

HOBOKEN EDUCATION ASSOCIATION	:	
V.	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
DAVID ANTHONY,	:	Docket No.: C11-00
<i>HOBOKEN BOARD OF EDUCATION,</i>	:	
<i>HUDSON COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint that Hoboken Board of Education (Board) member David Anthony violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when he negotiated and presented to the Board the renewal of the lease of the Hoboken Charter School in which his children are students. Specifically, the Hoboken Education Association alleges that Mr. Anthony violated N.J.S.A. 18A:12-24(b), (c), and (d), N.J.S.A. 18A:12-25 and N.J.S.A. 18A:12-31.

In an answer filed on Mr. Anthony’s behalf, Mr. Anthony’s attorney asserted that the Hoboken Charter School had been ratified by 51% of the students and teachers at the A.J. Demarest Middle School, so he was faithfully executing the duties as his office. Mr. Anthony denied having violated any provision of the Act.

The Complainant then filed an objection to the assertion of Mr. Anthony’s attorney that the Hoboken Charter School had been converted from a public school requiring a 51% ratification vote. The Complainant contended that there was never any vote taken by teachers and students to ratify the Charter School.

The Commission invited the parties to attend the Commission’s meeting on November 28, 2000, to present witnesses and testimony to aid in the Commission’s investigation. Neither party appeared.

During its public meeting of November 29, 2000, the Commission voted to find no probable cause and directed staff to prepare a decision for adoption at the next meeting. The Commission adopted this decision at its meeting on December 19, 2000.

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and its investigation.

David Anthony is President of the Hoboken Board of Education. The Hoboken Charter School leases space from the Hoboken School District. The Charter School is located in the A.J. Demarest Middle School. The Hoboken Charter School is not a public school that converted to a charter school, but one that leases space from the Hoboken Board of Education to share the A.J. Demarest Middle School concurrently.

Mr. Anthony, as Board President, negotiated the lease between the Board and the Charter School for the term from August 1, 1999 to July 31, 2000. He then negotiated the renewal of the lease for the term from August 1, 2000 to July 31, 2002. At the June 20, 2000, meeting of the Board, Mr. Anthony submitted the lease renewal for approval through 2002. He voted in favor of the lease and the motion to approve the lease renewal passed. Although the Board approved the continued rental of Demarest by the Charter School, the actual lease has not yet been finalized.

Two of Mr. Anthony's children enrolled in the Hoboken Charter School for the 2000-2001 school year.

Mr. Anthony did not seek an advisory opinion from the School Ethics Commission as to whether his negotiating the lease or submitting it to the Board for approval would violate the School Ethics Act.

ANALYSIS

The complainant first alleges that Mr. Anthony violated N.J.S.A. 18A:12-24(b). N.J.S.A. 18A:12-24(b) prohibits a board member from using or attempting to use his position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. Complainant urges the Commission to find that Mr. Anthony used his position to secure unwarranted privileges for himself and his children by negotiating the renewal of the lease and presenting it to the Board.

The complainants have not alleged that the charter school's lease changed materially from the first year that Mr. Anthony negotiated it to the next year when his children enrolled in the Charter School such that his children gained an unwarranted privilege or advantage. The information currently before the Commission does not demonstrate any basis to support a finding that the Charter School or Mr. Anthony's children received any unwarranted privilege or advantage. Therefore, based on the facts currently before it, the Commission finds no probable cause that Mr. Anthony used or attempted to use his official position to secure unwarranted privileges for himself or his immediate family in violation of N.J.S.A. 18A:12-24(b).

The other applicable section is N.J.S.A. 18A:12-24(c). It provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which

he holds 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.

The Hoboken Charter School is a public school, which students of Hoboken attend free of tuition. The Commission does not discern a financial benefit to Mr. Anthony that could be derived from the negotiation of the lease regardless of the terms of the lease. There could be no showing that the lease in question would result in, for example, a lower tuition payment that he would have to pay. There is no tuition. Therefore, the Commission finds no probable cause that Mr. Anthony had a financial involvement with the Charter School lease that might reasonably be expected to impair his objectivity.

