



According to the complainant, M&C Insurance, one of the brokers, thereafter sent an unsolicited letter to the State monitor indicating they were willing to waive their service fee. The complainant asserts that “The only way M&C Insurance would have known their service fee was an issue was if someone in our meeting talked to them.” (Id. at paragraph 7) At the May 5, 2009 reorganization meeting, the respondent “reversed her decision” and voted against Alston-Calaf. There was a 4-4 vote with one abstention; the State monitor intervened and Alston-Calaf was appointed as broker. M&C Insurance sued the Board, claiming it had improperly administered the RFP process which was partially based on the Board’s rejection of their offer to waive the service fee. Thereafter, articles appeared in The Courier Post showing that the respondent accepted campaign contributions in excess of \$300 from entities directly connected with M&C Insurance. The complainant contends that because the contribution threshold is \$300, the respondent should not have participated in any Finance Committee meetings where the insurance broker was discussed and she should not have voted for the broker. (Id. at paragraphs 8-10)

The complainant appended a series of documents to the complaint showing respondent’s 2008 campaign contribution reports, a Finance Committee Report from the April 8, 2009 meeting, a letter from M&C Insurance waiving the service fee, the May 5, 2009 official reorganization minutes, the State monitor’s May 8, 2009 explaining his decision to override the Board’s vote and accept Alston-Calaf as broker and an October 11, 2009 The Courier Post article.

## **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(e) and (f) 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 failed to meet this standard.

The Commission initially notes that the complainant never specifically alleges that the respondent conveyed information to M&C Insurance. Rather, he states, “The only way M&C Insurance would have known their service fee was an issue was if someone in the meeting talked to them.” (Complaint at paragraph 7). Thereafter, the complainant states that the respondent voted against an award of the contract to Alston-Calaf.

The complainant first asserts that the respondent violated N.J.S.A. 18A:12-24.1(e), which provides:

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's regulations further provide 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.

There is no allegation in the complaint that the respondent "made personal promises" of any kind. Neither are there any facts, which if true, would establish that the respondent took actions beyond the scope of her duty. She attended the Finance Committee meeting as a Board member, she discussed the proposals as a Board member and she voted on the award of the contract as a Board member. (Complaint at paragraphs 1-6) The complainant's contention that "[t]he only way M&C Insurance would have known their service fee was an issue was if someone in our meeting talked to them" merely insinuates that the respondent is the "someone," but offers no facts, that if true, would support a finding of violation of N.J.S.A. 18A:12-24.1(e).

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

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.

The Commission's regulations further provide 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.

There are no facts alleged in this complaint which, if true, would support a finding that the respondent took action on behalf of, or at the request of, a special interest group or partisan political group. Presumably, this allegation is based on the contention that the respondent changed her position with respect to awarding the insurance broker contract to Alston-Calaf. Yet it does not follow, nor does the complainant specifically allege, that in voting *against* Alston-Calaf, respondent was using the schools *for* some personal gain or for the gain of her friends. As the respondent argued, "the sole allegation is that that [sic] Wilson was not permitted to or

otherwise should not have voted, which in turn is predicated upon the alleged political contributions in the complaint.” (Respondent’s Motion at page 15) Accordingly, the Commission finds that even if the facts alleged by the complainant are true, these facts would not support a finding of violation of N.J.S.A. 18A:12-24.1(f).

## **REQUEST FOR SANCTIONS**

The respondent alleged in his Motion to Dismiss that the complaint herein is frivolous. Thus, at its meeting on January 26, 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 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**

The Commission grants the respondent’s Motion to Dismiss this complaint, but does so without prejudice to the complainant’s right to bring a conflict-of-interest claim under the School Ethics Act, N.J.S.A. 18A:12-24 et seq., if he maintains that there are facts sufficient to warrant the Commission’s review. Any such facts and claims must be raised in a duly filed complaint, pursuant to N.J.A.C. 6A:28-1.1 et seq.

Robert W. Bender  
Chairperson

## Resolution Adopting Decision – C41-09

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

**Whereas**, at its meeting on January 26, 2010, the Commission found the complaint was not frivolous, but granted the respondent's Motion to Dismiss, without prejudice, the allegations that she violated N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members; 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 February 23, 2010.

---

Joanne Boyle  
Executive Director