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<b>WILLIAM D. MOTT,</b>	:	
	:	<b>SCHOOL ETHICS COMMISSION</b>
<b>v.</b>	:	
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<b>KELLY ANNE MCDONNELL</b>	:	
<b>GREEN TOWNSHIP BOARD OF</b>	:	<b>Docket No. C21-09</b>
<b>EDUCATION</b>	:	<b>DECISION ON</b>
<b>SUSSEX COUNTY</b>	:	<b>MOTION TO DISMISS</b>
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**PROCEDURAL HISTORY**

This matter arises from a complaint filed on May 21, 2009 by William D. Mott alleging that Kelly Anne McDonnell, a member of the Green 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(a), (e) and (g) of the Code of Ethics for School Board Members. By letter dated May 27, 2009, the School Ethics Commission acknowledged receipt of the complaint, but noted that the complaint appeared to be untimely pursuant to N.J.A.C. 6A:28-6.5. The complainant was accorded an opportunity to submit reasons why the matter should not be dismissed as untimely. The Commission also permitted counsel for the respondent to submit arguments in this regard. At its meeting on July 28, 2009, and pursuant to its discretion under N.J.A.C. 6A:28-1.8, the School Ethics Commission determined to relax the filing timeline set forth in N.J.A.C. 6A:28-6.5 and accept the complaint filed in connection with the above-captioned matter.

Thereafter, on August 31, 2009, pursuant to N.J.A.C. 6A:28-8, a Motion to Dismiss was filed on behalf of the respondent. The motion also asserted that the complaint was frivolous. The complainant was accorded 20 days to respond to the motion and allegation of frivolousness. At its meeting on September 22, 2009, the Commission considered the motion, the response and the allegation of frivolousness and determined to grant the Motion to Dismiss, and to find that the complaint was not frivolous.

**SUMMARY OF THE PLEADINGS**

The complainant asserts that the respondent personally alerted Mr. Noll, a former Green Township Board member of serious allegations that were being made against him in an anonymous letter mailed to members of the Board. The complainant asserts that the respondent did so prior to the Board deciding on what action to take in the matter. The complainant contends that the respondent also provided Mr. Noll with a copy of the anonymous letter and asserts her actions were in violation of N.J.S.A. 18A:12-24.1(a). Repeating these facts, the complainant adds that the respondent faxed Mr. Noll the anonymous letter and asserts her actions were in violation of N.J.S.A. 18A:12-24.1(e). According to the complainant, “this anonymous letter contained information not only relating to Mr. Noll but also regarding the Superintendent of the Green [T]ownship School District and potentially serious problems for the district. [sic] Mr. Noll was a private citizen and not a current member of the Green Township School Board.”

The complainant contends these actions violated N.J.S.A. 18A:12-24.1(g). (Complaint/attachment page 1)

## ANALYSIS

In determining whether to grant a motion to dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, motions to dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3.

Thus, the question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24.1(a), (e) and (g) of the Code of Ethics for School Board Members. In so doing, the Commission notes that, for complaints alleging a violation of the Code of Ethics for School Board Members, the complainant has the burden to factually establish a violation in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). Granting all inferences to the complainant, and even assuming all facts to be true, the Commission finds that the complainant has failed to meet this standard.

There appears to be no dispute on this record that, prior to the Board's April 30, 2008 reorganization meeting, the respondent received an anonymous letter mailed to her home address which made allegations about the Superintendent of Schools of the Allamuchy School District, Timothy Fredericks, who also served as the Superintendent of the Green Township School District, as well as Kenneth Noll, a Board member who did not run for re-election and whose term was expiring at the April 30, 2008 reorganization meeting. (Complaint/Letter attachment at pages 1-2; Motion to Dismiss at pages 1-2) The respondent provided Dr. Fredericks with a copy of the anonymous letter on April 28, 2008. (Complaint/Letter attachment at page 2; Motion to Dismiss at page 3) The respondent advised the Board at its April 30, 2008 meeting that upon receiving the anonymous letter in the mail, she contacted Mr. Noll, advised him of the letter's contents, then provided him a copy via facsimile. (Complaint/Letter attachment, pages 2 and 3)

The complainant asserts the respondent violated N.J.S.A. 18A:12-24.1(a) by alerting Mr. Noll to the allegations that were contained in an anonymous letter sent to members of the Board, and then providing Mr. Noll with a copy of that letter. N.J.S.A. 18A:12-24.1(a) provides:

- a. 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.

