
IN THE MATTER

OF

WILLIAM PATTERSON
SOMERDALE BOARD OF EDUCATION
CAMDEN COUNTY

BEFORE THE
SCHOOL ETHICS COMMISSION

Docket No.: C11-03

DECISION

PROCEDURAL HISTORY

The above matter arises from a complaint filed by Somerdale Board of Education members Calvin W. Gunning and Linda Giambri on February 14, 2003 alleging that fellow Board member William Patterson directed the Board Solicitor to subpoena bank records to conduct an investigation in the District in violation of N.J.S.A. 18A:12-24.1(d) and (e). Complainants also allege that Mr. Patterson had a conflict of interest in violation of N.J.S.A. 18A:12-24(c) when he voted on a matter regarding the Board Solicitor.

Mr. Patterson filed an answer to the complaint on April 8, 2003 admitting that he directed the Board Solicitor to subpoena bank records. He asserts that his action was a result of repeated requests by the Board's Finance Committee to obtain the information and the advice of the Board Solicitor that he had the authority as Board President to take such action. Also, in his answer, Mr. Patterson admits that the Board Solicitor's firm represented his wife in 2001. However, Mr. Patterson asserts that he recused himself in votes involving the Board Solicitor. Mr. Patterson denies that he violated any provision of the Act.

The Commission invited the parties to its May 27, 2003 meeting to present witnesses and testimony to aid in the Commission's investigation. Mr. Patterson was represented by counsel, Steven Janove, Esquire. Complainants did not appear. The Commission also heard testimony from Board member, James Walsh. After hearing testimony, the Commission voted at its public meeting to find probable cause to credit the allegation that Mr. Patterson's conduct was in violation of the Code of Ethics, N.J.S.A. 18A:12-24.1(d) and (e) and the Act, N.J.S.A. 18A:12-24(c).

Mr. Patterson submitted timely written submissions and provided additional information in response to the Commission's probable cause decision which were considered by the Commission at its meeting of August 26, 2003. Mr. Patterson submitted his response by way of counsel, Steven Janove, Esquire. The Commission now reverses the finding of probable cause, finds no violation and dismisses the complaint against him.

FACTS

The Commission found the following facts to be undisputed.

William Patterson has intermittently served on the Somerdale Board of Education since 1986. Mr. Patterson did not serve on the Board for the periods of April 1988 through April 1989 and April 1995 through April 1997. At all times relevant to the complaint herein, Mr. Patterson served as Board President.

Mr. Patterson directed the Board Solicitor to subpoena bank records without the prior vote of the Board for approval.

In 2002, criminal charges were filed against the District's former Business Administrator involving his improper use of a District debit card. The District had also issued debit cards to the Superintendent and to Complainant, Calvin Gunning. To ensure the protection of the District's debit cards, in July 2002, the Board's Finance Committee chairperson, James Walsh, requested documentation from the District's business office on all transactions for each of the debit cards. The business office did not respond. In August 2002, Board member Frank Sabatini became the chairperson of the Finance Committee and also made a request to the business office for the aforementioned documentation. The business office did not respond to the second request. Mr. Walsh and Mr. Sabatini requested that Mr. Patterson follow-up with the request of the Finance Committee. Mr. Patterson consulted with the Board Solicitor, who advised him to make an informal request for the documentation to the bank where the cards were issued. Mr. Patterson contacted the branch manager of the bank and was informed that a subpoena must be produced to acquire the information requested. Mr. Patterson was advised by the Board Solicitor that he had the authority to have a subpoena issued to the bank for the production of debit card records. Mr. Patterson directed the Solicitor to issue the subpoena which was issued by the Board Solicitor on November 21, 2002. On January 10, 2003, Mr. Patterson wrote a letter to the full Board. In the letter Mr. Patterson set forth:

[The Superintendent of Schools] seems opposed to my issuing a subpoena for bank records. She, however, stated at the personnel committee meeting that it requires the board's permission. She was wrong. It does not. This subpoena is issued under the unambiguous authority given to the board president by the legislature (Title 18A:6-20). However, if five members of the board, knowing the information in this memo, ask me to do so I will instruct the solicitor to discontinue enforcement of the subpoena.

In their certifications in support of Mr. Patterson, Board members James Walsh, Frank Sabatini, Janet Barkoff and James Abbott set forth:

In order to get a complete response to the request for documentation about the debit cards, I am aware of and supported a request made to the Board's Solicitor to serve a subpoena on Fleet Bank, where the debit card accounts were held. The purpose of the subpoena was to obtain complete documentation about the debit cards. I can state with certainty that Mr. Patterson did not act on his own in

conducting a personal investigation into the debit cards. Mr. Patterson acted properly with the knowledge and approval of the Board's Finance Committee and the Board.

