
JUDY LEIDNER	:	
	:	BEFORE THE SCHOOL
V.	:	ETHICS COMMISSION
	:	
KENNETH KUCHTYAK,	:	Docket No.: C11-99
WOODBRIAGE TOWNSHIP	:	
BOARD OF EDUCATION,	:	
MIDDLESEX COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a claim that Woodbridge Township Assistant Superintendent Kenneth Kuchtyak violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when he allegedly interfered with and changed the vote of a member of the Woodbridge Township Board of Education (Board) during a Board meeting. Specifically, complainant alleges that since Mr. Kuchtyak is Assistant Superintendent for Personnel Services and the vote in question was on a personnel item, the vote directly affected his position and his interference thus violated the School Ethics Act.

In his answer, Mr. Kuchtyak denied that he persuaded a Board member to change his vote and denied having violated any provisions of the School Ethics Act.

The Commission invited the parties to attend the Commission’s meeting on October 26, 1999, and present witnesses and testimony to aid in the Commission’s investigation. Both parties appeared. Mr. Kuchtyak, who was represented by the board attorney, Viola Lordi, Esq., presented the Superintendent and several members of the Board as witnesses.

During its public meeting of November 23, 1999, the Commission voted to find no probable cause and dismiss the complaint for the reasons set forth below. At a special meeting of the Commission on January 31, 2000, it adopted this decision.

FACTS

The Commission was able to discern the following material facts on the basis of the pleadings, documents, testimony and the videotape of the meeting.

On April 29, 1999, the complainant attended a regular meeting of the Board. Board member James Russo, who chairs the Personnel Committee, made a motion to

move items 1-10 and 16-31 on the personnel agenda. Mr. Guzzo seconded the motion and a roll call vote was taken. Mr. Russo voted “yes” on items 1 through 10 and 16 through 31 of the personnel agenda, but voted “no” as to item 8 and abstained on item 15, although item 15 was not part of his motion. Item 8 on the personnel agenda was a reduction in force. The item did not gain enough votes to pass. A discussion ensued between Mr. Kuchtyak and the Superintendent regarding the vote that was inaudible to the public. Thomas Scarano, the Board President proceeded to address a question to the Board attorney when he was interrupted. Mr. Kuchtyak then called, “Tom, Tom” and said something to Mr. Scarano. Mr. Scarano then directed the Board Secretary to record a “yes” vote for Mr. Russo on item 8 while Mr. Kuchtyak stood near him. As the Board Secretary looked for clarification, Mr. Kuchtyak indicated that Mr. Russo was changing his vote to “yes” on all of the personnel items that he had moved. The Board Secretary then told Mr. Russo that he had to say that he was changing his vote. Mr. Scarano and another board member then told him so as well. At that point, Mr. Russo said that he would change his vote and Mr. Scarano told the Board Secretary to make note of the change.

The complainants testified that members of the viewing public did not understand what had taken place and they presented affidavits indicating that some members of the Board were confused as well. No Board member or administrator took the opportunity to explain the proceedings that had just occurred and the Board attorney proceeded to discuss the next agenda item. The minutes of the meeting make no mention of the discussion and provide only that Mr. Russo voted affirmatively on all items. All other Board members, except Mr. Guzzo, voted negatively on item 8, so Mr. Russo’s changed vote did not alter the outcome.

According to Mr. Scarano, the Board has a policy that a Board member who moves an agenda item has to vote in favor of that agenda item. The Board members and administrators agreed that this was a common practice. Mr. Scarano indicated that it was this practice upon which they were relying when he said that Mr. Russo wished to change his vote.

ANALYSIS

The complainant alleges that Mr. Kuchtyak’s actions were tantamount to taking part in the voting process and were in violation of N.J.S.A. 18A:12-22(a), which provides:

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.

In support of her position, she cites In the Matter of Fuller, C32-95, (removed by Commissioner Decision, January 21, 1998), as a case in which the Commission found that a school official had violated the public trust.

