

IN THE MATTER OF	:	BEFORE THE SCHOOL ETHICS COMMISSION
	:	
	:	
ANNE PIRILLO	:	Docket No. C12-04
WASHINGTON TOWNSHIP	:	
BOARD OF EDUCATION	:	
GLOUCESTER COUNTY	:	DECISION
	:	

PROCEDURAL HISTORY

Complainant, Ray Montgomery, filed a complaint against Anne Pirillo, who, at the time of the complaint, was a member of the Washington Township Board of Education (Board). The complaint was filed on February 26, 2004, alleging violations of N.J.S.A. 18A:12-24(a), (c) and (f) of the School Ethics Act (Act). Specifically, Mr. Montgomery alleged that Ms. Pirillo attended and participated in discussions during the October 15, 2003 Business Affairs Committee meeting when bids for the purchase of new copiers were discussed and one of the vendors that had submitted a bid was a company in which her husband possessed a financial interest. On March 5, 2004, the Commission sent the complaint to Ms. Pirillo notifying her that she had 20 days from receipt of the complaint to file an answer with the Commission. On March 30, 2004, the Commission sent a letter to Ms. Pirillo notifying her that, per a conversation with Greg Santori, Esq., she had been granted a 10 day extension to file an answer. On April 16, 2004, the Commission received a letter from Mr. Santori that confirmed his representation of Ms. Pirillo and notified the Commission that Ms. Pirillo elected not to submit a written statement in opposition to the complaint since she intended to resign from the Board.

On April 27, 2004, the Commission sent a letter to Mr. Santori indicating that Ms. Pirillo's resignation did not make the complaint moot, but only made certain penalties moot. It further provided notification that the Commission, pursuant to N.J.A.C. 6A:28-1.10(e), deemed each allegation in the complaint as admitted due to Ms. Pirillo's failure to answer the complaint and would discuss the complaint at its May 25, 2004 meeting.

At the May 25, 2004 meeting, the Commission heard testimony from Kim Belin and Karl Feltes, both from the Office of Compliance Investigation in the Department of Education. The Commission tabled the complaint until the June meeting in order to obtain further information from the complainant. The complainant submitted additional information to the Commission on June 17, 2004. At its public meeting on June 22, 2004, the Commission voted to dismiss the allegation that Ms. Pirillo violated N.J.S.A. 18A:12-24(a) and voted to find probable cause to credit the allegations that Ms. Pirillo violated N.J.S.A. 18A:12-24(c) and (f). The reasons for this decision were set forth in a probable cause decision dated July 9, 2004.

The Commission found that the material facts were not in dispute with respect to the issue upon which it found probable cause and, therefore, the Commission advised Mr. Santori that it would decide the matter on the basis of written submissions. Mr. Santori was invited to provide a written submission to the Commission within 30 days of the date of the probable cause decision and set forth why the Commission should not find Anne Pirillo in violation of N.J.S.A. 18A:12-24(c) and (f) for attending and participating in discussions during the October 15, 2003 Business Affairs Committee meeting when bids for the purchase of new copiers were discussed and one of the vendors that had submitted a bid was a company in which her husband possessed a financial interest. He was also told that his written submission should include the respondent's position on an appropriate sanction should the Commission determine that the Act was violated.

Mr. Santori submitted a timely response on August 9, 2004, which included a written statement from Ms. Pirillo. Ms. Pirillo set forth in her statement that because of her experience in the business, she thought that her presence in the deliberations would be helpful for the Board. She noted that in filing her ethics disclosure statement that she had disclosed her husband's interest to the Board. Ms. Pirillo further set forth that the business administrator was told by the counsel for the Board that it was not a conflict of interest if the contract was bid upon or awarded to her husband due to the fact that she did not hold an interest in Panasonic of Southern NJ/Tri State Office Solutions (Panasonic), a company in which her husband possessed a financial interest. She also argued that she did not make any statements regarding her husband's company and the statements she did make did not shed any favor on her husband's bid. She denied giving her husband information to cause him to resubmit his bid and explained that it was a conversation with the business administrator that caused her husband to resubmit his bid. She stated that she had no intentions to further her husband's business or to gain privileged information or contacts. Mr. Santori requested the Commission to seriously consider imposing a reprimand in the event that the Commission determines that a violation of the Act has occurred, especially given that Ms. Pirillo has resigned from the Board. He argued that Ms. Pirillo made a full disclosure of her husband's interest in the company and she reasonably believed that her attendance at the October 15, 2003 meeting would assist the Business Affairs Committee in reaching a decision.