In his response to the Commission's probable cause decision, Mr. Patterson argues that he and the aforementioned Board members acted with the express goal of protecting the District's funds. Mr. Patterson also argues that the majority of the Board supported the issuance of the subpoena.

There are no meeting minutes to show that the Board voted to approve the issue of the subpoena.

Mr. Patterson voted on a matter pertaining to the Solicitor when his wife had a business relationship with him.

In 2001, the Board Solicitor's partner represented Mrs. Patterson in a matter involving a minor car accident. Mrs. Patterson was charged with a traffic violation. The services provided to Mrs. Patterson included the writing of a single letter and making a brief court appearance on her behalf. At that time, Mr. Patterson disclosed to the Board the legal services provided by the Board Solicitor's firm. Mrs. Patterson was billed \$500.00 by the firm. The minutes from the Board's April 29, 2002 meeting indicated that Mr. Patterson voted "yes" to appoint the Solicitor for the position of Board negotiator. In his response, Mr. Patterson provided affidavits from Board members Martha Gray and Frank Sabatini who stated that the aforementioned meeting minutes "mistakenly show that Mr. Patterson voted "yes" for the appointment of Ronald Sahli, Esquire as Board negotiator. Ms. Gray and Mr. Sabatini further indicated that they "distinctly remember that Mr. Patterson did in fact recuse himself on the votes involving Mr. Sahli."

ANALYSIS

The Commission found probable cause that Mr. Patterson directed the Board Solicitor to issue a subpoena for bank records without the Board's prior vote for approval in violation of the Code of Ethics, N.J.S.A. 18A:12-24.1(d) and (e). The Commission notes that in complaints alleging a violation of the Code of Ethics, the complainant has the burden of proving factually that the respondent's conduct is in violation of the Act. Section (d) of the Code of Ethics provides:

I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

In its decision finding probable cause, the Commission acknowledged the certifications of Mr. Walsh, Mr. Abbott, Ms. Backoff, and Mr. Sabatini. In their certifications, the Board members note that they were aware of the subpoena for records and supported the request. The Commission, however, noted Mr. Patterson's letter to the Board dated January 10, 2003 wherein he set forth that the Superintendent of Schools believed that the Board should have voted on the issuance of the subpoena. The Commission also noted that there are no Board meeting minutes to show that a vote or discussion was ever held regarding the Solicitor's subpoena of records.

The Commission therefore concluded that despite the certifications of the above-referenced Board members, Mr. Patterson acted independently from the Board and retroactively attempted to obtain Board approval.

In its probable cause decision, the Commission also disagreed with Mr. Patterson's argument that N.J.S.A. 18A:6-20 supported his actions. N.J.S.A. 18A:6-20 provides:

Any party to any dispute or controversy or charged therein, may be represented by counsel at any hearing held in or concerning the same and shall have the right to testify, and produce witnesses to testify on his behalf and to cross-examine witnesses produced against him and to have compulsory process by subpoena to compel the attendance of witnesses to testify and to produce books and documents in such hearing when issued by (a) the president of the board of education, if the hearing is to be held before such board, or (b) the commissioner, if the hearing is to be held before such board or before one of its committees, or (c) the president and secretary of the state board, if the hearing is to be held before such board or before one of its committees, or (d) the chairman of the board of trustees of the State or county college or industrial school, if the hearing is to be held before such board.

The Commission noted that the above provision discusses the subpoena power of a board president in the resolution of disputes or controversies that are heard before the Board. However, it found that in the present case there was no apparent dispute or controversy to be addressed. The bank records were merely requested to ensure the protection of the District's debit cards. The Commission further noted that under N.J.S.A. 18A:6-20, it can be inferred that the board president is given the authority to subpoena on behalf of the Board, but should formally discuss the matter with the Board before such actions are taken. The Commission found probable cause that Mr. Patterson administered the school in violation of N.J.S.A. 18A:12-24.1(d) when he directed the Solicitor to subpoena the bank records without officially discussing the matter with the Board.

However, the Commission reconsidered this finding based upon Mr. Patterson's response that the majority of the Board supported the issuance of the subpoena and that his intent was to protect District funds. Therefore, the Commission now finds that Mr. Patterson did not attempt to administer the schools or fail to work together with his fellow Board members in violation of N.J.S.A. 18A:12-24.1(d).

Complainants also allege that Mr. Patterson violated N.J.S.A. 18A:12-24.1(e), which requires that school board members take no private action that may compromise the board. In its probable cause decision, the Commission found sufficient evidence that Mr. Patterson improperly directed the Solicitor to subpoena bank records without a formal Board discussion or vote on the matter. The Commission found that his independent action could compromise the integrity of a school board when its members take action of such magnitude without Board approval.