The School Ethics Commission has previously ruled that it does not find a violation of the School Ethics Act based solely upon N.J.S.A. 18A:12-22. This section sets forth the Legislature's findings and declarations. It is very useful in interpreting the provisions of the Act, but it does not alone set forth conduct that is prohibited under the Act. The Commission cited it as a guide to interpreting the Act in the Fuller case. The Commission found that Mr. Fuller was in violation of N.J.S.A. 18A:12-24(a) of the School Ethics Act for serving as a township administrator and a board member at a time when his district was a Type I district. The Commission did not base its finding of a violation on N.J.S.A. 18A:12-22. In order to find a violation, the Commission must look to the prohibited acts listed in N.J.S.A. 18A:12-24.

The provisions that are applicable to this situation are N.J.S.A. 18A:12-24(b) and (c). N.J.S.A. 18A:12-24(b) prohibits a board member from using or attempting to use his position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. Complainant argues that there was a direct conflict on Mr. Kuchtyak's part since the items being voted on had to do with the personnel agenda and Mr. Kuchtyak is Assistant Superintendent for Personnel. Mr. Kuchtyak's spouse works for the district, but she is tenured so the complainants do not allege that she would have benefited if the motion had failed. The Commission can discern no privilege or advantage that could have resulted to Mr. Kuchtyak or anyone else by persuading Mr. Russo to change his vote from a "no" to a "yes." Thus, there is no information before the Commission that would indicate that Mr. Kuchtyak used or attempted to use his position to secure unwarranted privileges, advantages or employment for himself or anyone else by contributing to a discussion which ultimately resulted in the change of Mr. Russo's vote. Thus, the Commission finds no probable cause regarding N.J.S.A. 18A:12-24(b).

The other applicable section is N.J.S.A. 18A:12-24(c). It 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.

The involvement that the complainant has identified is that which Mr. Kuchtyak has in the passage of the items of the agenda that fall under the heading of “personnel.” There is no financial gain that could accrue to Mr. Kuchtyak or his family as a result of the passage of the personnel agenda. Therefore, such an involvement is not a financial involvement that might reasonably be expected to impair his objectivity. The involvement alleged here is that Mr. Kuchtyak will be viewed as doing his job well if the Board passes the personnel agenda. This is not a conflict of interest. Therefore, Mr. Kuchtyak did not have a personal involvement that could have conferred a benefit on him or any member of his immediate family. Thus, the Commission finds no probable cause that N.J.S.A. 18A:12-24(c) has been violated.

Finding no probable cause to credit the allegations that Mr. Kuchtyak violated any provision of the School Ethics Act, the Commission dismisses the complaint against him.

REQUEST FOR SANCTIONS

The respondent has asked that, if the Commission finds no probable cause, that it find that the complaint was frivolous and impose sanctions against the complainant pursuant to N.J.S.A. 18A:12-29(e). In order to find a complaint to be frivolous, the Commission must find that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing 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. [N.J.S.A. 2A:15-59.1]

The Commission has viewed the videotape and read the minutes and transcript of the meeting in question. As a result of its investigation, it believes that this complaint arose from the utter confusion that was created at the meeting by the change in Mr. Russo’s vote. First, the Commission is unaware of any statute, regulation or rule of Robert’s Rules of Order that mandates that a Board member who makes a motion cannot vote against it. If such a rule was the Board’s policy as the Board members have testified, then the Board should have announced, for the benefit of the other Board members and the observing public, that this policy was the reason that Mr. Russo was changing his vote to a “yes.” Taking one minute to explain could have prevented the complainants from believing that some impropriety had occurred.

Second, the Commission believes that the method of voting on so many items in one motion, when there was clearly opposition to a couple of items, created additional

confusion. If there were items in the personnel agenda with which Board members did not agree, then they should have asked to have them removed from the motion and voted on separately. This also would have diminished the appearance that the Board was doing something improper.

The Commission finds that the complaint was filed because the Board created confusion and lost the confidence of the public in doing so. The complaint was not filed in bad faith or without any reasonable basis in law. Therefore, the Commission does not find the complaint to be frivolous.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that Kenneth Kuchtyak violated the School Ethics Act and dismisses the complaint against him. It does not find that the complaint was frivolous.

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 – C11-99

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and has considered the testimony of parties in executive session, in addition to its investigation; and

Whereas, the Commission has 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 dismisses the charges; and

Whereas the Commission has reviewed the proposed decision of its staff; 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 this Resolution was duly adopted by the School Ethics Commission at its public meeting on January 31, 2000.

Lisa James-Beavers
Executive Director