The Commission discussed Ms. Pirillo's response at its August 24, 2004 meeting. The Commission voted to find Ms Pirillo in violation of N.J.S.A. 18A:12-24(c) and (f) and recommended a penalty of censure in light of the fact that she is no longer a Board member.

FACTS

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

In October 2002, Ms. Pirillo was appointed to the Board and, subsequently, in April 2003, she was elected to the Board. She resigned from the Board effective April 20, 2004. Up until May 2003, she was employed in the photo-copying industry by Panasonic of Southern NJ/Tri State Office Solutions (Panasonic), a company in which her husband possesses a financial interest. Following her election to the Board, Ms. Pirillo was appointed to serve on the Business Affairs Committee.

During the October 15, 2003 Business Affairs Committee meeting, Ms. Pirillo was present during a review and discussion of bids submitted from commercial vendors in response to a solicitation from the district for photo-copying equipment to replace the district's copiers. One of the four bids that were reviewed and discussed was from Panasonic. Based on Ms. Pirillo's written statement that was included in a response from Mr. Santori to the Commission's probable cause determination, Ms. Pirillo made two statements during the October 15, 2003 meeting. The first statement was regarding the reputation of one of the companies that submitted a bid because "...it was well known throughout the industry that they had several issues regarding service." The second statement was about an aspect of a contract submitted by another company that may have thrown off the figures in comparison to the other companies.

During the Business Affairs Committee meeting, the district's purchasing agent discussed with the committee the district's preference for the configuration of copier models submitted by Xerox. The district's purchasing agent adjusted the bid amounts for the bids from the three other vendors to correspond to the bid offered by Xerox. The vendors were not notified by the district of this adjustment. Meanwhile, Panasonic submitted a modified quotation dated October 17, 2003, two days after the Business Affairs Committee meeting. Based on the bid amount adjustment, Panasonic's price quotation became the lowest bid. On October 28, 2003, the Board approved the award of a contract to Panasonic. In the public meeting, Ms. Pirillo abstained from the vote awarding the contract to Panasonic.

ANALYSIS

The Commission found probable cause to credit the allegation that Anne Pirillo's attendance at and participation in discussions during the October 15, 2003 Business Affairs Committee meeting was in violation of N.J.S.A. 18A:12-24(c) and (f) of the Act.

N.J.S.A. 18A:12-24(c) sets forth:

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;

In order to find that a board member has violated subsection 24(c), the Commission looks to whether a school official or a member of his immediate family has a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. Ms. Pirillo's husband falls within the definition of "member of immediate family," pursuant to N.J.S.A. 18A:12-23. The Commission must next determine if Ms. Pirillo's husband had a direct or indirect financial involvement that might reasonably be expected to impair Ms. Pirillo's objectivity or independence of judgment in acting in her official capacity. In this case, Ms. Pirillo's husband has a direct financial involvement in Panasonic since he possessed a financial interest in Panasonic. This direct financial involvement on the part of her husband might reasonably be expected to impair Ms. Pirillo's objectivity or independence of judgment because the contract could result in increased income to her husband and thus the household. Although Ms. Pirillo abstained from the Board vote to award the contract to Panasonic, she was present at and participated in discussions during the October 15, 2003 Business Affairs Committee meeting when a bid submitted by Panasonic was reviewed and discussed. The Commission noted in SEC v. Michael Kilmurray, C12-94 (January 27, 1998) that "when a school official has a conflict of interest of which the public is aware, and that school official goes behind closed doors when that item is discussed, the situation creates a justifiable impression among the public that their trust is being violated." In Kilmurray, the Commission noted that the public may believe that a board member that sits in on a private session discussion regarding his sister-in-law is actively participating in the discussion behind closed doors, that the board member will tell his relative what was said, or at the least, that the other board members will be inhibited in their discussion of the matter because of his presence.

