
HELEN YOON

v.

**CARMELO LUPPINO, JR.,
FORT LEE BOARD OF EDUCATION
BERGEN COUNTY**

: **BEFORE THE SCHOOL**
: **ETHICS COMMISSION**
:
:
:
:
: **DOCKET NO. C21-11**
: **DECISION ON**
: **MOTION TO DISMISS**
:

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 28, 2011 by Helen Yoon alleging that Carmelo Luppino, a member of the Fort Lee Board of Education (“Board”) violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when she attended a fundraiser in support of incumbent candidates for the Board.

After being granted an extension for good cause shown, on July 5, 2011, a Motion to Dismiss was filed on behalf of the respondent. The motion included an allegation that the complaint was frivolous. Although accorded the opportunity to file a reply to the motion, the complainant did not respond. N.J.A.C. 6A:28-8.2(a). The parties were notified by letter dated July 5, 2011 that this matter would be placed on the agenda for the Commission’s meeting on July 26, 2011 in order to make a determination regarding the respondent’s Motion to Dismiss the complaint, as well as the allegation of frivolousness. At its meeting on July 26, 2011, the Commission granted the respondent’s Motion to Dismiss 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 THE PLEADINGS

In Count 1, the complainant contends that on March 21, 2011, the Superintendent, Assistant Superintendent, Business Administrator and the School Board President attended a fund-raising dinner as guests for the re-election of incumbents running for the Board. The complainant asserts that they were introduced in their official positions and not as regular citizens. According to the complainant, “[t]he school officials also posed in pictures alongside the incumbents in front of [a] sign that read vote for these incumbents.” (Complaint at p. 1) Additionally, the complainant asserts that during a television interview broadcast to 4 million homes, the Superintendent “went on camera encouraging everyone to exercise their right to vote, right after an incumbent went on camera and asked everyone to vote for the incumbents.” (Id.) According to the complainant, the new candidates running for the Board were not invited to the event. (Id.) The complainant appends news articles to the complaint and asserts that this was a violation of N.J.S.A. 18A:12-24(b).

In Count 2 of the complaint, the complainant asserts that the dinners and drinks at the fundraiser were picked up or “donated” by the political associations who sponsored the dinner. The complainant asserts that this was a violation of N.J.S.A. 18A:12-24(e). (Id. at p. 2)

In Count 3 of the complaint, the complainant asserts that the fundraiser dinner was sponsored by the Korean American Voters’ Council and other Korean Associations. Thus, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(f).¹ (Ibid.)

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. In order to prevail on a Motion to Dismiss, the complainant must allege facts, which if true, would be sufficient to support a finding that the respondent violated N.J.S.A. 18A:12-24(b) and (e), as well as N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members.

Mr. Luppino acknowledges that he attended a community event on March 21, 2011 and stayed for approximately 45 minutes. He avers that he did not sponsor or otherwise organize the event and did not promise or offer any privileges, advantages or employment for anyone in connection with attending the event. Mr. Luppino affirms that he was not asked to donate any money or other remuneration to anyone, nor did he provide any money or other remuneration. He did not solicit any gift, favor, loan political contribution, service, promise of future employment or other thing of value in exchange for anyone’s attendance at the event. (Affidavit of Carmelo Luppino at pp. 1-2) In his Motion to Dismiss, the respondent states that he has been a member of the Board since 2008 and he ran for reelection in 2011. At the time she filed her complaint, the complainant was a candidate for a Board position. On April 27, 2011, she was elected to the Board and on May 2, 2011, she was sworn in as a Board member. (Motion to Dismiss at pp. 1-2)

The respondent contends that there is no allegation in the complaint that he secured an unwarranted privilege, advantage or employment for himself, members of his immediate family or others by attending the event on March 21, 2011. (Id. at p. 5) As to his alleged violation of N.J.S.A. 18A:12-24(e), the respondent asserts that there is no evidence on this record that he solicited a gift, favor, loan, political contribution, service, a promise of future employment, or other thing of value in exchange for some type of specific favor or favorable discharge of his duty as a Board member. To the extent a meal and/or beverage was paid by others and, therefore, a “gift,” there is no evidence that the food and drinks were offered for the purpose of influencing him in the discharge of his duties. (Id. at p. 6) The respondent argues, “[w]hen [the] Complainant made these ethics charges she was not an incumbent Board Member and may have felt her opponents running for the Board had some ‘unfair advantage’ over her.” (Id. at pp. 6-7) Moreover, the respondent argues,

¹ The complainant actually asserts a violation of “18A:12-24. f.” However, the complainant includes the text of the provision which she claims to be violated and that provision is N.J.S.A. 18A:12-24.1(f).

