

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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

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 Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(f) shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6.

Letter to the Editor Claim

The complainant alleges that the respondent "used her position to write an article in the paper to sway the vote in the incumbents' favor." (Complaint at p. 1) The respondent acknowledges that she submitted a letter to the editor in support of three candidates who were running for the Board in the 2010 election. (Respondent's Certification at paragraphs 3-5) The article appended to the complaint begins with the statement:

As a current member of the Elmwood Park Board of Education, I feel compelled to inform the community of the critical importance of re-electing Keith Cannizzo, Jennifer Pellegrine and Louise Gerardi for their fourth, second and first full terms, respectively. (Complaint/Appendix)

The letter continues, stating that these candidates have the knowledge necessary to meet the challenges faced by the school system today. Respondent states that the Board needs members with experience, since the majority is composed of persons who are recently elected. The

respondent further states how she believes each is qualified to serve as a Board member and ends the letter by stating:

I sincerely believe that these three individuals give the children and the community of Elmwood Park the best chance to succeed. Join me in voting for Keith Cannizzo, Jennifer Pellegrine and Louise Gerardi – they are truly the voices of reason for education in Elmwood Park. (Id.)

The Commission finds that, even assuming that writing the letter to the editor was “private action,” there are no facts alleged in this complaint that, if true, would establish that the respondent’s actions were of such a nature that they had the potential to compromise the board. Rather, the Commission finds that the respondent fairly analogizes this matter to Dressel v. Kolupanowich, Monroe Township Board of Education, Middlesex County, C11-07 (June 24, 2008), wherein the Commission dismissed a complaint alleging that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) when she wrote a letter to the editor responding to perceived errors in a prior letter to the editor. There, the respondent identified herself as the President of the Board, but did not state that the letter was being written on behalf of the Board so as to implicate N.J.S.A. 18A:12-24.1(e); she also used first person pronouns throughout the letter. (Motion to Dismiss at pp. 4-5) Similarly, the respondent argues that in the instant matter:

[S]he repeatedly used first person pronouns thereby making it clear that the opinions expressed in that letter were personal to her and did not represent that of the [B]oard. Nowhere in that letter did she state that it was being written on behalf of the Board. It is also significant that in Dressel, the respondent’s letter addressed a matter upon which it was the sole responsibility of the Board of Education to decide. Here, Ms. Sproviero commented on voting in an election open to the residents of Elmwood Park in general, and was not just a function of [B]oard members.*** Moreover, there is nothing contained in Ms. Sproviero’s letter which can be construed as having in any way compromised the [B]oard. (Motion to Dismiss at p. 5)

The Commission also notes that it has declined to credit allegations that respondent Board members violated N.J.S.A. 18A:12-24.1(e) when they endorsed political candidates in their roles as private citizens. (See, LaPorte v. Stewart et al., Atlantic City Bd. of Ed., C26-05 (September 27, 2005); Kazmark v. Depsee et al., West Paterson Bd. of Ed., C38-08 (January 26, 2010). Therefore, even granting all inferences to the complainant, the Commission finds that the facts set forth in the complaint, if true, would not establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

As to the complainant’s assertion that the respondent’s letter violated N.J.S.A. 18A:12-24.1(f), the Commission acknowledges the respondent’s argument that this matter is similar to James LiaBraaten v. Peter Emery, West Morris Reg’l Bd. of Ed., Morris County, C14-08 (April 28, 2009) wherein the Commission found no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f) when, in the context of a Board election, the respondent submitted a rebuttal to an article that criticized the District’s construction project. (Motion to

Dismiss at p. 9) Therein, the Commission found no evidence to suggest that the respondent caused the press release to be issued in order to secure an unwarranted privilege or advantage in the election; neither did the Commission find that the respondent used the schools for personal gain.

In the within matter, the Commission finds that the action taken by the respondent in writing the letter in support of the incumbent candidates was fairly within her role as a private citizen and there are no facts alleged in the complaint that, if true, would support a finding that the respondent surrendered her independent judgment as a Board member to special interest or partisan political groups or used the schools for personal gain or for the gain of friends when she supported these candidates. (See, Lee, et al. v. Beck, Union Township Bd. of Ed., Hunterdon County, C01-05, (September 27, 2005).

Employment with Municipal Tax Department Claim

The complainant alleges that the respondent has violated the Act because she holds a position in the municipal tax department. (Complaint at p. 1) Although the Commission notes that, in support of her Motion to Dismiss, the respondent acknowledges that she is employed by the Borough of Elmwood Park Tax Department as a Senior Clerk Typist, (Respondent Certification at paragraph 16), the complainant alleges no specific facts that, if true, would establish that the respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the Board. Therefore, even granting all inferences to the complainant, the Commission finds that the facts set forth in the complaint, if true, would not establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

Similarly, the Commission finds that the complainant offers no facts which, if true, would establish 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 her friends, simply by virtue of her employment with the municipality. Accordingly, even granting all inferences to the complainant, the Commission finds that the facts set forth in the complaint, if true, would not establish that the respondent violated N.J.S.A. 18A:12-24.1(f).

DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: September 1, 2010

Resolution Adopting Decision – C15-10

Whereas, the School Ethics Commission has considered the complaint and the Motion to Dismiss filed on behalf of the respondent and the reply thereto; and

Whereas, at its meeting on July 27, 2010, the Commission determined to grant the respondent’s Motion to Dismiss 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 decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 31, 2010.

Joanne Boyle
Executive Director