
JOAN ORBAN

V.

CRAIG ROSEVEAR,
NORTH BRUNSWICK BD. OF EDUCATION,
MIDDLESEX COUNTY

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:
: **BEFORE THE SCHOOL**
: **ETHICS COMMISSION**
:
: **Docket No.: C12-00**
:
: **DECISION**
:

PROCEDURAL HISTORY

This matter arises from a complaint alleging that North Brunswick Board of Education (Board) Member Craig Rosevear violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, Complainant Joan Orban alleges that Mr. Rosevear violated N.J.S.A. 18A:12-22(a) and N.J.S.A. 18A:12-24(c) by participating in the Board's search for a new superintendent when his spouse is the principal of an elementary school in the District.

Mr. Rosevear filed an answer to the complaint stating that he participated in the search on the advice of counsel, Anthony Vignuolo, who advised the Board that the School Ethics Commission's Advisory Opinion A10-00 allowed him to participate. Mr. Rosevear denied that he violated any provision of the Act.

The Commission invited the parties to attend the Commission's meeting on December 19, 2000, in order to present testimony to aid in the Commission's investigation. Mrs. Orban appeared with her husband, Philip Orban, and Mr. Rosevear appeared with Board Attorney Anthony Vignuolo, Esq. All of those present testified before the Commission.

At that same meeting, the Commission voted to find no probable cause and directed staff to prepare a decision setting forth its reasoning and forward it to the parties.

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted and the testimony before it.

Craig Rosevear is a member of the North Brunswick Board of Education. His wife is a principal in one of the elementary schools in the District. The North Brunswick School District consists of six schools and approximately 5,000 students.

The Board has been looking for a new superintendent of schools since the summer of 2000. Mr. Robert Turco, the Assistant Superintendent for Business/Board Secretary has been serving as Acting Superintendent since that time.

On November 2, 2000, the Board met in closed session to discuss the search for a superintendent. The Board discussed whether it was appropriate for Mr. Rosevear to participate in the superintendent search due to his wife's position as a principal in a District elementary school. Board Attorney Anthony Vignuolo discussed with the Board Advisory Opinion A10-00, which the Commission had issued on June 27, 2000. He read out loud several sections of the Opinion. Mr. Vignuolo advised that Mr. Rosevear could participate in the superintendent search, but could not participate in any discussions or votes on matters regarding the superintendent after he or she was hired. In view of the fact that one of the candidates for the position was currently a principal in the District, the Board asked Mr. Vignuolo to seek an advisory opinion from the Commission. Mr. Rosevear relied on Mr. Vignuolo's advice and continued to be involved in the selection process.

Mr. Rosevear testified that Mr. Vignuolo provided the same advice at the public meeting of the Board held on November 14, 2000. The Orbans dispute this and say that Mr. Vignuolo said that the Board would seek an advisory opinion from the School Ethics Commission as to whether Mr. Rosevear could participate in the search. The written minutes of the meeting are silent as to any statements by Mr. Vignuolo on this issue. The minutes indicate only that, "Several members of the public expressed concern regarding the participation by Mr. Rosevear in the Superintendent search process since a member of his family is an administrator in the District." In any event, Mr. Vignuolo did seek an advisory opinion on behalf of the Board as to whether Mr. Rosevear could participate in the superintendent search.

Mr. Vignuolo filed a request for an advisory opinion with the Commission on November 8, 2000. The Commission advised him that he would receive an answer after its next meeting on November 28, 2000. However, on November 16, 2000, Ms. Orban filed the complaint in the within matter against Mr. Rosevear. At its meeting of November 28, 2000, the Commission decided that it could not issue an advisory opinion because it appeared that the conduct in question had already taken place and a complaint had been filed based on the same set of facts and involving the same legal issue. The Commission so advised Mr. Vignuolo on December 1, 2000.

There are currently over 35 candidates being considered for the position of superintendent. One of the candidates is a principal at the High School in the District. This principal and Mr. Rosevear's wife are members of the local bargaining unit of the Principals' and Supervisors' Association. The Board is in the process of interviewing candidates. The Board's next public meeting is scheduled for January 9, 2000.

