

MARK ROSENWALD,	:	
	:	SCHOOL ETHICS COMMISSION
v.	:	
	:	
RONALD LAWSON,	:	
<i>FREEHOLD REGIONAL HIGH</i>	:	Docket No. C32-09
<i>SCHOOL DISTRICT BOARD OF</i>	:	
<i>EDUCATION</i>	:	DECISION ON
<i>MONMOUTH COUNTY</i>	:	MOTION TO DISMISS
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on July 23, 2009 by Mark Rosenwald alleging that Ronald Lawson, President of the Freehold Regional High School District 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), (b), (c) and (e) of the Code of Ethics for School Board Members, as well as N.J.S.A. 18A:12-24(c) and (f).

By letter dated August 12, 2009, the respondent contacted the Commission and indicated that he wished to withdraw the within complaint as it would result in considerable expenditure to the District and the community. (Lawson Letter, August 12, 2009). In this regard, the Commission’s regulations provide:

For complaints alleging prohibited acts and prior to a finding of probable cause, the complainant may submit a written request to the Commission to withdraw the complaint. Such request shall fully explain the circumstances for the withdrawal and state why the withdrawal would be in the public’s interest. The complainant shall serve a copy upon the respondent(s) and submit a proof of service pursuant to N.J.A.C. 6A:28-1.7. (N.J.A.C. 6A:28-10.6(b))

At its meeting on August 25, 2009, the School Ethics Commission considered the complainant’s request to withdraw the complaint. The Commission voted to deny the complainant’s request. On September 24, 2009, a Motion to Dismiss the complaint was filed on behalf of the respondent, pursuant to N.J.A.C. 6A:28-8. The motion also asserted that the complaint was frivolous. The complainant was accorded an opportunity to respond to the motion and submitted a reply on October 20, 2009. At its meeting on October 27, 2009, the Commission considered the motion and the allegation of frivolousness, as well as the complainant’s response to the motion. The Commission determined to grant the Motion to Dismiss, and to find that the complaint was not frivolous.

SUMMARY OF THE PLEADINGS

In Count I of the complaint, the complainant states that the respondent approved the agenda and attachments for the Board's June 15, 2009 meeting. The complainant alleges that during the meeting, the respondent voted on and approved salary increases for the Assistant Superintendents of Human Resources, Student Services and Curriculum and Instruction, but this action was taken without the required public hearing or providing public notice in a periodical of record as required by N.J.S.A. 18A:11-11. The complainant asserts this is a violation of N.J.S.A. 18A:12-24.1(a), (b), (c) and (e). (Complaint at pages 1-2)

In Count II of the complaint, the complainant states that the respondent's wife is a secretary in the District's Building and Grounds Department. The complainant alleges that at the June 15, 2009 meeting, the respondent violated N.J.S.A. 18A:12-24(c) and (f) when he voted to increase the salaries of the Assistant Superintendent for Business Administration, the Supervisor of Buildings and Grounds and the District Supervisor of Buildings and Grounds because there is "a direct line of supervision between Mrs. Lawson, [t]he Supervisor of Buildings and Grounds, the Director of Buildings and Grounds and the Assistant Superintendent for Business Administration." (Id. at page 2) The complainant also asserts this is a violation of N.J.S.A. 18A:12-24.1 (a), (b), and (e).

In Count III of the complaint, the complainant states that the Englishtown representative to the Board resigned in April 2009 and on June 15, 2009, prior to the Board's regular meeting, the respondent "convened a meeting of the BOE, not open to the public, in which a perspective [sic] candidate for the open position was introduced and questioned." (Id.) The complainant asserts there was no public notice of this meeting, nor was there any resolution which would permit the meeting and, therefore, the meeting violated the Open Public Meetings Act. The complainant also asserts this is a violation of N.J.S.A. 18A:12-24.1(a) and (e).

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), (b), (c) and (e) of the Code of Ethics for School Board Members, as well as N.J.S.A. 18A:12-24(c) and (f). The Commission is guided in this review by 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 determined to grant the respondent's Motion to Dismiss.

Count I

The complainant asserts the respondent violated N.J.S.A. 18A:12-24.1(a), (b), (c) and (e) because he voted on and approved salary increases for the Assistant Superintendents of Human Resources, Student Services and Curriculum and Instruction without a public hearing or public

notice as required by N.J.S.A. 18A:11-11. The Commission herein underscores, as set forth in its regulations that it has jurisdiction only over those matters arising under the School Ethics Act. The School Ethics Commission shall not receive, hear or consider any pleadings, motion papers or documents of any kind relating to any matter that does not arise under the Act. N.J.A.C. 6A:28-1.4(a). Thus, the Commission has no jurisdiction to consider whether a respondent violated N.J.S.A. 18A:11-11.¹

Further, the Commission finds that to the extent the complainant suggests that the respondent's failure to comply with N.J.S.A. 18A:11-11 renders him in violation of N.J.S.A. 18A:12-24.1(a), (b), (c) and (e), the complaint is devoid of any particular factual allegations that would support findings of violation. Specifically:

- (1) The complainant does not include, nor does he even assert that there has been, a final decision from any court of law or administrative agency of this State demonstrating that the respondent 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, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(a) (N.J.A.C. 6A:28-6.4(a)1);
- (2) The complainant has set forth no specific facts that could demonstrate that the respondent willfully made a decision contrary to the educational welfare of children, or that the respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(b). (N.J.A.C. 6A:28-6.4(a)2);
- (3) The complainant has set forth no specific facts that could demonstrate that the respondent 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, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(c) (N.J.A.C. 6A:28-6.4(a)3); and
- (4) The complainant has set forth no specific facts that could demonstrate that the respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(e) (N.J.A.C. 6A:28-6.4(a)5).

