
IN THE MATTER	:	Before the
	:	School Ethics Commission
OF	:	
	:	Docket No. C08-02
ROSEMARY JACKSON and	:	
SARA DAVIS,	:	
<i>CAMDEN CITY BD. OF EDUCATION</i>	:	DECISION
<i>CAMDEN COUNTY</i>	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed with the School Ethics Commission by Philip Freeman alleging that Camden City Board of Education (Board) members Rosemary Jackson and Sara Davis violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., in connection with the appointment of Harvey Johnson, Esq. as Solicitor for the Camden City Board of Education. Mr. Freeman is a former member of the Board.

Ms. Davis and Ms. Jackson filed answers to the complaint denying that their participation in discussions and votes regarding the appointment of Mr. Johnson violated the Act.

The Commission advised the parties that the complaint would be discussed at the Commission's meeting of August 27, 2002 and asked the parties to appear. All parties appeared, respondents with counsel. At the public session of the meeting, the Commission found probable cause to credit the allegation that Rosemary Jackson and Sara Davis violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., specifically N.J.S.A. 18A:12-24(b) and (c), when they took various actions to bring about the appointment of Harvey Johnson, Esq. as Solicitor for the Board and voted in favor of his appointment. The Commission found that the material facts were not in dispute. Therefore, it invited the respondents to file written submissions within 30 days of the date of the probable cause decision setting forth the reasons that the Commission should not find them in violation of N.J.S.A. 18A:12-24(b) and (c) of the School Ethics Act.

Respondents hand-delivered a timely written submission, which the Commission fully considered at its November 26, 2002 meeting. At its public meeting on that date, the Commission concluded that the respondents violated N.J.S.A. 18A:12-24(b) and (c) of the Act and recommended a penalty of censure for both Sara Davis and Rosemary Jackson.

FINDINGS OF FACT

The Commission discerned the following facts from the pleadings, the documents submitted, testimony and its investigation of this matter.

Ms. Davis was elected to the Camden City Board of Education in April 1999. She was re-elected to the Board in April 2002. Ms. Jackson was at all times relevant to this complaint, a member of the Board, having served for approximately nine years. Mr. Freeman ran for re-election to the Board in April 2002, but lost.

On April 17, 2002, Harvey Johnson, Esq. sent his firm's resume to the Board's business administrator. In his cover letter, Mr. Johnson set forth that Rosemary Jackson asked him to submit the resume to be considered as board solicitor at the upcoming reorganization meeting. His resume sets forth that the only school board that he represents is the Lawnside Board of Education, which is a district consisting of one school.

On April 24, 2002, the Board held its annual reorganization meeting. Ms. Davis was sworn in for a second term and was elected board president at that meeting. Ms. Jackson was elected vice-president. A motion was made to table resolutions selecting the auditor, solicitor, labor attorney and professional negotiator. That motion was defeated for lack of a second. A resolution had been prepared by the business administrator appointing the law firm of Sumners George, P.C. as board solicitor. Sumners George, P.C. was currently serving as the board solicitor. The motion was moved and seconded, but it was defeated by a vote of three in favor, four against and one abstention. Ms. Davis and Ms. Jackson voted against the appointment. A motion was then made by Ms. Jackson to appoint Harvey Johnson as board solicitor. The minutes show that the vote was four in favor, one against and three abstaining. The motion was noted as defeated. After a similar motion to appoint the labor attorney failed, the Board then adjourned to executive session. When it returned to public session, the Board voted unanimously to return the resolutions appointing the solicitor and labor attorney until the Board received responses to a request for proposals (RFP).

After the vote at the reorganization meeting, Ms. Jackson read a letter dated April 22, 2002 from Harvey Johnson, Esq. to Ms. Jackson. Therein, Mr. Johnson advised Ms. Jackson that she would not have a conflict of interest in voting to appoint him as board solicitor. The letter set forth his opinion that, although his firm represented her in an ethics matter before the Department of Education and a personal injury matter, there would be no conflict because the firm no longer represents her in any actions. He further noted that she should disclose that the firm previously represented her. After the letter was read, Ms. Davis also stated that Mr. Johnson had also done legal work for her prior to the date of the meeting.

Ms. Jackson testified that, after the reorganization meeting, Ms. Jackson spoke to a member of the New Jersey School Boards Association (NJSBA) who advised that the

initial vote to appoint Harvey Johnson as Solicitor on April 24, 2002 had succeeded by a vote of four in favor, one against and three abstentions, although the motion was noted to have failed.

