
CHERYL L. PITTS	:	BEFORE THE SCHOOL ETHICS COMMISSION
v.	:	
	:	
	:	
GULAB GIDWANI	:	
WINSLOW TOWNSHIP BOARD OF EDUCATION	:	Dkt. No. C27-11
CAMDEN COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 8, 2011 by Cheryl L. Pitts alleging that Gulab Gidwani, a member of the Winslow Township Board of Education (“Board”), violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. Specifically, the complainant alleges that the respondent violated N.J.S.A. 18A:12-24.1(c), (e), and (g) of the Code of Ethics for School Board Members. On July 5, 2011, the respondent filed an answer to the complaint. The parties were notified by letter dated July 18, 2011 that this matter would be placed on the agenda for the Commission’s meeting on August 23, 2011 for review in accordance with N.J.A.C. 6A:28-10.8. Therein, the parties were specifically advised that the Commission may take one of several actions: decide to retain the complaint for a hearing by the Commission at a later date; decide to refer the matter to the Office of Administrative Law for a hearing; table the matter to request additional information or legal advice; or dismiss the complaint where the allegations in the complaint, on their face, are insufficient, even if true, to warrant review by the Commission as possible violations of the School Ethics Act. At its meeting, the Commission voted to dismiss the complaint for failure to state a claim that would be a violation of the Act. (N.J.A.C. 6A:28-10.8(a)5).

SUMMARY OF THE PLEADINGS

The complainant alleges that on Wednesday, June 1, 2011, during the Executive Session of a regularly scheduled Board meeting, the respondent was discovered taping the proceedings of the session without asking permission to do so and he did not inform the Board of his intentions prior to taking action. The complainant adds that the respondent publicly voted in the affirmative with the Board to begin taping all Board sessions effective on June 15, 2011. The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(c), (e) and (g). (Complaint at pp. 1-2)

ANALYSIS

The complainant has the burden to factually establish a violation of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). A complaint must include, among other requirements, specific allegations and the facts supporting them which have given rise to the alleged violation(s) of the Act. N.J.A.C. 6A:28-6.3(b)3. Regulations further provide that the Commission may, in its discretion, dismiss complaints or specific allegations in complaints, where the complaint, on its face, fails to allege facts sufficient to maintain a claim under the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5.

The Commission first considers the allegations that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e), which state, respectively:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.¹

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.²

Even assuming the facts alleged in the complaint are true, the Commission does not find that the respondent's action in taping a Board session implicates his duties and functions as a Board member sufficiently to characterize his conduct as "board action" within the intendment of N.J.S.A. 18A:12-24.1(c). Further, if such action constituted private action, or action beyond the scope of the respondent's duties,³ the Commission finds that there are no facts set forth in the complaint that would support a conclusion that this action was of such a nature that it had the potential to compromise the Board so as to violate N.J.S.A. 18A:12-24.1(e). Indeed, inasmuch as the complainant fails to allege that the respondent took *any* action beyond taping, it appears that this matter predominantly implicates the Open Public Meetings Act, rather than the School Ethics Act. Thus, the Commission finds that the complaint, on its face, fails to allege facts sufficient to maintain a claim that the respondent violated N.J.S.A. 18A:12-24.1(c) or (e).

The Commission also considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(g), which provides:

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

¹ The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

² 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.

³ It is noted that in Marc Sovelove v. Paul Breda, Mine Hill Twp. Bd. of Ed., Morris County, C49-05 (September 26, 2006), the Commission found that a Board member's action cannot be both board action *and* private action.

concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

The Commission's 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. Factual evidence that the respondent violated the inaccurate information provision of N.J.S.A. 18A:12-24.1(g) shall include evidence that substantiates the inaccuracy of the information provided by the respondent(s) and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. N.J.A.C. 6A:28-6.4(a)7.

There is no claim that the respondent 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 so as to implicate the "confidentiality" provision of this statute. Indeed, as noted above, the complainant does not allege that the respondent did anything with the tape of the meeting. Neither does the complainant provide any facts to support a claim that the respondent failed to provide accurate information and, in concert with their board members, interpret to the staff the aspirations of the community for its school. Thus, the Commission finds that the complaint, on its face, fails to allege facts sufficient to maintain a claim that the respondent violated N.J.S.A. 18A:12-24.1(g).

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission dismisses the within complaint for failure to allege facts sufficient to maintain a claim that would be a violation of the Act. N.J.A.C. 6A:28-10.2(a)7; N.J.A.C. 6A:28-10.8(a)5. 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 28, 2011

Resolution Adopting Decision – C27-11

Whereas, the School Ethics Commission has considered the complaint and answer; and

Whereas, at its meeting on August 23, 2011, the Commission determined to dismiss the complaint for failure to state a claim that would be a violation of the Act; 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 September 27, 2011.

Joanne Boyle
Executive Director