¹ N.J.S.A. 18A:11-11 states, "A board of education shall not negotiate, extend, amend, or otherwise alter the terms of a contract with a superintendent of schools, assistant superintendent of schools, or school business administrator, unless notice is provided to the public at least 30 days prior to the scheduled action by the board. The board shall also hold a public hearing and shall not take any action on the matter until the hearing has been held. The board shall provide the public with at least 10 days notice of the public hearing."

Accordingly, even accepting as true all facts alleged by the complainant in Count I, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a), (b), (c) or (e).

Count II

The complainant asserts that the respondent violated N.J.S.A. 18A:12-24(c) and (f) when he voted to increase the salaries of the Assistant Superintendent for Business Administration, the Supervisor of Buildings and Grounds and the District Supervisor of Buildings and Grounds at the June 15, 2009 meeting. The complainant also asserts this is a violation of N.J.S.A. 18A:12-24.1 (a), (b), and (e).

On this count, the Commission initially finds that the complaint is devoid of any particular factual allegations that would support findings of violation of N.J.S.A. 18A:12-24.1 (a), (b) or (e). Specifically:

- (1) The complainant does not include, nor does he even assert that there has been, a final decision from any court of law or administrative agency of this State demonstrating that the respondent 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, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(a) (N.J.A.C. 6A:28-6.4(a)1);
- (2) The complainant has set forth no specific facts that could demonstrate that the respondent willfully made a decision contrary to the educational welfare of children, or that the respondent took deliberate action to obstruct the programs and policies designed to meet the individual needs of all children, regardless of their ability, race, color, creed or social standing, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(b). (N.J.A.C. 6A:28-6.4(a)2); and
- (3) The complainant has set forth no specific facts that could demonstrate that the respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(e) (N.J.A.C. 6A:28-6.4(a)5).

As to the allegations that the respondent's vote on June 15, 2009 constituted "a clear conflict of interest" in violation of N.J.S.A. 18A:12-24(c) and (f) (complaint at page 2), the Commission notes that the respondent argues that his vote could not constitute a violation because he indicated, when voting on matters concerning his wife, that he intended to abstain. Specifically, respondent argues:

Respondent was aware that he was precluded from voting on issues related to his wife's employment. Accordingly, when Agenda Item H (personnel) was presented to the Board for action at the June 15, 2009 Board meeting, Respondent asked that his vote be recorded as "present but not voting" where his wife's employment

was concerned. *** However, the Assistant Superintendent for Business, serving in his capacity as Board Secretary, incorrectly recorded Respondent's vote on agenda item H-6 as "yes." ***

Respondent clearly intended his abstention to be recorded as "present but not voting" to cover any issues relating to his wife's employment, including both agenda items H-2, which specifically addressed his wife's salary for the 2009-2010 school year, and agenda item H-6 which established the salary for the supervisors of the Building and Grounds Department, including the Director of Building and grounds and the Assistant Superintendent for Business. ***At no time did Respondent intend to vote on any matters related to his wife or her supervisors. (Respondent's Motion to Dismiss at page 7)

The Commission notes that N.J.S.A. 18A:12-24(c) and (f) provide:

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family;

f. No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

While the complainant disputes the respondent's *intent*, as argued above, the complainant's own papers and supporting materials show that when roll call was taken on June 15, 2009 with respect to the vote on personnel matters in agenda items H1 through H7, the respondent stated, "Yes on everything, save H-2, which includes my wife. *Please where she is concerned, mark me present but not voting.*" (Complaint Exhibits B and D and Complainant's Response to Motion at page 3, emphasis added) In light of these words, the Commission finds the facts set forth by the complainant are insufficient to support a finding that the respondent engaged in a prohibited act. Thus, even accepting as true all facts alleged by the complainant in Count II, the Commission determines that these facts are insufficient on which to base a finding of violation of N.J.S.A. 18A:12-24(c) or (f), nor a violation of N.J.S.A. 18A:12-24.1(a), (b), or (e).

Count III

The complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(a) and (e) when, on June 15, 2009, he “convened a meeting of the BOE, not open to the public, in which a perspective [sic] for the open [Board] position was introduced and questioned.” The complainant asserts this was a violation of the Open Public Meetings Act (OPMA). The Commission again states, as set forth above, that its jurisdiction is limited to review of matters that arise under the School Ethics Act. Further, the Commission notes that to the extent the complainant suggests that the respondent’s failure to comply with the OPMA renders him in violation of N.J.S.A. 18A:12-24.1(a) and (e), the complaint is devoid of any particular factual allegations that would support findings of violation. Specifically:

- (1) The complainant does not include, nor does he even assert that there has been, 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, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(a) (N.J.A.C. 6A:28-6.4(a)1); and
- (2) The complainant has set forth no specific facts alleging that that could demonstrate that the respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board, as is required to demonstrate a violation of N.J.S.A. 18A:12-24.1(e) (N.J.A.C. 6A:28-6.4(a)5).

Accordingly, even accepting as true all facts alleged by the complainant in Count III, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a) and (e).

REQUEST FOR SANCTIONS

Pursuant to N.J.A.C. 6A:28-8.2, the respondent alleged in his Motion to Dismiss that the complaint herein is frivolous. Thus, at its meeting on October 27, 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). 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

Resolution Adopting Decision – C32-09

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 October 27, 2009, the Commission granted the respondent's Motion to Dismiss the allegations that he violated N.J.S.A. 18A:12-24.1(a), (b), (c) and (e) of the Code of Ethics for School Board Members, as well as N.J.S.A. 18A:12-24(c) and (f) 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.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 24, 2009.

Joanne Boyle
Executive Director