Ms. Davis called a special meeting of the Board on May 2, 2002 and placed on the agenda an item, "Appointment of the Solicitor." Ms. Jackson stated at that time that Mr. Johnson was in effect the solicitor because the Board had erred at the reorganization meeting when it believed that her motion to appoint Mr. Johnson needed five votes. A motion was made to rescind the action taken at the reorganization meeting to send out an RFP for professional services for the Board Solicitor. The motion was seconded by Ms. Jackson. The motion was defeated by a vote of three to three. Ms. Jackson and Ms. Davis voted for the motion.

Another special meeting was held on May 7, 2002 at the request of Ms. Davis. According to the minutes, at this meeting, the first action was a motion by Ms. Jackson to rescind action taken on all professional services at the annual reorganization meeting. In the minutes, this motion was noted as defeated by a vote of four in favor and three against.

Philip Freeman filed this complaint against Ms. Davis and Ms. Jackson with the School Ethics Commission on May 7, 2002, alleging that the respondents had violated various provisions of the School Ethics Act.

On June 4, 2002, a special meeting of the Board was held to review the RFPs that were submitted by law firms for consideration to the appointment of Board Solicitor. The business administrator distributed the responses to the RFPs to the Board members for consideration. Initially, a motion to appoint the firm of Sumners George was defeated by a vote of four in favor and two against, with two Board members abstaining. A subsequent motion to appoint Mr. Johnson prevailed by a vote of six in favor and two against. Ms. Davis and Ms. Jackson voted in favor of Mr. Johnson.

On June 5, 2002, Mr. Freeman amended his complaint to add the respondents' participation in the discussion and votes at the June 4, 2002 meeting.

Attorney Harvey Johnson represented Ms. Davis and Ms. Jackson in separate cases before the School Ethics Commission. Those cases concluded in October 2001 for Ms. Davis and July 2001 for Ms. Jackson, when the Commissioner of Education issued his decision accepting the Commission's settlement finding her in violation of the Act and imposing a penalty of reprimand. Mr. Johnson also represented Ms. Jackson in a personal injury matter in 1995. Mr. Johnson did not charge Ms. Jackson for representing her in the School Ethics Commission case. He charged a fee to Ms. Davis, which she testified that she is still paying. Mr. Johnson represented Ms. Jackson on a contingent fee basis (for one-third of the recovery) in the personal injury matter.

ANALYSIS

The Commission found probable cause to credit the allegation that the respondents' conduct in participating in lobbying for Mr. Johnson to be the solicitor was in violation of N.J.S.A. 18A:12-24(b) and (c).

N.J.S.A. 18A:12-24(b) 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 found probable cause to credit the allegation that respondents used their position to secure unwarranted privileges and advantages for Mr. Johnson in violation of N.J.S.A. 18A:12-24(b). In the present case, the business administrator recommended the law firm of Sumners George, P.C. to be board solicitor. According to the respondents' testimony, the business administrator recommended the reappointment of the firm without application or firm resume. Although it strains credulity to believe that the business administrator did not have some indication from Sumners George, which had been serving as board solicitor for approximately four years, that it wished to continue as board solicitor and that he would not have shared that information with the Board, Ms. Jackson testified that the firm's failure to indicate in writing that they wished to remain counsel was one of her reasons for not supporting the firm. It is undisputed that firm resumes had not previously been sought for the position of the board solicitor and no request for proposals had been initiated at the time of the reorganization meeting, when the respondents cast their vote against the appointment of Sumners George and for Mr. Johnson. Since the Board had not issued an RFP prior to the reorganization meeting, Mr. Johnson would not have known to apply if Ms. Jackson had not asked him to do so as shown by his April 17, 2002 letter to the Board's business administrator stating that he was asked to send his resume by Ms. Jackson in an effort to be considered as board solicitor at the upcoming reorganization meeting. Ms. Jackson's solicitation of Mr. Johnson to seek the position and her letter from him advising that she would be able to vote for him despite his prior representation of her both preceded the April 24, 2002 reorganization meeting when she cast her vote against Sumners George and in favor of Harvey Johnson. Therefore, she cannot say that anything that occurred subsequent to that meeting influenced her to vote for Mr. Johnson.

