

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainant provides the following background/legal arguments:

Charles Granata, Bonnie Granatir, Anthony Calcado and Stanley Graboski filed a complaint before the School Ethics Commission on or about March 22, 2010 which was docketed by the Commission as C12-10. At the time, Granata, Granatir, Calcado and Graboski were members of the Board. Thereafter, a Motion to Dismiss was filed in response to C12-10. Jeffrey Ullman, Esq. of Ullman, Furhman & Platt, filed a brief on behalf of Granata, Granatir, Calcado and Graboski in opposition to the motion, wherein Granata, Granatir, Calcado and Graboski stated that although they constitute a majority of the Board, they had been unable to meet in Executive Session since March 2010. Thus, the complainant reasons that all meetings in which Granata, Granatir, Calcado and Graboski discussed, drafted and signed the complaint docketed as C12-10 were in their capacities as private citizens. The complainant asserts that there are no Board policies authorizing members to file ethics complaints against fellow members and the Board did not pass any resolutions authorizing the Board to file any complaints. (Complaint at paragraphs 1-3).

After the Commission granted Respondent Goldberg's Motion to Dismiss most of the allegations in C12-10 at its meeting on June 22, 2010, it retained the complaint for hearing on the remaining count. According to the complainant, the law firm of Parker McCay then billed 4.5 hours for reviewing audio file recordings and conferences with Granata and Granatir, the Superintendent and the Business Administrator. By letter dated October 19, 2010 addressed to the Commission, Granatir informed the Commission that Granata, Granatir, Calcado and Graboski were working with Stephen M. Bacigalupo II, Esq. of Parker McCay to serve as legal counsel in the hearing scheduled before the Commission in connection with C12-10. Thus, the complainant contends that Parker McCay represented Granata, Granatir, and Calcado in their personal capacities in connection with C12-10 "after all arguable defensive aspects of the case had been dismissed against the complainants, in preparation for the hearing on the affirmative claims they filed as individuals." (*Id.* at paragraph 4).² The complainant argues that filing the complaint docketed as C12-10 and pursuing the defense against a Motion to Dismiss in connection with C12-10 are not actions that are covered by the indemnification statute, N.J.S.A. 18A:12-20. Thus, Granata, Granatir and Calcado were not entitled to indemnification for legal fees. (*Id.* at paragraph 14).

The complainant alleges the following:

- At the June 7, 2010 meeting, Granata, Granatir and Calcado voted to approve payment to Parker McCay in the amount of \$3,477.95 which included time entries for legal services performed for Granata, Granatir and Calcado in connection with C12-10. According to the complainant, from March to November 2010, Parker McCay submitted monthly invoices to the Board for services provided to Granata, Granatir and Calcado in connection with C12-10 which totaled \$8,354.50. Additionally, the Board was billed approximately \$21,292.00 for Jeffrey Ullman, Esq., Paul Kalac, Esq., Stephen Bacigalupo, Esq. and Paul Barger, Esq. to provide legal advice to Granata, Granatir and

² Stanley Graboski, although a complainant in C12-10, is not a respondent in this matter.

Calcado from February 2010 until October 2010 in connection with C12-10. The complainant contends that by not paying their own legal fees and by voting for the district to pay these affirmative legal fees, Granata, Granatir and Calcado used their public office for personal financial gain in violation of N.J.S.A. 18A:12-24(b), (c) and (f). (Id. at paragraphs 8-9)

- At the July 19, 2010 Board meeting, Granata, Granatir and Calcado voted to approve payment to Parker McCay in the amount of \$5,494.07 and \$4,002.67, but abstained from voting on payment to Ullman, Furhman & Platt for \$12,281.25. According to the complainant, both the Parker McCay and the Ullman, Furhman & Platt invoices were paid by the Board for legal services provided to Granata, Granatir and Calcado in their individual capacities pursuing an action in connection with C12-10. The complainant claims that by not paying their own legal fees and by allowing the district to pay these fees, Granata, Granatir and Calcado used their public office for personal financial gain in violation of N.J.S.A. 18A:12-24(b), (c) and (f). (Id. at paragraph 10)
- At the September 20, 2010 Board meeting, Granata, Granatir and Calcado voted to approve payment to Parker McCay in the amount of \$7,619.50, which included legal services to Granata, Granatir and Calcado in connection with C12-10. The complainant maintains that by not paying their own legal fees and by voting for the district to pay these fees, Granata, Granatir and Calcado used their public office for personal financial gain in violation of N.J.S.A. 18A:12-24(b), (c) and (f). (Id. at paragraph 11)
- At the October 11, 2010 Board meeting, Granata, Granatir and Calcado voted to approve payment to Parker McCay in the amount of \$6,494.50 and \$6,497.96, which included time for legal services provided to them in their capacities as individuals for the affirmative action in connection with C12-10. The complainant affirms that by not paying their own legal fees and by voting for the district to pay these fees, Granata, Granatir and Calcado used their public office for personal financial gain in violation of Board Policy 0174 and N.J.S.A. 18A:12-24(b), (c) and (f). (Id. at paragraph 12)

