EDUCATION
MORRIS COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

**Docket No. C14-08
PROBABLE CAUSE NOTICE**

This matter arises from a complaint filed on May 1, 2008 by James LiaBraaten, alleging that Peter Emery, a member of the West Morris Regional High School District Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. An answer was filed on behalf of the respondent on June 26, 2008. The School Ethics Commission requested additional information from the respondent, which was filed on September 16, 2008. The matter was scheduled for a probable cause review by the Commission on January 27, 2009, but adjourned at the respondent's request. The matter was rescheduled for a probable cause hearing on March 24, 2009, at which time the Commission voted to find no probable cause and dismiss the complaint.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainant asserts that he was a candidate in the 2008 election for a one-year seat and the incumbent respondent was the chairman of the Facilities Committee on the Board. According to the complainant, on March 19, 2008, a resident published an article endorsing the complainant and also criticizing the District's expansion project which had not yet been completed. The complainant contends that the respondent sought to submit a rebuttal to the article, but was denied by the newspaper which has a policy that candidates are not permitted to write letters to the editor. On March 24, 2008, the newspaper received a press release from the Facilities Committee of the Board which was printed in the format of a letter to the editor. The complainant contends that the release consisted largely of political arguments attempting to refute the resident's letter. As such, the complainant alleges that the true purpose of the release was for the respondent to present his defense which was "written for impact under the auspices of the BOE committee he chaired, less than two weeks before his election." (Complaint at paragraph 7) The complainant asserts that there was a regularly scheduled Board meeting on March 24, 2008 and that any proposed letter could have been discussed and voted upon by the full Board, but it was not an agenda item. (Id. at paragraph 8).

According to the complainant, the respondent also defended his actions in a subsequent newspaper article published on April 2, 2008, which indicated that the letter from the Facilities Committee did not claim to represent the views of the Board, but was written by individual members of the Facilities Committee. However, the complainant points out that the release was written on Board letterhead and forwarded by a Board employee. (Id. at paragraphs 9-11)

The complainant ultimately lost the election and contends that this exchange of letters in the newspaper was the “single largest factor in voter’s [sic] decisions, swinging perhaps hundreds of votes...” (Id. at paragraph 14) The complainant further asserts that the respondent used his position for his personal gain in violation of N.J.S.A. 18A:12-24.1(f), N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24(c). (Id. at paragraphs 16-19)

In his Answer, the respondent admits that he contacted the newspaper editor on March 21, 2008 with concerns about the misstatements made in the resident’s article. According to the respondent, the editor suggested that a letter of rebuttal could come from the Board’s Facilities Committee, although not from the respondent as an individual since he was a candidate. The respondent asserts that he spoke with the two other members of the Facilities Committee, Margaret Berlin and James Johnston, and all three agreed that the resident’s letter contained misinformation about the District’s construction projects which needed to be corrected. Thereafter, the respondent alleges that he spoke with the Board president, John Notte, to advise him that the Facilities Committee planned to send a press release correcting the misinformation. Mr. Notte agreed that the Facilities Committee should send the response. The Facilities Committee drafted a press release which was emailed by Barbara McClurken in the District’s administrative offices. That the press release was printed in the format of a letter to the editor was, according to the respondent, the newspaper editor’s decision. (Answer at paragraphs 1-5)

The respondent denies that the purpose of the press release was to support his campaign. In this connection, the respondent contends that there were numerous times in the campaign when the complainant impugned his integrity through mailings, radio spots and telephone calls to voters; he did not once respond to “those antics.” Rather, the respondent asserts that the single time he responded was to correct the falsehoods in the resident’s letter. According to the respondent, he decided not to run for a three-year seat as he felt that he had done his service to the Board. However, when a one-year term for another seat became available, he decided to run to help maintain stability on the Board, but not to achieve his personal goals. (Id. at paragraph 7)

The respondent admits that the press release was not presented to the entire Board for review because it had already been finalized by the Facilities Committee and approved by the Board president. The respondent contends that such a press release is consistent with an existing practice for issuance of committee press releases. (Id. at paragraph 8)

Upon a request from the Commission for additional information, the respondent provided the following documents:

