

660-03 SEC

IN THE MATTER OF JOHN F. :
KROSCWITZ, II AND WENDY : COMMISSIONER OF EDUCATION
STURGEON, BOARD OF EDUCATION : DECISION
OF THE TOWNSHIP OF HAMILTON, :
MERCER COUNTY. :

SYNOPSIS

The School Ethics Commission determined that respondent Board members violated *N.J.S.A.* 18A:12-24(f) of the School Ethics Act by surrendering their independent judgment concerning the District's food service contractor to a special interest group (HTEA and HTSSA) which supported their candidacy and opposed the renewal of the existing food service contract. Respondent Sturgeon also violated *N.J.S.A.* 18A:12-24.1(j) by taking her complaints directly to the media instead of first giving the administration an opportunity to address them. After considering the nature of the charges, the Commission recommended the penalty of censure.

Upon review of the record, the Commissioner, whose decision was restricted solely to a review of the Commission's recommended penalty, concurred with the Commission's recommendation and, thus, ordered respondents censured as school officials found to have violated the School Ethics Act.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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December 19, 2003

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This matter comes before the Commissioner pursuant to *N.J.S.A.* 18A:12-29(c) and *N.J.A.C.* 6A:3-9.1 to impose a sanction upon respondents, members of the Hamilton Township Board of Education, based on the finding of the School Ethics Commission (Commission) that respondents violated the School Ethics Act. Specifically, the Commission found that Respondent Sturgeon violated *N.J.S.A.* 18A:12-24.1(j) by taking her complaints about the District’s food service contractor directly to the media without first presenting them to the chief school administrator for resolution, and that both respondents violated *N.J.S.A.* 18A:12-24.1(f) by surrendering their independent judgment to a special interest group consisting of District employee associations which had supported respondents’ candidacy for Board membership and strongly opposed renewal of the existing food service contract. For these violations, the Commission recommended that both respondents be censured.

The Commissioner has reviewed the Commission’s decision and the record of this matter. Additionally, the Commissioner has reviewed respondents’

comments, jointly submitted, on the Commission's recommendation that they be censured.

In their comment, respondents urge the Commissioner to reject the Commission's recommendation, contending that:

Contrary to the stated fact in the Decision, the Sodexo [food service] Contract was, in fact, renewed at the Meeting of the Hamilton Township Board of Education on May 28, 2003. This is public record. Although *N.J.A.C.* 6A:3-9.1 states that the findings of fact and determinations of violations are not reviewable by the Commissioner, this particular fact is not a "finding," but a matter of public record. The Commission found that both Respondents violated *N.J.S.A.* 18A:12-24.1(f) which states, "I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or the gain of friends." A finding of fact by the Commission that is contrary to the actual public record is a significant error that the Commission should address prior to recommending any sanctions in the above-mentioned Complaint. This is particularly egregious since the outcome of the vote is relevant to the alleged violation. (Respondents' Comment at 1-2)

At the outset, the Commissioner emphasizes that, in accordance with *N.J.S.A.* 18A:12-29(c) and *N.J.A.C.* 6A:3-9.1, and as recognized by respondents, only the School Ethics Commission may determine whether a violation of the School Ethics Act has occurred, and the Commission's decision in that regard is not reviewable by the Commissioner. Rather, the Commissioner's jurisdiction is limited to review of any sanction the Commission may recommend based upon its determination that a school official has violated the Act.

Given the nature of the Commissioner's review and upon full consideration of the record in this matter, the Commissioner finds no cause to disturb the Commission's recommended sanction. The Commissioner so holds notwithstanding the error noted by respondents, since, regardless of whether it constitutes a "finding"

reviewable by the Commissioner, it has no relation to the violation found with respect to *N.J.S.A.* 18A:12-24.1(j), failure to report complaints to the administration prior to taking public action on them, and it is immaterial to the violation found with respect to *N.J.S.A.* 18A:12-24.1(f), surrendering one's independent judgment to a special interest group. In this latter regard, the Commissioner specifically notes that, notwithstanding any action taken by the Board as a whole to renew or not renew the disputed food service contract, respondents each admitted that *they* voted *not* to renew it. (Complaint at 6, paragraph 19; Response of John F. Kruschwitz, II at 3, paragraph 19; Response of Wendy Sturgeon at 6, paragraph 19) Additionally, on November 25, 2003, the Commission acted to issue an amended decision correcting its prior factual error while still retaining its analyses, determinations of violation and recommendation for penalty.¹

Accordingly, for the reasons expressed in the decision of the School Ethics Commission, IT IS hereby ORDERED that John F. Kroschwitz, II and Wendy Sturgeon be censured as school officials found to have violated the School Ethics Act.²

COMMISSIONER OF EDUCATION

Date of Decision: December 19, 2003

Date of Mailing: December 19, 2003

¹ The October 31, 2003 decision reads, at the last sentence of the "Facts" section ending on page 3, "The contract with Sodexo was not renewed." The November 25, 2003 decision reads, at the same place, "The contract with Sodexo was renewed." In all other respects, the decisions are identical.

² This decision may be appealed to the State Board of Education in accordance with *N.J.S.A.* 18A:6-27 *et seq.*, *N.J.S.A.* 18A:12-29(d) and *N.J.A.C.* 6A:4-1.1 *et seq.* Pursuant to the latter, Commissioner decisions are deemed filed three days after the date of mailing to the parties.