

	:	BEFORE THE SCHOOL
CATHY SOUTHERLAND	:	ETHICS COMMISSION
	:	
v.	:	
	:	
ANTHONY VAUSS	:	
IRVINGTON BOARD OF EDUCATION	:	Docket No. C17-10
ESSEX COUNTY	:	PROBABLE CAUSE NOTICE
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 29, 2010 by Cathy Southerland alleging that Anthony Vauss, a member of the Irvington Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. By notice dated April 29, 2010, the complainant was informed that the complaint was deficient and, therefore, not accepted. On May 12, 2010, the complainant submitted an amended complaint, which was accepted by the Commission.

The respondent filed an answer on June 9, 2010, which included an allegation that the complaint was frivolous.¹ Although the complainant was provided an opportunity to respond to the allegation of frivolousness, she did not respond to the allegation. N.J.A.C. 6A:28-7.2(b). In accordance with the Commission’s authority under N.J.S.A. 18A:12-28(b), the Commission sought additional information to supplement the respondent’s answer. That information was timely submitted by the respondent on July 23, 2010.

The complainant and respondent were notified by letter dated July 29, 2010 that the Commission would review this matter at its meeting on August 31, 2010 in order to make a probable cause determination and consider the respondent’s allegation of frivolousness. N.J.A.C. 6A:28-10.7. At its meeting on August 31, 2010, the Commission found no probable cause to credit the allegation that the respondent violated the Act and dismissed the complaint. The Commission further found that the complaint is not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainant alleges that on February 18, 2010, the respondent, along with his civic association, hosted a community program which provided a legal seminar and sign-up for internship with the law firm that is the attorney for the Board of Education. The complainant adds that the respondent voted for the attorney in 2009 and 2010. The complainant asserts this is a violation of N.J.S.A. 18A:12-24(d). (Complaint at paragraph 1) The complainant appends to

¹By notices dated June 9, 2010, the Commission advised the respondent that his answer was not certified under oath, in accordance with N.J.A.C. 6A:28-7.2(c) and did not include proof of service on the complainant. On June 24, 2010, the respondent submitted a proper answer with proof of service.

the complaint a flyer from the February 18th event, as well as excerpts of minutes from the April 29, 2009 meeting showing that the respondent voted in favor of the appointment of Hunt Hamlin and Ridley as counsel for the Board for the 2009-2010 year and minutes from the June 17, 2009 meeting showing that the respondent voted in favor of increasing counsel's retainer agreement to cover legal expenses through June 30, 2009.

In his answer, the respondent denies that he violated N.J.S.A. 18A:12-24(d), asserting that no employment or service was undertaken by him and that his civic association is a community association unrelated to Board services. (Answer at p. 1) In the supplement to his answer, Mr. Vauss explains that on February 18, 2010, the Tony Vauss Civic Association, Inc., held a free, community event at a restaurant in Irvington. The respondent continues:

The event was intended to bring residents of the community together and inspire them to follow their dreams by providing an opportunity for them to meet accomplished individuals from various industries. There were a number of professionals from a multitude of industries who volunteered their time to meet with and talk to the attendees of the event ***: radio personalities, lawyers, doctors, professional athletes, ministers, and comedians. Although the flyer stated that attendees could sign up for an internship, the issue of internships with any participants never arose, as no residents signed up—this could be due to the fact that the internships were unpaid, volunteer positions. (Respondent's Supplemental Answer at p. 1)

The respondent asserts that the participants were volunteers and he received no economic benefit from the event, nor has he ever received an economic benefit from the appointment of Hunt, Hamlin and Ridley as counsel to the Board. The respondent also notes that the complainant did not attend the event. (Id.)

As to the complainant's allegation that the respondent voted for Hunt, Hamlin and Ridley as Board counsel, the respondent asserts that this firm has been representing the Board since 1997, a full nine years before he was elected to the Board. The respondent appends to his response a copy of minutes and a resolution from the Board's June 30, 2010 meeting showing that he was absent when the final vote was taken to appoint Hunt, Hamlin and Ridley as Board counsel for the 2010-2011 school year. (Id. at p. 2)

Upon its investigation pursuant to its authority under N.J.S.A. 18A:12-28(b), the Commission found that the Tony Vauss Civic Association, Inc. is a non-profit organization which receives a substantial part of its support from a governmental unit or the general public. <http://800mail.com/lookups/np.asp?ein+208098650>.

FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.7. That is, the Commission must determine, based on the evidence before it, whether probable cause exists to credit the allegation in the complaint. A finding of probable cause is not an 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.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(d) of the School Ethics Act, which 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;

Thus, the question before the Commission is whether there is probable cause to believe that the respondent, in sponsoring the community event on February 18, 2010 through the Tony Vauss Civic Association, has undertaken a “service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties” so as to potentially violate N.J.S.A. 18A:12-24(d).

The Commission finds that there are no material facts in dispute in this matter. The respondent acknowledges that the Tony Vauss Civic Association sponsored a program on February 18, 2010 at a local restaurant. The flyer states, in relevant part:

Learn the music business and sign up for internship (with DJ QUA 98.7 KISS FM)
Legal advice seminar and sign up for internship (With the Law firm of Hunt, Hamlin and Ridley)
Learn how to eat right and exercise, also sign up for basic aerobic classes (With Mike Jasper, personal Fitness Trainer)
Sign up for the Adult Basketball Program each week (With Tate George Former NBA Star)
Sign up for the CPC weekly Bible study (With Pastor Jerry Smith of Christian Pentecostal Church) (Complaint/Appendix)

There are no facts on this record to refute the respondent’s claim that no one signed up for the internship with the law firm. Even assuming that there were residents interested in signing up for an internship with the law firm, and further assuming that the respondent’s participation (via his civic organization) could be considered a “service” as intended by N.J.S.A. 18A:12-24(d), the Commission finds nothing on this record to suggest that the respondent’s service in this capacity might reasonably be expected to prejudice his independence of judgment in the exercise of his

duties as a Board member.² The Commission also notes that the record herein demonstrates that the respondent was not present at the June 30, 2010 meeting when the Board appointed the Law firm of Hunt, Hamlin and Ridley as counsel for the 2010-2011 school year. To the extent the complainant raises the issue of the respondent's vote for the Law firm of Hunt, Hamlin and Ridley in June 2009, the Commission finds such allegation to be not only untimely pursuant to N.J.A.C. 6A:28-6.5, but irrelevant to the within analysis, where the seminar that gave rise to the within allegation did not take place until February 2010.

REQUEST FOR SANCTIONS

The respondent alleged that the complaint herein is frivolous. At its meeting on August 31, 2010, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. N.J.A.C. 6A:28-1.2. Therefore, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(d) and the complaint is, therefore, dismissed. This decision is a final decision of an administrative agency and, 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: September 29, 2010

² Contrast, I/M/O David W. Fuller, Irvington Twp. Bd. of Ed., Essex County, C32-95 (November 25, 1997), Commissioner of Education Decision No. 472-12/97 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 serving as the Township Business Administrator based on the extent to which the duties can overlap in a Type I district. Similarly, 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. No. 30-95, 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.

Resolution Adopting Decision – C17-10

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and all papers filed thereafter; and

Whereas, at its meeting of August 31, 2010, the Commission found no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(d) and, therefore, dismissed the complaint; and

Whereas, the Commission further found that the complaint is not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; and

Whereas, the Commission has reviewed, and agrees with, the proposed probable cause notice;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed probable cause notice in this matter and directs its staff to notify all parties to this action of said notice.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on September 28, 2010.

Joanne Boyle, Executive Director
School Ethics Commission