In their answer, Granata, Granatir and Calcado initially explain, by way of background, that the Livingston Board of Education is a five-member Board. (Answer at p. 2) Paul Barger, Esq., then of the Parker McCay law firm, was, at the time, counsel to the Board and was assisted from time to time by Stephen Bacigalupo, Esq. and Paul Kalac, Esq. of the same firm. (Id. at p. 1) Granata, Granatir and Calcado assert that the Parker McCay law firm never billed the Board for any services as counsel in the prosecution of C12-10 and, therefore, there was nothing improper with any of their votes at the Board meetings referred to in the complaint. (Id. at p. 2)

Granata, Granatir and Calcado contend that they filed C12-10, in March 2010 on their own, pro se. Ms. Goldberg retained Robert Fettweis, Esq. to represent her as a respondent in C12-10 and in early April 2010, Granata, Granatir and Calcado engaged Jeffrey Ullman, Esq. of the law firm of Ullman, Furhman & Platt to represent them in the prosecution of C12-10. (Ibid.) On April 13, 2010, a Motion to Dismiss C12-10 was filed on behalf of Ms. Goldberg; the motion also sought sanctions. According to Granata, Granatir and Calcado, Mr. Ullman worked on their behalf to prepare a response to the motion and they affirm:

By then, [Mr. Ullman] had devoted a small amount of time to advising and assisting [them] with the prosecution of [their] case, but once Ms. Goldberg's motion was filed, all of his time was spent defending the application she brought against [them]. (Id. at p. 3)

Granata, Granatir and Calcado aver that they were advised by their Board Secretary and by Board counsel that Ms. Goldberg's motion for frivolous litigation sanctions against them in C12-10 constituted an affirmative claim by her for which they were entitled to reimbursement for their legal defense costs pursuant to N.J.S.A. 18A:12-20. Since Granata, Granatir and Calcado were aware that they were not entitled to reimbursement for Mr. Ullman's fees in prosecuting C12-10, they asked Mr. Ullman to prepare separate billing records to segregate out the time he was spending on their affirmative claim against Ms. Goldberg in C12-10 from his efforts in defense of Ms. Goldberg's frivolous litigation motion. (Ibid.)

Granata, Granatir and Calcado also note that on May 24, 2010, they were named as respondents in the matter entitled, S.L.G. and M.S. v. Granata et al., Livingston Twp. Bd. of Ed., Essex County, C18-10 (February 22, 2011) Commissioner of Education Decision No. 150-11SEC, decided April 11, 2011, (hereinafter, "C18-10"). They assert that they "were clearly entitled to indemnification for their legal defense costs in that matter, and do not understand this Complaint to allege otherwise." (Id. at pp. 3-4)

June 7, 2010 Meeting: Invoice #2390049

Granata, Granatir and Calcado acknowledge that at the June 7, 2010 meeting, they voted to approve an invoice submitted by Parker McCay in March 2010 (Invoice #2390049) but assert that these legal services were not in support of their affirmative complaint against Ms. Goldberg in C12-10. (Id. at p. 4) Rather, they assert that the challenged entries were for "appropriate activities" as provided by Board counsel in advising the Board on how to conduct its business under "stressful circumstances" that existed at that time. (Id. at pp. 4-6) Granata, Granatir and Calcado underscore that "[n]one of these entries [was] for advising [them] on the prosecution of [their] complaint against Ms. Goldberg, and [they] had no individual lawyer-client relationship with Mr. Barger or his firm at that time." (Id. at p. 6)³ The respondents affirm that Mr. Barger determined that although they would have to shoulder their own legal expenses for any claims they were prosecuting, they would be entitled to indemnification for any claims they were defending. (Id. at pp. 7-8) Thus, Mr. Barger determined that Ms. Goldberg's Motion to Dismiss

