
THELMA RICE and KENIA NUNEZ

V.

**DANIEL J. GALLAGHER,
ATLANTIC CITY BOARD OF EDUCATION
ATLANTIC COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No.: C31-01

DECISION

PROCEDURAL HISTORY

This matter arises from a complaint that Atlantic City Board of Education (Board) member, Attorney Daniel Gallagher, who formerly served as chairperson of the Board's Goods and Services Committee, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* when he allegedly advocated, lobbied and voted upon public contracts that involved several vendors, including Paine Webber, Inc. and Winzinger, Inc., which complainants believe are either the clients of his law firm, sought after clients of his law firm, or businesses that referred clients to the law firm. Specifically, complainants allege that Mr. Gallagher violated N.J.S.A. 18A:12-24(b), (c) and (e).

In his answer, Mr. Gallagher denies that he advocated or lobbied for any contracts that involved the present or sought after clients of the firm or business entities that have business relationships with him. Mr. Gallagher further asserts that the firm has never held itself out as the legal representative for Paine Webber, Inc. and that Winzinger, Inc, was turned away as a client after the company submitted a bid to the Board. Mr. Gallagher denies having violated any provision of the Act and claims that the complaint is frivolous.

The Commission invited the parties to attend the Commission's meeting on November 27, 2001, to present witnesses and testimony to aid in the Commission's investigation. Mr. Gallagher appeared with counsel, Edwin Jacobs, Jr., Esq. Complainants appeared with counsel, Peter A. Locascio, Esq.

During its public meeting of November 27, 2001, the Commission voted to table the matter and requested additional information to aid in the Commission's investigation. At its December 18, 2001 meeting, the Commission voted to find no probable cause to credit the allegation that Mr. Gallagher violated the Act and recommended that the matter be referred to the New Jersey Office of Attorney Ethics. The Commission directed its staff to prepare a decision for adoption at the next meeting. The Commission adopted this decision at its meeting on January 22, 2002.

FACTS

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

Daniel J. Gallagher has been a member of the Atlantic City Board of Education since 1998 and formerly served as chairman of its Goods and Services Committee. Mr. Gallagher is also currently an attorney at the law office of George K. Miller, Jr. (firm). At the Commission's November 27, 2001 meeting, Mr. Gallagher testified that in the fall of 2000, the Atlantic City Public Library requested that he submit a proposal for consideration of his firm for the position of Solicitor at the Library. In or around November 2000, Mr. Gallagher submitted a proposal for the firm, including a qualification statement, which indicated that the firm was solely owned and listed Mr. Miller and Mr. Gallagher as principle attorneys at the firm. The proposal also contained a list of client references, which named Paine Webber, Inc. and a tentative client list, which named Winzinger, Inc. Both of the aforementioned companies were selected to be vendors for the Board during Mr. Gallagher's service as the chairman of the Board's Goods and Services Committee. Ms. Nunez, who served on the Committee while Mr. Gallagher was chairman, testified that she was privy to the firm's proposal as a member of the Library's board and that the Board awarded a contract to Paine Webber, Inc. Ms. Nunez further testified that Mr. Gallagher voted on the contract. Mr. Gallagher testified that he did vote on the contract involving Paine Webber, but denies that the vendor was a client of the law firm and also denied representation of Winzinger Inc., upon learning of its bid for a Board contract.

In or around April 2000 a new Board president, Thelma Rice, was elected and the Board was reorganized. Ms. Nunez advised Ms. Rice of her findings concerning Mr. Gallagher. In May 2001, Ms. Rice removed Mr. Gallagher from his office of chairman of the Goods and Services Committee. Mr. Gallagher questioned his removal and in July 2001 filed suit against Ms. Rice so that a court could review the grounds for dismissal. Mr. Gallagher asserts that the present complaint was brought in retaliation to his law suit and that the complaint is frivolous. Complainants deny that the complaint is retaliatory and assert that although it was filed in October, the complaint was being drafted before Mr. Gallagher filed his action.

ANALYSIS

Complainants urge the Commission to find that Mr. Gallagher violated N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

The Commission finds that there are insufficient facts to demonstrate that Mr. Gallagher attempted to use his official position to secure unwarranted privileges or

advantages for himself or others. It does not appear that any of the vendors that were awarded contracts by the Board have business relationships with Mr. Gallagher's firm which would give rise to an unwarranted privilege or advantage.