N.J.S.A. 18A:12-24(e) explicitly exempts the acceptance of contributions to the campaign of an announced candidate for elective public office if the school official has no knowledge or reason to believe the contribution was given to influence the discharge of duties. Although there is no evidence offered to establish this event as a political fundraiser, even if [the] Complainant is correct, that type of activity is permitted under the School Ethics Act. [The] Complainant has offered no information to suggest contributions being given to influence the Board members in the discharge of their duties. (Id. at p. 7)

As to the allegation that he violated N.J.S.A. 18A:12-24.1(f), the respondent asserts that the function was not sponsored by Korean American Voters or any other Korean associations and that no special interest group was involved in the event. Thus, the respondent reasons that there is nothing in the complaint to substantiate this charge. (Id. at p. 8)

As noted above, the complainant contends that on March 21, 2011, the Superintendent, the Assistant Superintendent, the Business Administrator and the School Board President attended a fund-raising dinner as guests for the re-election of incumbents running for the Board. The complainant asserts that they were introduced in their official positions and not as regular citizens. According to the complainant, “[t]he school officials also posed in pictures alongside the incumbents in front of [a] sign that read vote for these incumbents.” (Complaint at p. 1) Additionally, the complainant asserts that during a television interview broadcast to 4 million homes, the Superintendent “went on camera encouraging everyone to exercise their right to vote, right after an incumbent went on camera and asked everyone to vote for the incumbents.”² (Id.) The complainant alleges that the dinners and drinks at the fundraiser were picked up or “donated” by the political associations who sponsored the dinner. According to the complainant, the dinner was sponsored by the Korean American Voters’ Council and other Korean Associations.

The Commission first considers the allegation that the respondent violated N.J.S.A. 18A:12-24(b), which 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 complaint contains no specific factual allegations as to Mr. Luppino. Nor does the complaint allege how, in attending the event on March 21, 2011, the respondent used or attempted to use his official position as a Board member to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. Accordingly, even assuming the facts set forth in the complaint are true, the Commission does not find that these facts would support a finding that the respondent violated N.J.S.A. 18A:12-24(b).

² The complaint does not identify the incumbent.

The Commission next considers the allegation that the respondent violated N.J.S.A. 18A:12-24(e), which provides:

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

The Commission notes that the complaint is devoid of any factual allegations specific to Mr. Luppino that, if true, would support a finding that, in attending the event on March 21, 2011, he, a member of his immediate family, or business organization in which he has an interest, solicited or accepted a gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. Even assuming that a meal and/or beverage could be characterized as a “gift” or “other thing of value,” the complainant sets forth no facts to support a finding that they were offered or accepted by the respondent based upon the understanding that they would influence him in the discharge of his duties.³

Moreover, as the respondent contends, even assuming that this event was a fundraiser which included the acceptance of contributions to his campaign, N.J.S.A. 18A:12-24(e) does not apply where the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties. Accordingly, even assuming the facts set forth in the complaint are true, the Commission does not find that these facts would support a finding that the respondent violated N.J.S.A. 18A:12-24(e).

Finally, the Commission considers the complainant’s allegation that the respondent violated N.J.S.A. 18A:12-24.1(f), which provides:

³ Contrast, I/M/O Hugh Gallagher, Keansburg Bd. of Education, Monmouth County, C03-01 (July 23, 2002), Commissioner of Education Decision No. 387-02SEC decided November 6, 2002; I/M/O Judy Ferraro, Keansburg Bd. of Education, Monmouth County, C04-01 (July 23, 2002), Commissioner of Education Decision No. 348-02SEC decided September 23, 2002); I/M/O Thomas Keelen, Keansburg Bd. of Education, Monmouth County, C06-01 (June 24, 2003), Commissioner of Education Decision No. 549-03SEC decided September 22, 2003.

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.

Additionally, 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.

Again, the Commission notes that the complaint contains no specific factual allegations as to Mr. Luppino, and is devoid of any facts to indicate that Mr. Luppino took action on behalf of, or at the request of, a special interest group or partisan political group; nor are there any facts to indicate that the respondent used the schools in order to acquire some benefit for himself a member of his immediate family or a friend. Accordingly, even assuming the facts set forth in the complaint are true, the Commission does not find that these facts would support a finding that the respondent violated N.J.S.A. 18A:12-24.1(f).

REQUEST FOR SANCTIONS

At its meeting on July 26, 2011, 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 does not find that the complainant "[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainant "knew, or should have known," that the matter "was without any reasonable basis in law or equity and 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. 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 W. Bender
Chairperson

Mailing Date: August 24, 2011

Resolution Adopting Decision – C21-11

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

Whereas, at its meeting on July 26, 2011, the Commission granted the respondent’s Motion to Dismiss the complaint; and

Whereas, at its meeting on July 26, 2011, the Commission 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 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 23, 2011.

Joanne Boyle
Executive Director