- The certification of John Notte, Jr., Board president at the time of the press release, who affirmed that he approved the press release prepared by the Facilities Committee. Mr. Notte further certified that Board Policy #9020 gives the Board President the authority to make public statements on behalf of the Board and, as such, he was exercising that authority to approve the press release drafted by the Facilities Committee. (Notte Certification, September 2, 2008)

- The certification of James Johnston, current Vice President and a member of the Facilities Committee at the time of the press release, who affirmed that he spoke with the respondent about the resident's letter which contained numerous errors. Mr. Johnston further attested that the respondent and Ms. Berlin drafted the press release and read it to him over the phone. He stated he was aware that the respondent discussed the press release with Mr. Notte, who approved of its issuance. Mr. Johnston agreed with the contents of the draft and affirmed that similar releases had been issued by other Board committees. (Johnston Certification, September 4, 2008)
- The certification of Margaret J. Berlin, former Board member and member of the Facilities Committee at the time of the press release, who affirmed that she spoke with the respondent about the resident's letter which contained numerous errors. Ms. Berlin stated that she and the respondent drafted a press release which they read to Mr. Johnston over the phone; Mr. Johnston approved the draft. Ms. Berlin further certified that she was aware that the respondent discussed the matter with Mr. Notte who approved the issuance of the press release. Ms. Berlin stated that similar releases had been issued by other Board committees. (Berlin Certification, August 28, 2008)

The respondent also submitted a copy of the Board's Policy #9020, which authorizes the President of the Board to make public statements on behalf of the Board.

The complainant attended the Commission's meeting on March 24, 2009, as did the respondent, with his attorney, Russ Weiss, Esq. The complainant, James LiaBraatten, testified that his complaint had to do with the practices of a school board member misusing his position to his benefit. The letter that was written by the resident was "clearly a political letter," according to the complainant. The complainant reasoned that because the newspaper had a policy prohibiting letters to the editor written by candidates, the type of response issued by the respondent would not have been possible had he not been a member of the board. Thus, the complainant argued that the respondent benefited by the press release having been submitted; he further argued that a board member cannot use his official position to his advantage. According to the complainant, the respondent wrote the press release which ultimately swayed the election.

Respondent Peter Emery testified that although he "really wanted to get off the Board," in 2008, he ran for reelection because of the outstanding construction issues in the District and the need for continuity. The respondent testified that when he read the letter from the resident, he was concerned about the inaccuracies contained in the letter with respect to the District's construction projects. The respondent explained that as a regional high school district with five towns, there are always questions about funding; it was a challenge to get all five communities to spend millions on these buildings. The Board got the public to "sign on" notwithstanding the constant issues of allocations per community. The respondent stated that the Board walks a tight line on these issues and credibility is important. According to the respondent, the resident's letter made many statements that were not true and damaged the Board's credibility in the towns. The respondent explained that he called the Vice President of the Board who agreed the letter was damaging. He then spoke to Mr. Notte, the President of the Board, and asked if the Facilities Committee could draft a letter in response. According to the respondent, Mr. Notte agreed that a response to the letter was warranted. Mr. Emery called the editor of the paper, who

informed him that the newspaper would not allow letters from candidates. The respondent stated that the editor suggested that a press release could be issued from the Facilities Committee. The respondent testified that the members of the Facilities Committee got together and drafted some language; they “ran it by” the Board President and sent it to the District’s communications office.

According to the respondent, the goal of the release was to “put the most straightforward statements out there.” He was only running for a one-year seat and he just wanted to set the record straight. The respondent also stated that this took place during the time when the Board was presenting its budget and he was concerned about the Board’s integrity. The respondent noted that, in the past, press releases had been issued by other committees for various reasons.

Margaret Berlin testified for the respondent. She was a Board member from 1999 until 2008, when she chose not to run again. Ms. Berlin was on the Facilities Committee for three years, including the 2007-2008 school year. With respect to the letter that was written by the resident, Ms. Berlin testified that the letter contained many factual misstatements “so incorrect” that the Facilities Committee felt a response from the Board was warranted. According to Ms. Berlin, the Committee did not view the letter as an attack. However, the information in the resident’s letter about the facilities and the progress of the facilities was completely wrong. Ms. Berlin affirmed that the Committee discussed how to provide facts about the construction so that the public would be aware of what was correct. She stated that the Committee spoke by phone about the contents of the press release. The goal of the response, according to Ms. Berlin, was to make sure the public knew the correct information. The Committee called the Board President and informed him that the letter contained misstatements of fact. The Board President said to go ahead with the rebuttal. Ms. Berlin testified that this response was in keeping with had been done in the past; a committee would clear everything with the Board President before anything was publicly released. She testified that she was the former chair of the negotiations team and obtained authorization to speak publicly through the Board President. Ms. Berlin could not specifically recall any other press releases that were issued by the Facilities Committee. She emphasized that the goal of the press release was “absolutely not” to assist the respondent in his campaign; the Committee’s concern was for the welfare of the District and for the citizens. The press release said nothing about the respondent’s candidacy.