Complainant's aver that Mr. Gallagher advocated, lobbied and voted upon various public contracts (i.e., land surveying, brokerage/depository services, real estate appraisal/services, financial auditing services, demolition and site remediation) that involved vendors, which were either the clients of his law firm, sought after clients of his law firm, or businesses that referred clients to the law firm. However, the Commission noted that Paine Webber, Inc. and Winzinger Inc. are the only vendors who are listed as client references or tentative clients in the firm's proposal. There are insufficient facts to show that Mr. Gallagher's firm had business relationships with any of the other successful or unsuccessful bidders for the aforementioned contracts. Moreover, at the Commission's November 27, 2001 meeting, Mr. Gallagher testified that Paine Webber, Inc. has never been a client of the firm, but that he has personal references from the vendor. Mr. Miller's affidavit in support of Mr. Gallagher is consistent with Mr. Gallagher's testimony denying the firm's representation of Paine Webber.

Regarding Winzinger, Inc., Mr. Gallagher testified that the firm had represented Winzinger, Inc. in a zoning board application, but that it turned the vendor away upon learning of its bid for a contract with the Board. Mr. Gallagher also testified that he abstained from voting on the Winzinger contract. Furthermore, in her affidavit in support of Mr. Gallagher, Joanne Winzinger, a principle of Winzinger, Inc., denies that her company is currently a client of the firm and asserts that the firm declined representation of Winzinger, Inc. upon learning that it had submitted a bid for a contract to the Board.

Given the foregoing, the Commission cannot discern any privileges or advantages that were inured or could inure by Mr. Gallagher or others, which would warrant a finding of probable cause to credit the allegation that he violated the N.J.S.A. 18A:12-24(b).

Complainant next urges the Commission to find that Ms. Gallagher violated N.J.S.A. 18A:12-24(c).

N.J.S.A. 18A:12-24(c) provides in pertinent part:

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

There are insufficient facts to demonstrate that Ms. Gallagher undertook any employment or service, which might reasonably be expected to prejudice his independence of judgment in the exercise of her official duties. For the same reasons set forth above, the Commission finds that there are insufficient facts to show that Mr. Gallagher engaged in any conduct that would give rise to a violation pursuant to N.J.S.A. 18A:12-24(c). It does not appear that his firm had business relationships with any of the vendors with which the Board contracted that would preclude Mr. Gallagher from lobbying, advocating or voting upon contracts involving those vendors. Therefore, the Commission finds no probable cause to credit the allegation that Mr. Gallagher violated the subsection.

Complainant lastly argues that Mr. Gallagher violated N.J.S.A. 18A:12-24(e), which provides, in pertinent part:

No school official ...or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him directly or indirectly, in the discharge of his official duties...

Here the Commission finds that neither he nor his firm have engaged in any conduct in violation of N.J.S.A. 18A:12-24(e). As shown above, the Commission has found that there are insufficient facts to demonstrate that Mr. Gallagher advocated, lobbied or voted upon public contracts that involved the clients of his law firm, sought after clients of his law firm, or businesses that referred clients to the law firm. Therefore, the Commission also finds that there is no probable cause to credit the allegation that Mr. Gallagher violated N.J.S.A. 18A:12-24(e).

Mr. Gallagher counterclaimed that the complaint brought by Ms. Rice and Ms. Nunez is frivolous and that they should be sanctioned pursuant to N.J.S.A. 18A:12-29(e). In order to find a complaint frivolous, the Commission must find, on the basis of pleadings and evidence presented, that the complaint was commenced or continued in bad faith; or that the non-prevailing party knew or should have known that the complaint was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. The Commission cannot find that complainants' allegations were made in bad faith or that they have no reasonable basis in law. Complainants relied on Mr. Gallagher's representations in his qualification statement, resume and cover letter as the basis for their complaint. Therefore, the Commission does not find the present complaint to be frivolous and declines to impose sanctions.

While the Commission does find that there are insufficient facts to conclude that Mr. Gallagher violated the School Ethics Act, it does note that complainants relied on Mr. Gallagher's representations with respect to his status at the firm, the firms client references and tentative clients. The Commission further notes that the aforementioned

representations appear to be unclear and misleading and may raise issues concerning attorney ethics. The Commission therefore refers this matter to the Office of Attorney Ethics, P.O. Box 963, Trenton, NJ 08625, for further review.

DECISION

For the foregoing reasons, the Commission finds no probable cause that Mr. Gallagher 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 – C31-01

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 December 18, 2001, the Commission found no probable cause to credit the allegations that Mr. Gallagher 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 January 22, 2001.

Jacqueline Richmond
Acting Executive Director