³ Respondents also state, in this regard:

Since a Complaint had been filed by four Board members against the fifth Board member, which contained much information about internal Board matters, including the Superintendent's evaluation, Mr. Barger did review the confidentiality implications of this complaint to protect Board interests, but this had nothing to do with representing [them] in the prosecution of [C12-10]. At no time did [they] receive any advice from Mr. Barger regarding the filing of [their] Complaint against Ms. Goldberg. (Ibid.)

filed in C12-10 “constituted an affirmative claim for which [Granata, Granatir and Calcado] would be entitled to indemnification for their legal costs.” (Id. at p. 8)

July 19, 2010 Meeting: Invoice #2392469, 2396406 and 105277

At the July 19, 2010 meeting, Mr. Ullman’s invoice for \$12,281.85 (Invoice #105277) was before the Board for approval. According to Granata, Granatir and Calcado, Mr. Ullman’s bill reflected work that was entirely in defense of Ms. Goldberg’s Motion to Dismiss filed in C12-10 and contained no entries for work done for them in the prosecution of C12-10. As to this, the respondents affirm:

Mr. Ullman billed [them] personally for work done during the month of April on [their] affirmative complaint, and no Board funds were expended. [They] took no part as Board members in determining the propriety of the Board paying Mr. Ullman’s invoice in connection with [their] defense, and did not vote on the resolution. The approval of that invoice was done by the remaining Board members in consultation with the Board attorney and administration. (Id. at p. 8)

Granata, Granatir and Calcado acknowledge that they voted on July 19, 2010 to approve invoices submitted by Parker McCay in April and May 2010 (Invoice #2392469 and 2396496). (Id. at p. 7) The respondents note that by this time, Ms. Goldberg was no longer on the Board. Additionally, by this date, the Commission had already voted at its June 22, 2010 meeting to deny Ms. Goldberg’s motion for sanctions against them in C12-10 and to grant in part and deny in part the accompanying motion to dismiss the complaint. The Commission’s interim decision on the motion was issued to the parties on July 27, 2010. Granata, Granatir and Calcado affirm that although they voted to approve the invoices, Parker MacKay had not provided any personal legal services to them and all of the billing entries were for services appropriate to Mr. Barger’s role as the Board attorney, including his initial review of the complaint docketed as C18-10, which is not challenged in this complaint. (Id. at pp. 8-9) They underscore that Mr. Barger had not been authorized to act on behalf of any of them personally in the prosecution of C12-10.

September 20, 2010 Meeting: Invoice #2398454

Granata, Granatir and Calcado acknowledge that on September 20, 2010, they voted to approve Invoice #2398454 for services from Parker McCay in June 2010. They assert that by June 2010, they were in the process of defending themselves in the matter docketed as C18-10 wherein they were respondents. As such, they argue that they were clearly entitled to payment of their legal expenses by the Board for that defense. (Id. at pp. 9-10) In this connection, Granata, Granatir and Calcado state that they “had agreed with Mr. Barger’s firm that they, as the appointed Board Attorney, would represent Respondents in defense of [C18-10] at the lower public sector hourly billing rates they charge to the Board, rather than Mr. Ullman’s higher private sector hourly rate.” (Id. at p. 10) Granata, Granatir and Calcado reason that, as far as they can tell, any entries were for Board business or for their defense in C18-10. (Id.)

October 11, 2010 Meeting: Invoice #2401575, 2404249 and 2406650

Granata, Granatir and Calcado acknowledge that Invoice #2401575, 2404249 and 2406650 were approved at the October 11, 2010 meeting. They affirm that Invoice #2401575 has no entries relating to the prosecution of C12-10. To the extent the entries contained a review of an “audio file,” Granata, Granatir and Calcado assert that review of this record in July 2010 had nothing to do with either C12-10 or C18-10, but, rather were services provided to the Board in connection with a settlement in 2005 of another matter. (Id. at pp. 10-11)

As to Invoice #2404249, Granata, Granatir and Calcado note that some of the challenged entries reflect a continuation of Parker McKay’s work on behalf of the Board with respect to the aforementioned settlement. The remaining entries challenged in that invoice deal with their defense in C18-10 and had nothing to do with C12-10, where they were the complainants. (Id. at p. 13) Similarly, with respect to Invoice #2406650, Granata, Granatir and Calcado assert that these entries for services in September 2010 all dealt with either appropriate services as the Board counsel or to assist them with their defense in C18-10. (Id.)

