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<b>JAMES M. WORRELL</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
	:	
v.	:	
	:	
<b>FRANK MINNITI</b>	:	
<b>GREENWICH BOARD OF EDUCATION</b>	:	<b>Docket No. C45-09</b>
<b>GLOUCESTER COUNTY</b>	:	<b>PROBABLE CAUSE NOTICE</b>
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**PROCEDURAL HISTORY**

This matter arises from a complaint filed on November 16, 2009 by James M. Worrell alleging that Frank Minniti, member of the Greenwich Township Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The respondent filed an answer on December 8, 2009.<sup>1</sup> The complainant and respondent were notified by letter dated January 27, 2010 that the Commission would review this matter at its meeting on February 23, 2010 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.7. At its February 23rd meeting, the Commission found no probable cause to credit the allegation that the respondent violated the Act and dismissed the complaint.

**SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION**

The complainant asserts that the respondent placed himself on the Personnel Committee, although his wife is a secretary in the District whose income is determined by the Committee. In so doing, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24(c).

In his answer, the respondent states that he has been appointed to the Personnel Committee numerous times in the past because of his track record regarding professionalism and ethics. The respondent continues, “Knowing my spouse is a district employee, I fully understand the potential for conflicts of interest. A protocol is followed with regards to employment, appointments, and terms, conditions of employment, performance evaluations and promotions regarding my spouse.” (Answer at paragraph 3) The respondent affirms, “I have never participated in any way regarding the above conflicts of interest, never made a motion regarding any of the above possible conflicts of interest, or voted on any issue which could possibly affect the district or my spouse.” (Id. at paragraph 4)

The Commission, pursuant to its duty at N.J.S.A. 18A:12-28(b) further investigated the allegation in the complainant by obtaining from the Board’s website listing of 2009-2010 Board Committee Members. The listing shows that the respondent is the chairperson of the Personnel Committee.

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<sup>1</sup>By notices dated December 8, 2009 and January 4, 2010, the Commission advised the respondent that his answer was not certified under oath, in accordance with N.J.A.C. 6A:28-7.2(c). On February 19, 2010, the respondent submitted a signed certification under oath.

## FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.7. That is, the Commission must determine, based on the evidence before it, whether probable cause exists to credit the allegation in the complaint. A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act.

No school official shall act in his official capacity in any matter where he, a member of his immediate family<sup>2</sup>, 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;

In order to credit this allegation, the Commission would have to find evidence that the respondent had either: 1) taken action in his official capacity in a matter where he, or a member of his immediate family had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment or 2) acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that is or created some benefit to him or the member of his immediate family. Here, even assuming for this analysis that the respondent's service on the Personnel Committee constitutes "action in his official capacity" as a Board Member, there is nothing in this complaint to indicate that there was "a matter" pending before the Personnel Committee so as to implicate either clause in N.J.S.A. 18A:12-24(c).

The Commission offers the following guidance in I/M/O Mark Connolly, West Milford Board of Ed., Passaic County, C15/96/C26-09 (May 27, 1997), Commissioner of Education Decision No. 334-97, June 23, 1997<sup>3</sup> wherein the respondent Board member was censured for

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<sup>2</sup> The School Ethics Act at N.J.S.A. 18A:12-23 defines "member of the immediate family" as the spouse or dependent child of a school official residing in the same household. The Commission's regulations at N.J.A.C. 6A:28-1.2 define "spouse" as "the person to whom the school official is legally married under New Jersey law and also includes a partner in a civil union couple as established in N.J.S.A. 37:1-33." Thus, the respondent's spouse is a member of his immediate family.

<sup>3</sup> At the time this case was decided, N.J.S.A. 18A:12-24(c) read: "No school 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 or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment." Nevertheless, the Commission finds its reasoning in 1997 to be applicable to this matter.

violating N.J.S.A. 18A:12-24(c) when, as a member of the Personnel Committee, he recused himself from discussion of his wife's application for a position in the District, although he did not leave the room.<sup>4</sup> On the issue of his participation on the Personnel Committee, the Commission stated:

The initial question, therefore, is whether Mr. Connolly's continued attendance at the meeting of the Personnel Committee was "acting in his official capacity" in a matter in which he and his spouse had a financial and personal involvement. Mr. Connolly does not argue that he and his spouse have a direct financial and personal involvement in her getting a full time job with the board that might reasonably be expected to impair his objectivity. He correctly abstained on the vote, which shows that he acknowledges the involvement. The Commission finds that Mr. Connolly did not have to resign from the Personnel Committee altogether because his wife was being considered for an appointment with the board. **However, by remaining in the room when she was being discussed, he was acting in his official capacity in a matter in which he had a financial and personal involvement.** The committees of the board meet in private and thus, are not subject to public scrutiny. Thus, when the Personnel Committee makes its recommendation to appoint Susan Connolly and the minutes show Mr. Connolly as having been present for the entire meeting, the public may view the recommendation with suspicion and mistrust. His mere presence may be viewed as a hindrance to a critical review of the candidate's credentials by the committee. It may create a chilling effect on the committee's speech by virtue of the fact that any board member who dares to speak against the candidate's qualifications is viewed as personally attacking Mr. Connolly. \*\*\* (Id. at pp.4-5; emphasis added)

Thus, while the Commission finds no reason to move forward on the inchoate allegation in the within complaint, it nevertheless cautions the respondent that whenever there is discussion before the Personnel Committee of any matter which implicates, directly or indirectly, his wife's employment such as, but not necessarily limited to, salary, benefits and working conditions, the respondent must recuse himself from these discussions and leave the room. As to this record, however, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c).

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<sup>4</sup> It is noted that the respondent, Mr. Connolly also attended the executive session of the board at which his wife's appointment was discussed, but did not participate in the discussion. When the matter came before the full board, Mr. Connolly abstained from voting on his wife's appointment. After the motion to appoint his wife failed, the respondent took measures to bring the motion back to the Board for a re-vote, which the Commission described as taking on the "role of an advocate instead of an impartial and neutral observer that the Act requires." Connolly, slip op. at p. 5.

## NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c), and the complaint is, therefore, dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender  
Chairperson

**Resolution Adopting Decision – C45-09**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties and all papers filed thereafter;

**Whereas**, at its meeting of February 23, 2010, the Commission found no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c) and the complaint is, therefore, dismissed the complaint; and

**Whereas**, the Commission has reviewed, and agrees with, the proposed probable cause notice;

**Now Therefore Be It Resolved**, that the Commission hereby adopts the proposed probable cause notice in this matter and directs its staff to notify all parties to this action of said notice.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on March 23, 2010.

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Joanne Boyle, Executive Director  
School Ethics Commission