

<b>IN THE MATTER</b>	:	<b>BEFORE THE</b>
	:	<b>SCHOOL ETHICS COMMISSION</b>
<b>OF</b>	:	
	:	<b>Docket No.: C10-02</b>
<b>ABDI GASS,</b>	:	
<b>CHESILHURST TOWNSHIP</b>	:	
<b>BOARD OF EDUCATION,</b>	:	<b>DECISION ON VIOLATION</b>
<b>CAMDEN COUNTY</b>	:	

**PROCEDURAL HISTORY**

The above-captioned matter arises from a complaint that was filed on May 13, 2002 by Chesilhurst Board of Education (Board) member Wadia Alwan. Therein, she alleged that Abdi Gass violated N.J.S.A. 18A:12-24(c), by serving as “borough consultant” to the Borough of Chesilhurst, but functioning as the Borough’s financial officer while he was a member of the Board. She also alleged that Mr. Gass violated N.J.S.A. 18A:12-24(d) by continuing employment with the Borough while remaining on the Board. Third, she alleged that Mr. Gass violated N.J.S.A. 18A:12-24(g) by representing the Chesilhurst Borough Council’s position in the defeated budget negotiations process contrary to the Board’s budget presented by the Chief School Administrator (CSA). Last, she alleged that he violated two Board policies by not supporting the adopted budget and supporting budget cuts that were not prepared by the CSA and the Business Administrator.

At its meeting of September 24, 2002, the School Ethics Commission found probable cause to credit the allegations that Mr. Gass violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when, as a member of the Chesilhurst Board of Education (Board), he voted in favor of the budget and participated in the defeated budget negotiations process while he was employed by the Borough of Chesilhurst as a consultant and N.J.S.A. 18A:12-24(g) when he presented the budget cuts advocated by Borough Council to the CSA and the Board. The Commission did not find probable cause to credit the allegations that he had an inherent conflict of interest in violation of N.J.S.A. 18A:12-24(d) by serving on the board and being employed by the Borough or that his violation of board policies violated the Act.<sup>1</sup> The Commission found the material facts to be undisputed regarding the conduct on which it found probable cause and invited Mr. Gass to submit a written statement to the Commission by January 6, 2003, setting forth why he should not be found in violation of N.J.S.A. 18A:12-24(c) and (g) of the Act.

Mr. Gass submitted a timely written statement to the Commission arguing that it was not a violation for him to vote on the budget before it was defeated and that there was no direct evidence that he participated in discussions on the budget after it was defeated.

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<sup>1</sup> In its probable cause decision, the Commission found that it did not have the authority to enforce Board policies, but said that the policies supported the charges upon which it found probable cause.

At its meeting of January 28, 2003, the Commission disagreed and found Mr. Gass in violation of the Act and recommended a penalty of censure since it was the highest penalty that it could recommend against a former board member.<sup>2</sup>

## **FACTS**

Based on the pleadings, the documents submitted and the testimony presented, the Commission found the following facts to be undisputed.

At all times relevant to the allegations in this complaint, Abdi Gass was a member of the Chesilhurst Board of Education. Also, at all times relevant to the allegations in this complaint, Abdi Gass was an appointed consultant to the Borough of Chesilhurst. As Borough Consultant, he has received up to \$18,000 per year. Mr. Gass has served in this capacity for approximately nine years. The minutes of the January 5, 2002 meeting of the Chesilhurst Borough Council show that he was to be appointed as Financial Consultant, but the resolution to do so was tabled. He was appointed as Borough Consultant on January 10, 2002. Mr. Gass holds a Municipal Finance Officer (MFO) certificate. No employees in the Borough hold such a certificate, including the Chief Financial Officer (CFO). The CFO's resume shows that her background up until 2001 was in banking, not municipal finance. Mr. Gass assists her in the performance of her duties since she is new to the position.

Mr. Gass set forth that his role with the Borough "has been primarily to ensure that computer systems, data processing, and the backing up of data are properly maintained and effectively managed so that the operation of the Borough will not be undermined." He also assists the CFO in running annual sewer bills and the bill list from the computer system and helps her to ensure the proper posting of transactions to the system. Mr. Gass stated that one of the primary responsibilities of the CFO is to assist the Mayor and the governing body in the annual budget development process. However, the CFO's resume showed that she had no prior experience with the preparation of a municipal budget. Mr. Gass testified that the independent auditor has accomplished this task, as well as the preparation of the annual financial statements and the supplemental debt statement. Mr. Gass denied being the Borough's financial consultant.

At the March 12, 2002 meeting of the Board, Mr. Gass voted to approve the proposed 2002-2003 School District Budget in the amount of \$3,178,167.50 (local tax levy \$979,763.00) and to submit it to the county office for approval. The motion passed by a vote of five to zero. On March 25, 2002, the Board held a budget meeting. At that meeting, after the CSA presented the budget as approved on March 12, 2002, Mr. Gass proposed a resolution to reduce the local tax share to \$849,763.00. Mr. Gass voted in favor of his motion, but his motion failed by a vote of three in favor and four against. A second resolution to adopt the budget as approved on March 12<sup>th</sup> with a general fund tax

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<sup>2</sup> The Commission was advised that Mr. Gass resigned from his position on the Board at the Board's October 8, 2002 meeting.

levy of \$976,581.00 succeeded with a vote of four in favor and three against. Mr. Gass voted against the motion.