However, in his response, Mr. Patterson argues that there is no law that requires the Board to conduct a vote on such matters. The Commission notes that no statute or case law has been provided to this effect. In addition, Mr. Patterson has demonstrated that he had the support of four Board members who represent the majority of the Board. The Commission is persuaded by Mr. Patterson's argument and now finds that Mr. Patterson's conduct did not constitute private action that could compromise the Board.

Next, Complainants allege that Mr. Patterson violated N.J.S.A. 18A:12-24(c) when he voted to appoint the Board Solicitor when his wife had received legal representation from the Solicitor's firm. 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 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 Commission has previously addressed a similar issue in *In the Matter of Rosemary Jackson and Sara Davis*, SEC Docket No. C08-02 (November 26, 2002). The Commission held that two board members 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 the board solicitor, who had provided private legal services to them. The Commission reasoned that the benefit is derived from the possible perception that when the law is not clear, the two board members will be more likely to receive legal advice that is favorable to their position. However, the Commission held 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. *In the Matter of Huber*, SEC Docket No. C19-96 (May 27, 1997).

Mr. Patterson argued in his initial answer that there was no violation of this section, since the Board Solicitor's partner represented Mrs. Patterson. In its probable cause decision, the Commission recognized that the Board Solicitor and any partners to his firm share monetary interests derived from the legal services provided by the firm. Mrs. Patterson was represented by the Board Solicitor's partner in a matter for which the firm billed her \$500.00. The Commission found that Mrs. Patterson's relationship with the firm clearly created some benefit to her. The Commission further found that under these circumstances, it is more probable for Mr. Patterson to receive legal advice that is favorable to his position when legal questions are addressed by the Board.

Mr. Patterson argued in his initial answer that he recused himself from all matters pertaining to the Solicitor. However, in its probable cause decision, the Commission noted that in the Board's minutes of April 29, 2002, Mr. Patterson voted "yes" for the appointment of the Solicitor, Ronald Sahli, Esquire, to be the Board's negotiator. The Commission also noted that Mrs. Patterson was represented by the Board Solicitor's firm in 2001 and found that the representation was not so far in the past, as in *Huber*, that the conflict had dissipated.

In his response to the Commission's probable cause decision, Mr. Patterson provided two affidavits from Board members Martha Gray and Frank Sabatini wherein they distinctly recall

Mr. Patterson's abstention from the aforementioned vote. The Commission also notes that the minutes from the same meeting show Mr. Patterson's recusal from the vote to appoint Mr. Sahli as the Board Solicitor. Mr. Patterson claimed that the minutes were to be changed by the Board Secretary, but the Board Secretary left the District before doing so.

The Commission previously addressed a similar matter in *In the Matter of Mary Adams*, Docket No. C44-02 (May 1, 2003). The Commission found that Mary Adams violated N.J.S.A. 18A:12-24(c) by voting on bill lists containing bills from her husband's company. Ms. Adams argued that despite the Board minutes to the contrary, that at three separate meetings, the Board secretary not only did not hear her abstain from voting on the bills in question, but erroneously heard her vote "yes." Ms. Adams admitted that she was aware that it is a violation of the School Ethics Act to vote on a bill payment to her husbands company, but failed to correct the aforementioned minutes. The Commission ultimately found that she acted in a matter in which she had a direct or indirect financial involvement that might reasonably be expected to impair her objectivity or independence of judgment.

The present matter is distinguished from the *Mary Adams* case. There is uncontroverted evidence from Mr. Patterson and two Board members that Mr. Patterson abstained from the Board's vote to appoint Mr. Salhi as negotiator for the Board. The Commission notes that these are unique circumstances where the Board Secretary present at the meeting no longer works in the District or the Commission would still require amended Board minutes to prove that a vote was different than that recorded. In this particular case, however, it is not possible to amend the minutes. Based upon the new evidence provided, the Commission now finds that Mr. Patterson did not act in a matter in which he had a financial involvement in violation of N.J.S.A. 18A:12-24(c).

DECISION

For the foregoing reasons, the Commission finds that Mr. Patterson did not violate N.J.S.A. 18A:12-24.1(d) or (e) of the Code of Ethics when he directed the Board Solicitor to subpoena bank records and did not vote on a matter pertaining to the Board Solicitor in violation of N.J.S.A. 18A:12-24(c). The Commission, therefore, dismisses the complaint against him.

This decision herein represents final agency action and is appealable to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C11-03

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

Whereas, the Commission found probable cause to credit the allegations that Mr. Patterson violated N.J.S.A. 18A:12-24.1(d) and (e) of the Code of Ethics and N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission reviewed the written submissions and additional information provided by Mr. Patterson in response to the finding of probable cause; and

Whereas, the Commission now finds that Mr. Patterson did not violate the aforementioned provisions and reverses its finding of probable cause;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter.

Paul C. Garbarini, Chairman

I hereby certify that the School
Ethics Commission adopted this decision
At its public meeting on September 23, 2003

Lisa James-Beavers
Executive Director