Further, at the reorganization meeting, Ms. Davis and Ms. Jackson voted against the business administrator's recommendation to appoint Sumners George as board solicitor without any discussion. Neither said at that time that they lacked knowledge that the firm wanted to continue. Mr. Johnson's letter of April 17th showed that Ms. Jackson had already encouraged Mr. Johnson to apply for the position in conversations prior to the meeting. Ms. Jackson then made the motion to appoint Harvey Johnson as Solicitor. She did so with no proposal from Mr. Johnson as to what he would charge the Board for his

services. Three other Board members went along without any information. When that motion was declared to have failed, the Board sought requests for proposals. Ms. Davis then called special meetings of the Board on May 2, 2002 and May 7, 2002 to try to rescind the action of the Board requesting proposals. Ms. Davis called a third special meeting on June 4, 2002. At that meeting, although the business administrator distributed the proposals to the Board, the Board held no discussion about them. The first motion to appoint Sumners George was declared defeated by a vote of four in favor, two against and two abstentions. Interestingly, although Ms. Jackson had received advice that only a simple majority vote was needed to appoint the solicitor, she did not inform the Board of that advice, which would have meant that the motion to appoint the firm of Sumners George actually passed. Mr. Johnson was then finally appointed on June 4th, with six board members voting in favor, including Ms. Davis and Ms. Jackson.

The respondents' objections notwithstanding, the Commission still finds that Ms. Davis and Ms. Jackson went to great lengths as noted above to have Harvey Johnson appointed as board solicitor. All of the special meetings were only to get Mr. Johnson appointed. Even if the meetings were to correct an error made at the initial reorganization meeting, as the respondents assert, the goal was never to discuss the merits of appointing any firm. If it were, then the respondents who were President and Vice-President of the Board would have opened discussion on the merits of the proposals at the June 4, 2001 meeting. The goal of the special meetings was only to see Mr. Johnson appointed, so much so that Ms. Jackson ignored prior legal advice that she had received that a simple majority was enough to appoint a solicitor. The Commission finds that the respondents so acted due to their prior relationship with Mr. Johnson. Mr. Johnson had represented Ms. Jackson at no cost and Ms. Davis had been vindicated from ethics charges with Mr. Johnson's representation.

The Commission does not have to find that Mr. Johnson represented Ms. Davis for free in order to conclude that she used her position to secure unwarranted privileges for him. Ms. Davis testified that she was still paying Mr. Johnson for his representation of her before the Commission, which had concluded October 23, 2001, when the present case was heard before the Commission. This adds to the finding that the representation was close in time to the April 24, 2002 reorganization meeting and indeed played a part in the events that took place at that meeting. The Commission also notes that it dismissed the prior complaint against her. The Commission therefore finds that Ms. Davis used her position to secure unwarranted privileges and advantages for Mr. Johnson in violation N.J.S.A. 18A:12-24(b), when she admittedly solicited from Mr. Johnson an opinion as to whether a conflict of interest would exist if she were to vote on his appointment as board solicitor, when she called special meetings to try to have the Board reconsider or rescind its vote to send out an RFP after the motion to appoint Mr. Johnson was declared failed and when she voted to appoint Mr. Johnson to be board solicitor.

Regarding Ms. Jackson, the Commission again notes that Mr. Johnson previously represented her before the Commission without charge. The Commission concludes that she used her position to secure unwarranted privileges or advantages for Mr. Johnson in violation N.J.S.A. 18A:12-24(b) when she asked Mr. Johnson to submit his firm resume to

seek the appointment as board solicitor, when she sought an opinion from Mr. Johnson as to whether her voting for him would be a conflict of interest, when she made the motion and voted to appoint Mr. Johnson at the reorganization meeting, when she seconded and voted in favor of a motion to rescind the vote to send out an RFP at the May 2nd meeting, when she made the motion and voted in favor of rescinding action taken on all professional services at the May 7th meeting, and when she voted in favor of the motion to appoint Mr. Johnson at the special meeting on June 4th.

The Commission also found probable cause to credit the allegation that Ms. Davis and Ms. Jackson violated N.J.S.A. 18A:12-24(c), which 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.

In *Public Advisory Opinion A03-01* (April 24, 2001), the Commission advised that a board member would violate the Act if she were to participate in discussions and vote on the reappointment of the board attorney when the attorney had prepared simple wills and powers of attorney for her and her spouse. The Commission reasoned that the attorney's representation of her in her personal capacity created a personal involvement that constitutes a benefit to her because it creates a perception that her desire for the attorney's continued appointment as solicitor is based on the attorney being her personal counselor and therefore the board attorney's opinions may be more favorable to her viewpoint. The Commission reiterated that the benefit does not have to be financial.