ANALYSIS

Complainant first alleges that the conduct of Mr. Rosevear violated N.J.S.A. 18A:12-22(a), which states:

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

The Commission has consistently held that the conduct which constitutes a violation of the Act is set forth in the prohibited acts section of the School Ethics Act, N.J.S.A. 18A:12-24. *I/M/O Bucco*, C11-98 (October 26, 1998). N.J.S.A. 18A:12-22(a) sets forth the Legislature's purpose for enacting the School Ethics Act.. It does not, by itself, set forth grounds for a violation. To base a violation on a finding that a school official's conduct "created a justifiable impression among the public" that the public trust was being violated, would not give a school official sufficient notice of what conduct would constitute a violation. *Id.* at p. 4. The Commission believes that the Legislature intended that its findings and declarations be considered when deciding how to interpret the prohibited acts section of the Act, but it did not intend for them to prescribe impermissible conduct.

Complainant also alleged that Mr. Rosevear violated N.J.S.A. 18A:12-24(c) by participating in the superintendent search. That subsection of the Act 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.

Complainant alleges that Mr. Rosevear's failure to remove himself from the process of selecting a new superintendent violates N.J.S.A. 18A:12-24(c) because his wife will be directly under the supervision of the new superintendent. She alleges that Mr. Rosevear's involvement in the process would give his wife an unfair advantage over other administrators in the District in that the superintendent would feel grateful to the individuals who hired him or her. She further argues that this would make it difficult or impossible for the superintendent to be completely objective when reviewing the performance of a spouse of one of those individuals. Further, complainant states that she

believes that it would be impossible for Mr. Rosevear to look at a candidate in an objective manner if he believed that the choice of a particular candidate would not be in the best interest of his wife's career.

The initial question is whether Mr. Rosevear's participation in the superintendent search constitutes a matter in which he or his spouse has a "financial involvement" that might reasonably be expected to impair his objectivity. The Commission considered a similar question in Advisory Opinion A10-00. There, the issue was whether a board member would violate the Act by participating in the appointments of the superintendent and principals when his spouse was a teacher in the district. In A10-00, the Commission found that, "Since teachers are employed pursuant to a collective bargaining agreement, the chance of the choice affecting the board member or the spouse financially is even more limited." *Id.* at p. 2. Therefore, the Commission rejected the notion that it would be reasonable to expect a board member to choose a candidate that would be most favorable to or in the best interest of his spouse's career.

Principals are similarly employed pursuant to a collective bargaining agreement. Therefore, the same principle applies that the superintendent is not likely to be able to affect Mr. Rosevear's wife financially in any different manner than he would be able to affect any other member of the Principal and Supervisor's Association. It is also noteworthy that principals are subject to tenure and seniority laws, which further insulate them from arbitrary employment decisions. Regarding the testimony that Mr. Rosevear's wife may be seeking an administrative position with the Board, the Commission does not discern how Mr. Rosevear will know whether a candidate for superintendent will recommend his wife for a position or not once he or she is employed. There is no indication that Mr. Rosevear has sought assurances from any candidate that he or she would make such a recommendation. Indeed, the method of choosing a superintendent, requiring the involvement of all board members, would seemingly ensure that such questions would not be asked. Mr. Rosevear will not be in conflict merely by participating in the selection process.

Complainant has also expressed fear that the chosen superintendent will be obligated to Mr. Rosevear and be obligated to treat his wife more favorably. This fear should be assuaged by the fact that Mr. Rosevear will not be able to participate in any subsequent decisions regarding the superintendent's employment. Therefore, the superintendent will not fear any retaliatory action by Mr. Rosevear if Mr. Rosevear's wife is a candidate for any other position in the District and the superintendent chooses not to recommend her. The prohibition against Mr. Rosevear's participation also extends to his ability to lobby or otherwise encourage other Board members to vote a certain way regarding the superintendent's employment as well.

