

#226-13 (OAL Decision: Not yet available online)

JAMES DORAN, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
GEORGE KING, :
RESPONDENT. :

SYNOPSIS

Petitioner alleged that the respondent is prohibited under *N.J.S.A.* 18A:12-2 from serving on the Board of Education of the Township of Kearny (Board) due to an impermissible conflict, *i.e.* that he also serves as the Deputy Chief of the Kearny Police Department. Respondent contended that *N.J.S.A.* 18A:12-2 does not preclude him from holding both positions. The parties submitted motions for summary decision.

The ALJ found, *inter alia*, that: *N.J.S.A.* 18A:12-2 requires that no board member hold any interest in a contract with or claim against the board; it is uncontroverted that the respondent has no claims against the Board and no interest in a contract with the Board; *N.J.S.A.* 18A:12-2 also prohibits board members from holding office as mayor or as a member of the governing body of a municipality; the only issue to determine in this matter is whether respondent holds an incompatible office that disqualifies him pursuant to *N.J.S.A.* 18A:12-2; respondent has not been the mayor of Kearny nor a member of its town council; accordingly, the respondent's position as Deputy Chief of Police does not preclude him from serving as a member of the Board. The ALJ concluded that the matter is ripe for summary decision, and respondent is entitled to judgment as a matter of law.

Upon comprehensive review and consideration, the Commissioner adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

<p>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.</p>

June 17, 2013

JAMES DORAN, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
GEORGE KING, :
RESPONDENT. :

In this controversy, petitioner James Doran, a member of the Kearny Township Board of Education (the Board), alleges that *N.J.S.A.* 18A: 12-2 and general common law principles concerning conflicts of interest bar respondent George King from serving on the Board. Upon consideration of the record and Initial Decision of the Office of Administrative Law (OAL),¹ the Commissioner adopts the Initial Decision and dismisses the petition.

Petitioner's contention that respondent may not serve on the Board is based upon the fact that respondent is Kearny Township's Deputy Police Chief. Consequently, the Administrative Law Judge (ALJ) compared the requirements of *N.J.S.A.* 18A: 12-2 with the established facts concerning respondent, his employment and his public service.

N.J.S.A. 18A:12-2 provides that:

No member of any board of education shall be interested directly or indirectly in any contract with or claim against the board, nor, in the case of local and regional school districts, shall he hold office as mayor or as a member of the governing body of a municipality, nor, in the case of county special services school districts and county vocational school districts, shall he hold office as a member of the governing body of a county.

¹ No exceptions to the Initial Decision were filed by either party.

The ALJ found that “at all times relevant [respondent] has not been the mayor of Kearny or a member of Kearny’s town council.” She further found that respondent was neither involved in any claim against the Board nor any contract with it.

Only the last finding had been disputed by petitioner. More specifically, petitioner alleged that respondent had an interest in a contract. The contract was identified as the “Uniform State Memorandum of Agreement between Education and Law Enforcement Officials” (MOA), first approved in 1988 by the New Jersey Attorney General and Education Commissioner to foster cooperation between local law enforcement and education officials in addressing drug and alcohol problems relating to school age children.

The MOA was expanded in 1992 and 1999 to address the problem of firearms and other weapons brought onto school grounds. In 2007 it was again expanded to address school safety and security, harassment, bullying, gang reporting, computer crimes, and other current issues. Revisions were made in 2011 as a result of the Anti-Bullying Bill of Rights Act, and the need to provide assistance to truant officers. Thus, as the ALJ observed, the MOA is not a commercial or employment contract as contemplated by *N.J.S.A. 18A:12-2*, but rather the model for local alliances between law enforcement and educators to work together to protect the school environment. Accordingly, the ALJ was correct in concluding that respondent derived no personal or individual interest from the MOA and that none of the prohibitions in *N.J.S.A. 18A:12-2* are implicated in this case.

Petitioner’s alternate basis for alleging that respondent should not serve on the Board was the common law doctrine of incompatibility. Petitioner contended that there is an inherent conflict between respondent’s duties as Deputy Police Chief and his responsibilities as a Board member, which conflict precludes the simultaneous retention of both positions.