However, as Mr. Johnson noted in his letter to the Board business administrator, and Mr. Peterson noted in his brief on respondent's behalf, the Commission concluded in the case, *In the Matter of Huber*, C19-96 (May 27, 1997), that a board member did not violate the Act by voting on the appointment of an attorney as board solicitor who had prepared closing papers for the board member eleven years earlier. The Commission finds that the present case much more closely resembles the situation set forth in *Advisory Opinion A03-01*, rather than the *Huber* case. In the former, the personal representation was occurring at the same time as the vote in question to reappoint the attorney as counsel to the Board. In the latter, the representation had occurred eleven years earlier, thus dissipating the conflict. Although Mr. Johnson's representation of the respondents in their respective ethics cases and his representation of Ms. Jackson in a personal injury matter had concluded, his letter to her of April 21, 2002 demonstrates that he was still providing personal legal advice to the respondents just before the reorganization meeting. Ms. Davis and Ms. Jackson both indicated that they had solicited the letter from him. When one couples Mr. Johnson's letter with the additional fact that Ms. Davis is still paying for his

representation of her, it becomes clear that the representation is not so far in the past, as in *Huber* that the conflict has dissipated.

The letter demonstrates the reason that the personal involvement creates a “benefit” for the respondents, if Mr. Johnson becomes board solicitor. The benefit of having him serve as the board attorney is that they will perceive that when the law is not clear, they will be more likely to receive legal advice that is favorable to their position. The Commission therefore concludes that Ms. Davis and Ms. Jackson acted in their official capacity in a matter in which they had a personal involvement that constituted a benefit to them when they participated in discussions, made the motions and voted on the appointment of Mr. Johnson to become the new board solicitor in violation of N.J.S.A. 18A:12-24(c).

DECISION

For the foregoing reasons, the Commission concludes that Ms. Davis and Ms. Jackson violated N.J.S.A. 18A:12-24(b) and (c) of the School Ethics Act.

PENALTY

The respondents argue in their submission that the respondents are being punished for relying on the opinion of Mr. Johnson that the School Ethics Act did not prohibit them for voting for him. They further argue that they were without assistance from the former solicitor and the lack of formal legal advice lead to confusion among the Board members.

The Commission would normally find reliance on legal advice to be a mitigating factor. However, in the present case, the respondents asked for an opinion from an attorney who they knew was seeking a contract with the Board as to whether they could vote on his contract. If they had received advice from a disinterested attorney, the fact that they sought advice would have more weight. Nevertheless, the Commission allows some mitigation of the penalty as a result of their reliance on the opinion on the justification that attorneys are obligated to provide correct legal advice, even when they have an interest in the advice that they are rendering. The Commission however, rejects the argument that the former solicitor forced the respondents to proceed without proper legal representation and that the lack of legal advice from the former solicitor contributed to their conduct. Morris Smith, Esq., who the respondents testified was from another firm, was present at the meeting of June 4, 2002 as he was quoted as thanking the board and regretting that the firm was unable to continue in a Philadelphia Inquirer article dated Wednesday, June 5, 2002 attached to Mr. Freeman’s amendment to his complaint. Mr. Smith’s statement in the article is not relevant for the truth of it, but to show only that he was present.

In considering the nature of the offense and the somewhat mitigating circumstances, the Commission recommends that the Commissioner of Education impose a penalty of censure for both Sara Davis and Rosemary Jackson.

This decision shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only, pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the Commission and all other parties.

Paul C. Garbarini, Chairperson

Resolution Adopting Decision – C08-02

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

Whereas, the Commission found probable cause to credit the allegation that respondents violated N.J.S.A. 18A:12-24(b) and (c) of the School Ethics Act in connection with their votes to appoint an attorney who had represented them on personal matters prior to the appointment; and

Whereas, the Commission reviewed the written submission of the respondents and the complainant and now concludes that their conduct violated N.J.S.A. 18A:12-24(b) and (c) of the School Ethics Act and warrants a penalty of censure; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth the reasons for its decision; and

Whereas, the Commission agrees with the proposed 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 the Resolution was duly authorized by the School Ethics Commission at its public meeting on November 26, 2002.

Lisa James-Beavers
Executive Director

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