The April election resulted in the defeat of two incumbents who were supported by Wadia Alwan. It also resulted in the defeat of the budget. Specifically, the budget was defeated by a vote of 47 in favor and 186 against. On April 11, 2002, the county office distributed a defeated budget packet to the District. Mr. Gass became Board Vice President at the April 23, 2002 reorganization meeting. By memorandum dated April 26, 2002, the CSA set forth \$100,000 in proposed cuts from the defeated 2002-03 budget. He noted that the cuts would take the District below the Thorough and Efficient range (T&E) so the budget would be automatically reviewed by the Commissioner of Education. The staff reductions that the CSA proposed were only \$12,000 of the \$100,000 in cuts.

On April 29, 2002, at the request of the newly elected Board President Mary Ellen Tillmon, Mr. Gass attended a meeting with Ms. Tillmon and the CSA. The CSA informed the Board by memorandum of April 29, 2002 that the purpose of the meeting was to review the budget cuts proposed by Mr. Gass and Mrs. Tillmon. In Mr. Gass' proposed budget cuts, he set forth a total of \$150,000.00 in budgetary reductions in personnel including elimination of the basic skills teacher position, elimination of the administrative secretary position, elimination of music, art and physical education and the elimination of two teacher aides and one cafeteria aide. These were in addition to almost \$100,000 in non-personnel budgetary reductions for a total of \$250,000 in cuts.

On April 30, 2002, the Board held a special meeting to discuss the budget. The minutes of that meeting provided by Ms. Alwan set forth:

The Board voted to submit the \$250,000.00 budget cuts Mr. Gass and Mrs. Tillmon submitted to the CSA on Monday, April 29<sup>th</sup>. Most Board members stated they did not get a chance to review said cuts and discussion was not permitted.

The Commission learned that these were not the official minutes approved by the Board, but the official minutes also do not reflect that the Board discussed the proposed cuts at that meeting. The Board voted to forward Mr. Gass' budget cuts in the amount of \$250,000 to the Borough Council for their approval. Mr. Gass abstained and the motion passed by a vote of four in favor and two against.

Also on April 30, 2002, the Board met with the Borough Council regarding the budget. On May 9, 2002, the Borough Council held a meeting and adopted a resolution to certify the taxes to the County Board of Taxation in the amount of \$726,581.00, which it said reflected the \$250,000 budgetary reductions proposed by the Board and approved by the Council. Attached to the resolution was the line item memorandum prepared and presented to the CSA by Mr. Gass and Mrs. Tillmon.

Interestingly, on April 22, 2002, the Borough Council President had sent to the Board's CSA a letter setting forth a proposed schedule of meetings with the Board to

discuss the defeated school budget. Therein, he proposed a meeting of May 2, 2002, the purpose of which was stated to be:

[F]or the Governing Body to consider the budget reductions proposed by the school board. The Council would like to see a budget reduction of at least \$250,000. of which the school board had already identified in its last board meeting a reduction of \$150,000. which did not have any negative impact on the educational program. The council is suggesting that the board undertake a comprehensive examination of its 2001-2002 budget to determine the amount of projected fund balance as of June 30, 2002 – (The latest financial reports indicate an appropriation balance of \$145,000. and that all salaries are encumbered.) The board should consider eliminating non-mandated programs such as music, physical education, and art. The Board should also consider leasing one small bus to transport some of its own special edu. students to reduce cost.

A prior ethics complaint against Mr. Gass in 1998 charged him with violating the School Ethics Act in connection with his serving on the Chesilhurst Board of Education and holding a position as consultant with the Borough. The Commission issued a decision on November 24, 1998 finding no probable cause and dismissing the complaint, *In the Matter of Abdi Gass*, C13-98 (November 24, 1998). Although the Commission found no probable cause, it set forth that, because of his role as Borough Consultant, he would have a conflict of interest regarding budget matters. Therefore, the Commission advised Mr. Gass to abstain from discussions on the Board's budget and to recuse himself from participating in matters involving the Borough to the extent that the interests of the Board and the Borough may diverge. The Commission stated that "Failure to adhere to this restriction may result in further proceedings consistent with this opinion."

Mr. Gass provided many facts concerning the factions on the Board and the fact that Ms. Alwan's faction became the minority as a result of the April 22, 2002 election. The Commission considered these facts in rendering its determination.