The answer submitted on behalf of Granata, Granatir and Calcado includes a certification from Paul Barger, Esq. affirming that, as the Board attorney, he is obliged to honor the Board’s attorney-client privilege; he states as a general proposition that the complainant’s contentions that he or his associate, Mr. Bacigalupo, provided services for the prosecution of C12-10 are not true. Mr. Barger attests that at no time did he or anyone from his firm bill the Board for any services relating to the prosecution of C12-10. Rather, according to Barger, “[e]ach of the challenged entries in Mr. Smith’s spreadsheet were for legal advice and representation for the Board itself on matters affecting the Board’s rights and responsibilities,” or to assist Granata, Granatir and Calcado in their defense in the matter docketed as C18-10. (Answer at Exhibit A) The answer also includes a certification from Jeffrey Ullman, Esq., attesting to the accuracy of the assertions made by Granata, Granatir and Calcado. (Id. at Exhibit B)

Granata, Granatir and Calcado also assert that shortly after the filing of this complaint, the complainant sent a letter to two “non-conflicted” members of the Board, a copy of which is included in their answer at Exhibit C, claiming that Parker McCay’s invoices for September, October and November 2010 reflected fees for representing them on their affirmative claims. By then, the Board had engaged Rodney Hara, Esq. of the Fogarty & Hara law firm as special counsel to review any questions about which fees would be paid.⁴ Respondents state:

Mr. Hara responded to Mr. Smith on January 10, 2011, annexed as Exhibit D, advising that his firm had conducted an investigation of all contested time entries on the Parker McKay invoices, and concluded that no time was billed for any services on Respondents’ behalf involving the prosecution of Respondents’ affirmative claims. (Id. at pp. 13-14)

⁴ It is noted that the complaint at Exhibit J includes a copy of a resolution approved by the Board on November 15, 2010 approving special counsel Rodney Hara. (Complaint at Exhibit K). Respondents Calcado, Granata and Granatir abstained on the vote for this resolution.

Finally, Granata, Granatir and Calcado note that some of the challenged entries included in the within complaint had nothing to do with any of the ethics proceedings and, in fact, predated the filing of any complaints. (Id. at p. 14)

Pursuant to its authority under N.J.S.A. 18A:12-28(b), the Commission reviewed documents provided by respondents' counsel which had been filed with the Office of Fiscal Accountability and Compliance (OFAC) in the Department of Education. Specifically, in August 2010, there was a letter complaint filed with the OFAC requesting it "to investigate why [the] current Livingston Board of Education felt it appropriate to pay for Livingston residents [sic] personal legal bills." (Complaint Letter to OFAC, August 9, 2010⁵) The facts presented in the letter parallel those in this complaint. The writer states, in relevant part:

On March 25, 2010, four members *** of the Livingston Board of Education filed ethics charges against the fifth member, (Sheri Goldberg). At the time the Complainants stated that they were filing the charges as individuals and drafted the complaint without any legal counsel. Upon the referral of the Board attorney, Goldberg retained [the] Tressler law firm to defend her. The Complainants then retained Ullman, Fuhman & Platt to draft and serve the Complainants' Brief in Opposition to the Respondent's Motion to Dismiss.

On July 19, 2010 the Livingston Board of Education voted to pay Ullman, Fuhman & Platt \$12,281.25 for legal fees incurred by the complainants. According to N.J.S.A. 18A:12-20 the only Board member who is entitled to indemnification for legal fees is Sheri Goldberg. Upon my questioning of the payment of these legal fees I was told by Paul Barger the Board Attorney that the board was only indemnifying those who had defensive actions against them. This is clearly not the case as you can see from the enclosed letter from Jeffrey D. Ullman in which he states that he is the Complainants [sic] counsel. (Complaint Letter to OFAC, August 9, 2010)

Although the writer requested an investigation, the OFAC declined to conduct an investigation in that it was not satisfied that any impropriety had occurred, even accepting the facts offered in the letter at face value. The OFAC file was closed. (Rubin Letter, April 15, 2011 addressed to the Commission; Rubin Letter dated April 14, 2011 addressed to Granata).

