

BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF CHESTER,	:	
MORRIS COUNTY,	:	
	:	
PETITIONER,	:	
	:	
v.	:	COMMISSIONER OF EDUCATION
	:	
WALTER RILEY AND	:	DECISION
DONALD BEATTY,	:	
	:	
RESPONDENTS.	:	
	:	

SYNOPSIS

Petitioning Board sought removal of respondent Board members for alleged unethical and improper conduct. Board contended respondents' involvement in challenging a special election that approved a referendum relating to District schools created a conflict of interest.

ALJ analyzed respondents' conduct under *N.J.S.A.* 18A:12-2 and the School Ethics Act, *N.J.S.A.* 18A:12-22 et seq. and concluded that respondents had an indirect personal interest in the outcome of a challenge to invalidate a special election that approved a referendum relating to the District's schools that might reasonably be expected to impair their objectivity or independence of judgment in violation of *N.J.S.A.* 18A:12-24(c). ALJ concluded reprimand was the appropriate penalty.

Commissioner rejected the initial decision as the ALJ erroneously mixed and melded two discrete statutory provisions, *N.J.S.A.* 18A:12-2 and the School Ethics Act (*N.J.S.A.* 18A:12-21 et seq.), violations of which are under the jurisdictional purview of two distinct entities. Petition was dismissed with respect to question under jurisdiction of Commissioner, *i.e.*, disqualifying conflict of interest under *N.J.S.A.* 18A:12-2. A copy of this decision and the record of the matter was transmitted to the School Ethics Commission for action, as it deems appropriate, with respect to issues of alleged School Ethics Act violations.

April 27, 1998

OAL DKT. NO. EDU 7081-97
AGENCY DKT. NO. 473-10/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Board and those of respondents were timely filed pursuant to *N.J.A.C* 18A:1-1-18.4 and were duly considered in the Commissioner's within determination.

Upon careful and independent review, the Commissioner is compelled to reject, in its entirety, the recommended decision of the OAL, as the Administrative Law Judge therein erroneously mixed and melded two discrete statutory provisions, *N.J.S.A.* 18A:12-2 and the School Ethics Act (*N.J.S.A.* 18A:12-21 *et seq.*), violations of which are under the jurisdictional purview of two distinct entities. The sole issue rightfully before the Commissioner of Education herein is whether the facts in this matter, which are essentially undisputed, constitute a situation where, pursuant to *N.J.S.A.* 18A:12-2, the respondents can be said to have a disqualifying direct or indirect interest in any claim against the Board so as to disqualify them from Board

membership. As to whether respondents can be found to have violated provisions of the School Ethics Act, *N.J.S.A. 18A:12-21 et seq.*, the Commissioner observes that, with the implementation of this Act in April 1992, such determinations are solely within the jurisdictional purview of the School Ethics Commission. Consequently, upon issuance of this decision, the matter will be transmitted to that body for action as it deems appropriate.

In addressing the substantive issue properly before him, namely, whether Respondents Beatty and Riley were in violation of *N.J.S.A. 18A:12-2* and, thus, disqualified from continuing in office, the Commissioner observes that it is well settled that not every claim lodged against a board of education automatically disqualifies the person making such claim from serving on the board. Rather, as was recognized in *Board of Education of the Township of Holmdel v. O'Connell*, 1990 *S.L.D.* 674

Case law has *** established that any such claim must be examined on a case-by-case basis in arriving at a determination as to whether the circumstances in the matter demonstrate that the board member would benefit in a substantial and material way from said claim. If so, the statute should be applied and the board member disqualified from serving on said board. See *Board of Education of the City of Newark, Essex County v. Edgar Brown and Oliver Brown*, [1984 *S.L.D.* 671, aff'd State Board, 1984 *S.L.D.* 683.] See *Thomas D. Hogan et al. v. Kearny Board of Education and Kearny Board of Education v. Thomas D. Hogan*, decided April 12, 1982, aff'd State Board of Education August 4, 1982.***
(*Holmdel, supra*, at 680)

In examining the circumstances surrounding the within matter, even accepting, *arguendo*, the level of participation on behalf of both respondents as charged by the Board in the lawsuit at issue, which was seeking to invalidate the results of a special referendum conducted by the school district, the Commissioner concludes that such participation would not have resulted in

“substantial and material benefit” to either of the respondents sufficient to disqualify them from holding a seat on the Board pursuant to *N.J.S.A. 18A:12-2*.

Finally, it is noted that the within respondents, in their pleadings and again in their exceptions, request that the Commissioner impose sanctions on the Board for “its vindictive behavior” and also award indemnification for their attorney’s fees in this matter, both of which the Commissioner declines to do. Consideration of the record here provides the Commissioner with no basis to conclude that the Board acted egregiously or in deliberate violation of law. Moreover, notwithstanding that *N.J.S.A. 18A:12-20* provides for board member indemnification in the defense of civil and criminal matters, there is no legal authority for indemnification in administrative proceedings. See *Board of Education of the City of Passiac, Passaic County, v. Gerardo Fernandez, Jr.*, decided by the Commissioner October 10, 1996 (relying on the Appellate Division’s decision in *In the Matter of the Tenure Hearing of David C. Borrelli, Waterford Township Board of Education*, 96 *N.J.A.R.* 2d (EDU) 163).

Accordingly, the initial decision of the OAL is rejected and the within Petition of Appeal is dismissed. A copy of this decision and the record of this matter will be transmitted to the School Ethics Commission for action, as it deems appropriate, with respect to issues of alleged School Ethics Act violations.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

April 27, 1998