## **ANALYSIS**

The Commission first found probable cause to credit the allegation that Mr. Gass 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 its prior opinion, *In the Matter of Abdi Gass, supra*, the Commission specifically advised Mr. Gass that he had an indirect financial involvement with the Borough due to his position as Borough Consultant and therefore he would violate the Act if he were to participate as a Board member in budget discussions. Based on the undisputed facts set forth above, Mr. Gass voted on the budget on March 12, 2002. He made a motion to lower the budget and voted against the budget that he had previously supported on March 25, 2002. In addition, he submitted proposed budget cuts to the CSA, attended a meeting with the CSA and Mrs. Tillmon. Further, according to Mr. Gass' own witness, he presented the revised budget with the cuts to the Borough Council at the April 30, 2002 meeting. The Commission finds that, not only did Mr. Gass act in clear contravention of its prior decision regarding Mr. Gass, but it concludes that he acted in his official capacity in a matter in which he had an indirect financial involvement that might reasonably be expected to impair his objectivity in violation of N.J.S.A. 18A:12-24(c).

The Commission also found probable cause that he represented the Chesilhurst Borough Council's position in a matter pending before the Board in violation of N.J.S.A. 18A:12-24(g). The Council's position was contrary to the budget presented by the CSA, which was initially adopted as the Board's budget as reflected in the Board minutes of March 12 and 25, 2002, and later revised by the CSA's memorandum of April 26, 2002 after the defeat of the budget in the election. N.J.S.A. 18A:12-24(g) provides:

No school official...shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the district in which he serves or in any proceeding involving the school district in which he serves or, for officers and employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities.

After the Board's budget was defeated in the April election, the CSA should have proposed cuts for the Board to consider. Chesilhurst Board Policy F3113 sets forth that the CSA and business administrator are responsible for formulating the annual budget. If the cuts that the CSA proposes are favorable to the Board, then the cuts would be presented to the Borough Council for consideration. Instead, the Borough Council President's letter of April 22, 2002 to the CSA sets forth the Borough's proposed cuts of \$250,000 including cuts to what he calls "non-mandated" programs such as music, physical education and art. In the same letter, the Council suggested that the Board undertake a comprehensive examination of its 2001-2002 budget and stated that the amount of projected fund balance as of June 30, 2002 was \$145,000 and that all salaries were encumbered, according to the latest financial reports. This information regarding the projected fund balance, which the Council set forth, had not even been discussed or delivered to the Council as of that date. Prior to the April 22, 2002 letter, the CSA had not set forth any cuts that he proposed to make in response to the defeat of the school budget. He did not do so until April 26, 2002 when he set forth \$100,000 in cuts that did not include any cuts to the programs that the

Borough proposed. Mr. Gass and Mrs. Tillmon then met with the CSA, and, amazingly, the cuts of \$250,000 that the Borough proposed in its April 22, 2002 letter, eliminating music, physical education and art programs, became the resulting budget from that meeting. Mr. Gass presented those cuts to the Board at its April 30, 2002 meeting, where the Board approved them without discussion. Chesilhurst Board Policy F3100 requires that the Board support the adopted budget, after the legally required budget hearing is held and after the county superintendent approves it. The Board did not support the adopted budget as required by F3100 by approving \$250,000.00 in cuts. Mr. Gass then presented the cuts to the Council at the April 30, 2002 Borough Council meeting with the Board. The Council then approved the cuts that went way beyond what the CSA was willing to make. Based on the foregoing, the Commission concludes that Mr. Gass represented the Borough Council in a matter pending before the Board in violation of N.J.S.A. 18A:12-24(g).

## **DECISION**

For the foregoing reasons, the Commission concludes that Mr. Gass violated N.J.S.A. 18A:12-24(c) and (g).

## **PENALTY**

The Commission has found that Mr. Gass flagrantly ignored the Commission's prior decision cautioning him that participation in budget matters would violate the Act. He fully participated in the approval of the budget both before and after its defeat by the voters. Therefore, the Commission would have recommended that the Commissioner of Education remove Mr. Gass from his position on the Chesilhurst Board of Education. However, because he abruptly resigned from the Board after the Commission's finding of probable cause at its meeting of September 24, 2002, the highest penalty that the Commission can impose is a censure. The Commission therefore recommends that the Commissioner of Education impose a penalty of censure.

This decision, having been adopted by the Commission, 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, the respondent 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 School Ethics Commission and all other parties.

Paul C. Garbarini, Chairperson

### **Resolution Adopting Decision – C10-02**

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and the testimony of the parties; and

Whereas, the Commission found probable cause to credit the allegations that Mr. Gass violated N.J.S.A. 18A:12-24(c) and (g) of the School Ethics Act; and

Whereas, the Commission reviewed the written submission of Mr. Gass in response to the finding of probable cause; and

Whereas, the Commission now concludes that respondent violated the School Ethics Act and believes that removal would be the appropriate penalty for the reasons set forth, but cannot impose removal because Mr. Gass resigned from the Board;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter finding Abdi Gass in violation of the Act and recommending that the Commissioner of Education impose a penalty of censure.

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Paul C. Garbarini, Chairperson

I hereby certify that the School Ethics Commission adopted this decision at its public meeting on January 28, 2003.

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Lisa James-Beavers  
Executive Director