FINDINGS OF PROBABLE CAUSE

This matter is 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

⁵ The name of the person who wrote the letter is redacted.

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.

In this analysis, the Commission finds the following facts to be admitted, or otherwise undisputed: (1) The Livingston Board of Education is a five-member Board. (Answer at p. 2) (2) Paul Barger, Esq., then of the Parker McCay law firm, was, at the time, counsel to the Board and was assisted from time to time by Stephen Bacigalupo., Esq. and Paul Kalac, Esq. of the same firm. (Id. at p. 1) (3) The respondents voted to pay Invoice #2390049 on June 7, 2010. (Id. at p. 4). (4) The respondents voted to pay Invoices #2392469 and 2396406 on July 19, 2010. (Id. at p. 7). (5) The respondents voted to pay Invoice # 2398454 on September 20, 2010. (Id. at p. 9). (6) The respondents voted to pay Invoices 2401575, 2404249 and 2406650 on October 11, 2010. (Id. at pp. 11-13).

The complainant challenges the respondents' votes for the payment of counsel fees for: (1) legal services which *the complainant contends* were for the prosecution of C12-10, and/or (2) legal services which *the complainant contends* should not have been subject to indemnification under N.J.S.A. 18A:12-20. As to the latter category of fees, the Commission has no jurisdiction to determine whether such fees were properly included under the umbrella of indemnification, in accordance with N.J.S.A. 18A:12-20. As to the former category, the Commission concurs with the respondents in this matter that the complainant's assertions are based on his speculation about what these services entailed, given the often ambiguous texts of the invoices. As counsel for the respondents argues:

The complainant in this case has no personal knowledge of what services were reflected in the specific entries on those invoices, nor could he be expected to have any since those services were rendered in the privacy of the confidential attorney-client relationship. The complainant has taken a factual position as to what those services represented in the guise of a sworn complaint, but those assertions are nothing more than uninformed speculation that would be inadmissible as evidence in this proceeding.

On the other hand, the Commission has before it not only a sworn denial from respondents, who have firsthand knowledge of what services were performed on their own behalves but also sworn denials from Mr. Barger and Mr. Ullman, the two attorneys whose services are at issue here. Unlike the complainant, who is free to make meritless allegations with relative impunity, Messrs. Barger and Ullman are licensed attorneys who face substantial consequences were they to make knowing misrepresentations under oath. *** (Rubin Letter at p. 3)

Thus, the Commission is persuaded by the attestations from Granata, Granatir and Calcado, the certifications from counsel and from the review by Mr. Hara as special counsel that the Board was not billed for any legal services in the prosecution of C12-10. More specifically:

- As to the June 7, 2010 vote (Invoice #2390049), the challenged entries were for “appropriate activities” as provided by Board counsel in advising the Board on how to conduct its business under “stressful circumstances” that existed at that time. (Answer at pp. 4-6)⁶
- As to the July 19, 2010 vote (Invoice #2392469 and 2396406), the challenged entries were for services provided by Mr. Barger in his role as Board attorney or for entries relating to their defense as respondents in the matter docketed as C18-10. (Id. at p. 9)⁷
- As to the September 20, 2010 vote (Invoice # 2398454), the challenged entries related to their defense as respondents in the matter docketed as C18-10. (Id.)
- As to the October 11, 2010 vote (Invoices 2401575, 2404249 and 2406650), the challenged entries related to their defense as respondents in the matter docketed as C18-10 and to an unrelated settlement matter dating back to 2005. (Id. at pp. 11-13).

As noted above, the complainant asserts that the respondents violated N.J.S.A. 18A:12-24(b), (c) and (f) of the Act. The Commission first considers 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;

In order to credit this allegation, the Commission must find evidence that that the respondents used, or attempted to use, their positions as Board members to secure some *unwarranted* privilege, advantage or employment for themselves, members of their immediate family or others. However, based on this record, the Commission cannot find that the respondents’ votes on the payment of legal fees on the dates in question were a means of using or attempting to use their positions for something to which they were not entitled.⁸ In this connection, and noting, in particular, the certifications from counsel, the Commission is satisfied that the votes cast by the

⁶ Later, after C12-10 was filed, Mr. Barger reviewed the confidentiality implications of this complaint to protect Board interests. (Ibid.)