The Commission next considered whether Mr. Anthony had a personal involvement with the lease that is or creates some benefit to him in violation of N.J.S.A. 18A:12-24(c). In contrast to a financial involvement, the Commission does not believe that a benefit has to be financial in order to constitute a personal involvement under the Act. The Commission believes that the parents of children who attend a charter school derives some real, yet intangible, benefit from the lease of the charter school. This benefit could exist in terms of the lease setting forth how many rooms and which rooms within the middle school the charter school will lease. Although the Legislature removed the language that provided that a personal involvement exists if it “might reasonably be expected to impair [the school official’s] objectivity or independence of judgment,” the Commission still has to consider the purpose of the Act. The purpose of the Act is to ensure that school officials avoid conduct that is in violation of the public trust or creates the impression that the public trust is being violated. N.J.S.A. 18A:12-22(a). Therefore, the Commission believes that Mr. Anthony had a personal involvement with the negotiation of the charter school lease. However, the Commission finds that N.J.S.A. 18A:12-24(h) provides an exception such that Mr. Anthony’s involvement does not constitute a conflict of interest.

N.J.S.A. 18A:12-24(h) provides:

No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group.

The Commission applied this exception in a recent advisory opinion wherein it advised that board members whose children attended the high school would not violate the Act by participating in discussions and votes concerning a proposal to give greater weight to more academically challenging classes. Advisory Opinion A01-98 (February 27, 1998.) The Commission finds N.J.S.A. 18A:12-24(h) to be particularly applicable when issues arise concerning proposals that come before a board from which a school official's child can benefit. The Commission believes that the Legislature recognized the difficulty that could arise if school officials had to remove themselves from all decisions that affected their children as students in the district. Essentially, board members with children who attend the schools would be unable to participate in any decision involving students and thereby be prevented from fulfilling their duties as board members. Therefore, where the policy, lease or other Board decision does not benefit that school official's children more than the other students, the Commission will consider applying N.J.S.A. 18A:12-24(h).

When Mr. Anthony negotiates the lease with the Charter School, he negotiates the lease for the Board in his capacity as the Board President. He does not negotiate a lease that will benefit only his children. His children will not receive any material gain from the Board's lease to the Charter School to any greater extent than the other children attending that school will. Therefore, no material gain can be said to accrue to Mr. Anthony as a member of the group of charter school parents to any greater extent than any gain could reasonably be expected to accrue to any other parents of children who attend the charter school. Thus, the Commission finds that N.J.S.A. 18A:12-24(h) applies such that Mr. Anthony cannot be deemed in conflict with the provisions of the School Ethics Act. The Commission therefore finds no probable cause that Mr. Anthony violated N.J.S.A. 18A:12-24(c) of the Act.

The complainant also alleges that Mr. Anthony violated N.J.S.A. 18A:12-25(a), subsections (2) and (3), which set forth the requirement that school officials disclose whether they are a party to a contract with the school district and whether they are employed by, receive compensation from or have an interest in any business that is a party to a contract with the school district. The complainant has not alleged that Mr. Anthony's failed to disclose any information on his disclosure statement. Nevertheless, assuming that he did not respond that he had a party to a contract or that he was employed by a party to a contract with the Board, the facts do not show that he was required to do so. There are no facts to demonstrate that Mr. Anthony or any relative of Mr. Anthony is a party to a contract with the school district. Similarly, there are no facts to demonstrate that Mr. Anthony is employed by, receives compensation from or has an interest in a business that is a party to a contract with the school district. The facts show only that Mr. Anthony's children attend the charter school. Their doing so does not make him or his children a party to a contract with the school district. Therefore, the Commission finds that N.J.S.A. 18A:12-25 does not apply to the facts of this case and finds no probable cause that Mr. Anthony violated that section.

Last, complainants allege that Mr. Anthony violated N.J.S.A. 18A:12-31 by not seeking an advisory opinion from the School Ethics Commission prior to proceeding to negotiate the lease and bring the lease renewal before the Board. N.J.S.A. 18A:12-31 enables school officials to request an advisory opinion from the Commission. It does not mandate that they do so whenever a potential conflict may arise. Indeed, because, by statute, the Commission meets once a month, it may be impractical for a school official to ask the Commission for an advisory opinion. Therefore, the Commission finds no probable cause that Mr. Anthony violated N.J.S.A. 18A:12-31.

DECISION

For the foregoing reasons, the Commission finds no probable cause that David Anthony violated the School Ethics Act and dismisses the complaint against him.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C11-00

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the information obtained from its investigation; and

Whereas, at its meeting of November 28, 2000, the Commission found no probable cause to credit the allegations that Respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against him; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the draft decision and agrees with the decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on December 19, 2000.

Lisa James-Beavers
Executive Director