John Notte testified for the respondent. He has been a member of the Board for 18 years and served as the President for five years; he ended his term as president in April 2008. Mr. Notte stated that he spoke to the respondent and Ms. Berlin, who was then the Vice President; both felt that the letter needed to be addressed since it contained incorrect information about the construction project. Mr. Notte testified that in a regional school district, with shared taxes, the public needs to know that what they voted on and planned for was actually happening. Mr. Notte also noted that the resident’s letter could have had a negative effect on the budget vote, which was imminent. Mr. Notte testified that, as president, he gave permission to the respondent as chairperson of the Facilities Committee to issue a press release; he felt that the Committee was in a better position to issue the release than he was since they were more up to date. He asked them to “put something together and make sure that I see or hear it.” Mr. Notte explained that when they do similar press releases for budget reasons, usually the chair of the Committee signs the release. But here, all three members signed because they felt strongly enough to do so and they were from different towns. When questioned about press releases for

other purposes, Mr. Notte stated that, in the past, during negotiations, he gave permission to Ms. Berlin to speak to the newspaper. Mr. Notte testified that he felt it was consistent with policy that he gave permission to issue releases as long as he was kept up to date. Mr. Notte could not recall another time when the Facilities Committee issued a press release.

FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause. That is, the Commission must determine, based on the documentary and testimonial evidence before it, whether probable cause exists to credit the allegations in the complaint. A finding of probable cause is not adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted. In making this decision, the Commission must consider whether sufficient evidence exists to support a claim of violation under the School Ethics Act. Here, the Commission finds there is insufficient evidence to proceed.

The complainant contends that the respondent violated N.J.S.A. 18A:12-24(b) by submitting the press release to the newspaper. 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;

The complainant asserts that the respondent used his position as a Board member to issue the press release which resulted in his swaying the election by a narrow margin. All the documents and testimony adduced in this matter, however, suggest that the respondent caused the press release to be issued so that the facts about the District's construction project could be set straight, rather than to attempt to secure an unwarranted privilege or advantage in the election. There is nothing in the text of the release that speaks to the respondent's candidacy. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b).

The complainant further contends that the respondent violated N.J.S.A. 18A:12-24(c), which 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;

Although the Commission believes that the respondent was acting in his official capacity as the Chair of the Facilities Committee (Berlin Certification at page 2) when issuing the press release, the Commission can find no direct or indirect financial involvement that might reasonably be expected to impair the respondent's objectivity or independence of judgment. To the extent that the complainant asserts there was a benefit to the respondent inasmuch as he won the election, the Commission is persuaded by the credible testimony offered by the respondent and his witnesses that the action in issuing the press release was authorized by the Board President and intended to benefit the Board as well as the District, not the respondent. Any incidental benefit to the respondent is purely speculative and insufficient for the Commission to base a finding of probable cause. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c).

Lastly, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(f), which 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.

In this connection, it appears that the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(f) because he used the schools for personal gain. However, the Commission finds nothing in the documents or testimony on this record to support this contention, as set forth above. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f).¹

NOTICE

Pursuant to N.J.S.A. 18A:12-29b, the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegations that the respondent violated the Act and the Commission dismisses the complaint. 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

¹ There is no allegation that the respondent surrendered his independent judgment to special interest or partisan political groups, as defined at N.J.A.C. 6A:28-7.1.

Resolution Adopting Decision – C14-08

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

Whereas, at its meeting of March 24, 2009, the Commission found no probable cause to credit the allegations that the respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against them; and

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

Whereas, the Commission has reviewed, and agrees with, the proposed 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 April 28, 2009.

Joanne Boyle, Executive Director
School Ethics Commission