For these reasons, the Commission finds no probable cause to credit the allegation that Mr. Rosevear and his wife have a direct or indirect financial involvement that may reasonably be expected to impair his objectivity or independence of judgment in participating in the selection process.

The next question is whether Mr. Rosevear or his wife has a personal involvement that is or creates some benefit to him or his wife. The Commission considered this question in Advisory Opinion A10-00 as well. It advised that a board member's participation in the selection of a principal or superintendent would not create a personal involvement that constitutes a benefit in violation of N.J.S.A. 18A:12-24(c) when his spouse is a teacher in a one-school district. However, the Commission went on to note,

This may change if the selection of administrators is for someone who already knows the board member's spouse. Then, it would not be speculative to suggest that the board member voted for someone who would be favorable to the spouse. There would be information in that regard.

The Complainant focuses on the above language in urging the Commission to conclude that Mr. Rosevear's participation in the process of selecting a superintendent when one of the candidates is also a principal, violates N.J.S.A. 18A:12-24(c). She further argues that the relationship between the superintendent and the principal will be much closer than that between a superintendent and a teacher as was the case in A10-00. Therefore, she argues that this case presents a greater conflict of interest. The Commission does not believe that the above language applies to the present matter, given the relevant facts.

As set forth above, in order to find that Mr. Rosevear's participation in the selection process is in violation of N.J.S.A. 18A:12-24(c), the Commission would have to find that he or his wife has a personal involvement that is or creates some benefit to Mr. Rosevear or his wife. Here, the complainant alleges that the personal involvement is the feeling of obligation that one has to the person who hired him or her, which will inure to the benefit of Mr. Rosevear's wife giving her an unfair advantage over other principals. In the present case, Mr. Rosevear is one of nine Board Members participating in the selection process and thus, only one of nine votes. The chosen superintendent will be no more beholden to Mr. Rosevear than any other Board Member. Therefore, the feeling of obligation, if it exists at all, does not create a personal involvement under N.J.S.A. 18A:12-24(c). The Commission does not find that the facts support the existence of a personal involvement, nor does it discern any benefit that can inure to the spouse solely because Mr. Rosevear participated in the search.

Complainant argues separately that the fact that another principal is a candidate for the superintendent position clearly creates a conflict of interest and cites the language in A10-00 in support of her argument. In A10-00, the Commission advised that, in a small one-school district, if there is a candidate who knows the board member's spouse, then the board member may have to recuse himself from the selection process. The Commission included this caution to let the board member in A10-00 know that there may be limits to his participation in a district consisting of one school where contact with all the teachers and principals is frequent and regular. In contrast, the facts in the present case reveal a district with six schools where the spouse's only connection to one of the candidates is that he is also a principal. He is a principal of a high school rather than an elementary school, so it is doubtful that they share information on curriculum or many

other issues on a consistent basis. There is no evidence to indicate that Mr. Rosevear's spouse works in the same building with the other principal, that they see each other on a frequent basis or that they share more than a professional relationship. Because of the limited extent of the relationship between the spouse and the candidate, it would be speculative to suggest that the Board Member would base his choice for superintendent upon who he believes would be more favorable to his spouse rather than the criteria of who would be the best choice for the District.

For the foregoing reasons, the Commission finds no probable cause to credit the allegation that Mr. Rosevear or his spouse has a personal involvement with the superintendent selection process that is or creates some benefit in violation of N.J.S.A. 18A:12-24(c).

DECISION

For the foregoing reasons, the Commission finds no probable cause that Craig Rosevear 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 – C12-00

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the testimonial and documentary evidence obtained from its investigation; and

Whereas, at its meeting of December 19, 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;

Now, Therefore, Be It Resolved that the Commission hereby directs its staff to notify all parties to this action of the Commission's decision rendered at its December 19, 2000 meeting.

Paul C. Garbarini, Chairperson

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

Lisa James-Beavers
Executive Director

*Commissioner Rosalind Frisch dissented from this decision and would have found probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(c).