The Commission notes 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 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.

At no time does the complainant assert that a final decision has been rendered with respect to this respondent from any court of law or administrative agency of this State demonstrating that Ms. McDonnell 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[s] brought about changes through illegal or unethical means. Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a).

Next, the Commission notes that N.J.S.A. 18A:12-24.1(e) provides:

e. 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 notes that its 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.

The complainant does not allege that the respondent made a personal promise. Presumably, the complainant asserts that the respondent's actions were in violation of N.J.S.A. 18A:12-24.1(e) because the Board had not yet had an opportunity to discuss the anonymous letter or take any action with respect to its allegations when the respondent shared the contents of the letter, and the letter itself with Mr. Noll. (Complaint/Letter attachment, pages 2 and 3) However, as noted above, it is undisputed that the respondent shared the letter with Mr. Noll prior to the Board's reorganization meeting. As the respondent asserts, and the complainant does not specifically challenge:

It is well settled that when Board members are defeated for re-election, or decline to run at all, their terms continue until the reorganization meeting following the election. See, Gerald F. Blessing v. Board of Education of the Borough of Palisades Park and Frank Polotta, Bergen County, 1133 S.L.D. 1133 (December 2, 1974) ("It is at [the reorganization meeting] that ... the terms of those who are not to continue as members of the Board officially expire.") Since, by all accounts, McDonnell gave Noll a copy of the letter prior to the reorganization meeting, he was still a member of the Board at the time. (Respondent's Motion to Dismiss at pages 7-8)

The Commission finds that the undisputed facts alleged in this complaint support the conclusion that the respondent was fairly acting within the scope of her duties as a Board member when she shared a copy of the anonymous letter with Mr. Noll, *then a fellow Board member*, and advised the Board of the same at its meeting on April 30, 2008. Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(e).

The complainant next claims that the respondent violated N.J.S.A.18A:12-24.1(g), which provides:

g. I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

The Commission notes that its regulations require that:

Factual evidence of a violation of the confidentiality provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that the respondent(s) took action to make public, reveal or disclose information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices. \*\*\* N.J.A.C. 6A:28-6.4(a)7.<sup>1</sup>

The complainant has not alleged that the respondent publicly disclosed the letter beyond members of the Board. Neither does the complainant assert that the letter, even if disclosed, included “information that was not public under any laws, regulations or court orders of this State, or information that was otherwise confidential in accordance with board policies, procedures or practices.” Rather, the complainant merely asserts that the letter contained “serious allegations” about the Superintendent. According to the complainant, the letter was sent to all Board members and specifically shared by the respondent with Mr. Noll, who was still a Board member at the time. Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(g).

## **REQUEST FOR SANCTIONS**

Pursuant to N.J.A.C. 6A:28-8.2, the respondent alleged in her Motion to Dismiss that the complaint herein is frivolous. Thus, at its meeting on September 22, 2009, 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).

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<sup>1</sup> There is no allegation that the respondent provided “inaccurate information.” Therefore, just the confidentiality provision is addressed herein.

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. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

## **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 Bender  
Chairperson

**Resolution Adopting Decision – C21-09**

**Whereas**, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of the respondent, together with the response filed by the complainant; and

**Whereas**, at its meeting on September 22, 2009, the Commission granted the respondent’s Motion to Dismiss the allegations that respondent violated N.J.S.A. 18A:12-24.1(a), (e) and (g) of the Code of Ethics for School Board Members and found that the complaint was not frivolous; 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.

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Robert Bender Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 27, 2009.

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Joanne Boyle  
Executive Director