In the present case, Ms. Pirillo was present at and participated in a discussion related to a bid submitted by the company in which her husband had a financial interest. She made two comments during those discussions regarding two of the other companies that had also submitted bids. The first comment was about the bad reputation of one of the four companies that had submitted bids to the Board. The second comment was about an aspect of a contract offered by one of the four companies that would have thrown off the figures in comparison to the other companies. In Ms. Pirillo's statement in response to the Commission's probable cause determination, Ms. Pirillo argues that she never made any statements regarding her husband's company and that none of the statements she made shed favor on his bid. The Commission disagrees that her statements did not shed favor on her husband's company. By commenting on one of the other companies in comparison to her husband's company and by commenting on the bad reputation of one of the other companies, Ms. Pirillo did make statements in violation of subsection 24(c) that could have had a beneficial impact on the bid from her husband's company.

Ms. Pirillo also argues that the business administrator was told by the counsel for the Board that it was not a conflict of interest if the contract was bid upon or awarded to her husband due to the fact that she did not own an interest in her husband's company. The Commission agrees that the Board could have accepted a bid from her husband's company and could have entered into a contract with that company. However, Ms.

Pirillo had an obligation under subsection 24(c) not to act in her official capacity in any matter involving her husband's company, including being present during discussions related to her husband's company and participating in those discussions. For the foregoing reasons, the Commission finds that Ms. Pirillo's attendance at and participation in the October 15, 2003 Business Affairs Committee meeting violated N.J.S.A. 18A:12-24(c).

Finally, both Mr. Santori and Ms. Pirillo argue that Ms. Pirillo made a full disclosure of her husband's interest in the company and reasonably believed that her attendance at the October 15, 2003 Business Affairs Committee meeting would be helpful in assisting the committee in reaching a decision. The Commission notes that, pursuant to N.J.A.C. 6A:28-1.5(b), the School Ethics Commission disclosure forms are required to be filed with the County Superintendent with an additional copy maintained on file by the local school district. There is no evidence that Ms. Pirillo's disclosure statement was disseminated to the entire Board. Thus, there is no evidence that Ms. Pirillo made a full disclosure of her husband's interest in the company to the members of the Business Affairs Committee or the entire Board. While Ms. Pirillo may have thought that her attendance at the October 15, 2003 meeting would be helpful to the Business Affairs Committee in making a determination, she still had the duty to comply with the Act and not act in her official capacity on any matter where a member of her immediate family has a direct financial interest. Her attendance may have been helpful if her husband's company was not a bidder, but since her husband's company was a bidder, her attendance only raised suspicions that she was there to help her husband.

The Commission also found probable cause to credit the allegations that Anne Pirillo violated of N.J.S.A. 18A:12-24(f) of the Act, which sets forth:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

Panasonic's resubmission of a bid to the Board just two days after the October 15, 2003 Business Affairs Committee meeting created the appearance that Ms. Pirillo violated subsection 24(f) by providing her husband with information from that meeting to assist in development of the resubmitted bid. Panasonic was the only company of the four bidders to resubmit a bid to the Board. However, in Ms. Pirillo's statement, she denies that she gave her husband any information that caused him to resubmit his bid. She states that it was a conversation with the business administrator that caused her husband to resubmit his bid. Under subsection 24(f), an appearance of a violation is not enough to sustain the finding of a violation, especially in this case where Ms. Pirillo has denied that she gave her husband any information that caused him to resubmit his bid. Therefore, the Commission cannot find a violation of N.J.S.A. 18A:12-24(f).

DECISION

For the reasons discussed above, the Commission finds that Anne Pirillo violated N.J.S.A. 18A:12-24(c) when she was present at and participated in discussions during the October 15, 2003 Business Affairs Committee meeting when bids for the purchase of new copiers were discussed and one of the bidders was a company in which her husband possessed a financial interest. Mr. Santori argues that the sanction should be a reprimand in light of the fact that Ms. Pirillo resigned from the Board. The Commission is not persuaded that the sanction should be a reprimand simply because of the fact that Ms. Pirillo has already resigned from the Board. She was not only present during the discussions at the October 15, 2003 meeting, but she made two statements during that meeting. Therefore, the Commission recommends that the Commissioner of Education impose the highest sanction that he is capable of imposing on a former board member, a penalty of censure.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter 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 13 days from the date on which the Commission's decision was mailed to the parties, Mr. Santori 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 – C12-04

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

Whereas, at its meeting of August 24, 2004 the Commission found that Anne Pirillo violated N.J.S.A. 18A:12-24(c) of the Act and recommended that the Commissioner of Education impose a sanction of censure; and

Whereas, at its meeting of September 30, 2004, the Commission reviewed a draft decision prepared by its staff 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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 30, 2004.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C12-04