⁷ Granata, Granatir and Calcado abstained on this vote. To the extent the complainant objects to the Board’s decision to pay for Ullman’s services relative to Invoice #105277, any claim that a board has acted in a manner that is arbitrary and capricious, or otherwise contrary to law, must be brought before the Commissioner of Education. Solar-Snyder v. Rose et al., Sussex Wantage Board of Education, Sussex County, C32-03 (December 16, 2003). See, also, Dericks et al. v. Johnson et al., Sparta Board of Education, Sussex County, C01-08 (October 27, 2009).

⁸ See, I/M/O Doris Graves, Pleasantville Board of Education, C45-07 (May 27, 2008), Commissioner of Education Decision No. 301-08, decided July 10, 2008, rejecting a claim of violation of N.J.S.A. 18A:12-24(b) because the record did not demonstrate that the respondent Board member’s relative did not deserve the continued appointment to the position of head custodian; Freeman v. Jackson, Camden City Bd. of Ed., C18-02 (October 29, 2009) where the Commission declined to find probable cause that the respondent violated N.J.S.A. 18A:12-24(b) without information to show that when she voted on the reinstatement of her friend to employment in the district, such reinstatement was unwarranted.

respondents do not implicate this statutory provision. Accordingly, the Commission finds no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(b).

The Commission next considers N.J.S.A. 18A:12-24(c), which provides:

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;

Initially, the Commission notes that the allegation herein does not involve any of the immediate family members of these respondents. Further, while Granata, Granatir and Calcado clearly took action in their official capacities as Board members when they voted on the dates in question, as noted in the respondents' answer, they were either voting on billing entries for services attendant to Mr. Barger's role as Board attorney or for the payment of services which Mr. Barger advised were subject to indemnification under N.J.S.A. 18A:12-20. While voting on the former raises no question under the Act, voting on the latter may. However, here the Commission finds it relevant that the Livingston Board of Education is a five-member Board which presumably requires three members to establish a majority for voting purposes. Thus, had Granata, Granatir and Calcado abstained from voting on the costs which Mr. Barger advised were subject to indemnification under N.J.S.A. 18A:12-20, the Board may have been unable to authorize payment for these legal services. The Commission opines that the better practice would have been for *the Board* to invoke the Doctrine of Necessity. The failure to do so, however, cannot be laid at the feet of these respondents.⁹ Consequently, *under these unique factual circumstances*, the Commission finds no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(c).

Finally, the Commission considers N.J.S.A. 18A:12-24(f), which provides:

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;

⁹ To the extent it is argued that the Board acted in a manner that is arbitrary and capricious, or otherwise contrary to law or regulation by failing to invoke the Doctrine of Necessity, any such claim must be brought before the Commissioner of Education. See, Solar-Snyder v. Rose et al., Sussex Wantage Board of Education, Sussex County, C32-03 (December 16, 2003); Dericks et al. v. Johnson et al., Sparta Board of Education, Sussex County, C01-08 (October 27, 2009); and Lovett et al. v. Bret Asbury et al., Freedom Academy Charter School Board of Trustees, Camden County, C01-09 (April 28, 2009).

As noted above, the record supports a conclusion that when Granata, Granatir and Calcado voted on the dates in question, they were either voting on billing entries for services attendant to Mr. Barger's role as Board attorney or for the payment of services which Mr. Barger advised were subject to indemnification under N.J.S.A. 18A:12-20. The Commission thus cannot conclude, under these circumstances, that the respondents used, or allowed to be used, their respective public offices for the purpose of securing financial gain for themselves, any member of their immediate families or for any business organization with which they are associated. Accordingly, the Commission finds no probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(f).

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondents that it finds no probable cause to credit the allegations that the respondents violated N.J.S.A. 18A:12-24(b), (c) and (f) 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

Mailing Date: July 27, 2011

Resolution Adopting Decision – C46-10

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, and the documents submitted in support thereof; and

Whereas, at its meeting on June 28, 2011, Commission found no probable cause to credit the allegations that the respondents violated N.J.S.A. 18A:12-24(b), (c) and (f) and, therefore, dismissed the complaint;

Whereas, at its meeting on July 26, 2011, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on July 26, 2011.

Joanne Boyle
Executive Director