The Commissioner, however, has expressly held to the contrary. As explained in the Initial Decision:

the Commissioner has held that *N.J.S.A.* 18A:12-2 does not prohibit police officers from serving on boards of education. In one case, *Ubal dini v. Cancel*, 93 *N.J.A.R.2d* (EDU) 457, the Commissioner held that a Passaic board of education member did not hold an incompatible office although he was employed by the Passaic County Police Department attached to the juvenile bureau, and was serving as a security officer at Passaic High School. Still, the Commissioner noted that if the board member is assigned to be the security officer at a school “he should be guided, in general, in the event that he is assigned to investigate a student infraction, by the principle that a board member should not only avoid conflicts of interest, but also potential conflicts of interest or even the appearance of a conflict of interest.” *Ubal dini, supra*, 93 *N.J.A.R.2d* (EDU) at 459. Nevertheless, the Commissioner noted that “[t]he rule of thumb to be followed in potential conflicts of interest on the part of board members can be cured by abstention in voting.” *Ibid.* The Commissioner has also held that the position of Saddle Brook deputy chief of police is not incompatible with membership on Saddle Brook’s board of education, pursuant to *N.J.S.A.* 18A:12-2. *Brodie v. Saddle Brook Twp. Bd. of Educ.*, 93 *N.J.A.R.2d* (EDU) 694.

(Initial Decision at 5-6)

In its arguments about the applicability to this case of the doctrine of incompatibility petitioner relied on certain dicta in the cases he cited, rather than on the holdings. Thus, upon analysis of the cited cases, *i.e. Jones v. MacDonald*, 33 *N.J.* 132 (1960); *Township of Belleville v. Fornarotto*, 228 *N.J. Super.* 412, (Law Div. 1988); and *McDonough v. Roach*, 35 *N.J.* 153 (1961) the Commissioner finds that they are distinguishable from the instant controversy.

First, the cases did not involve boards of education. But more importantly, they turned not on the dicta cited by petitioner, but upon specific facts that left no room for doubt that one individual could not execute the responsibilities of each of two positions independent of competing interests or demands.

In *Jones v. MacDonald, supra*, the defendant sought to maintain both the position of North Plainfield councilman and member of the Somerset County Board of Taxation. But the Court explained:

The question here is whether incompatibility inheres in the rights, duties or obligations of the offices. The county board of taxation is an agency of the State to enforce its tax statutes. Defendant says that a councilman has no role with respect to assessments for taxation since that duty is the assessor's and the assessor is elected and legally beyond the supervision and control of the governing body. If we assumed the assessor is immune from the will or wishes of the governing body, the inquiry would not end. The municipality itself has a statutory role with respect to tax proceedings before the county board of taxation and it is in that area that defendant may find himself drawn in opposite directions.

(Jones v. MacDonald, supra at 136)

In *Township of Belleville v. Fornarotto, 228 N.J. Super. 412, (Law Div. 1988)*, Belleville's housing inspector was elected to serve as a town commissioner. The court found 1) that a conflict would exist when Fornarotto's position as a commissioner would require him to vote on matters related to his employment as a housing inspector, and 2) there could be an appearance of undue influence by his civil service superiors:

...where an individual is both a public employee and an elected public official, a conflict exists if the elected position carries with it responsibility for voting on matters related to the individual's public employment or if the two positions create the possibility of undue influence of one elected official on the independent judgment of a second because the first official is also the employer of the second.

(Township of Belleville v. Fornarotto, supra, at 424)

In *McDonough v. Roach, 35 N.J., supra*, the defendant was elected to the positions of mayor of Dover and member of the Board of Chosen Freeholders of Morris County. The Court found, among other things, that the county and municipal governments frequently enter into contracts for services or other purposes. Thus:

In the negotiations the county board is bound to consider the interests of all of its citizens while the local governing body has a like obligation to the citizenry of the municipality alone. No man, much less a public fiduciary, can sit on both sides of a bargaining table.

McDonough v. Roach, supra, at 156.

In the present case, there is no such fundamental conflict between respondent's position in the police force and his membership on the Board. The MOA does not represent a contract between two parties with separate, individual interests. It rather evidences a commitment by two local institutions to work together toward the mutual goal of keeping the schools and students safe. When issues which could have given rise to an appearance of conflict were on the Board's agenda – such as the issue of remuneration for police officers who provide security at school events, and the discipline of a Kearny student who had been arrested for assault – respondent refrained from voting on same. The Commissioner therefore cannot find that respondent's membership on the Kearny Board is in conflict with, or incompatible with, his job in the police department. Accordingly, respondent's motion for summary disposition is granted and the petition is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 17, 2013

Date of Mailing: July 18, 2013

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).