

The Commission received timely submissions from all parties and reviewed them at its meeting on December 21, 1999. At a special meeting on January 31, 2000, the Commission adopted this decision concluding that the conduct of the respondents did not constitute a violation of N.J.S.A. 18A:12-24(c).

FACTS

The Commission noted in its probable cause determination that it found the following material facts to be undisputed. George Schwenger and John Knorr were elected to the Galloway Township Board of Education in April 1999. Complainant Gary Bowen was the Superintendent of Schools in Galloway until his contract was terminated in June of 1999. At a June 21, 1999 Board meeting, George Schwenger and John Knorr participated in discussions and voted against the motion to renew Mr. Bowen's employment with a new three-year contract. The motion failed by a vote of four to five. Mr. Knorr then made and Mr. Schwenger seconded a motion to not reappoint Mr. Bowen. With Mr. Knorr and Mr. Schwenger voting in the affirmative, this motion passed by a five to four vote.

Mr. Schwenger's wife was the confidential secretary to the Superintendent from February 1993 until July 1998. In July 1998, Mrs. Schwenger was transferred on an involuntary basis to a bargaining unit secretarial position. The transfer was made for economic reasons and was made permanent in September 1998. Gary Bowen recommended and approved this transfer. As a result, Mrs. Schwenger no longer works for the Superintendent. Mrs. Schwenger was paid a salary higher than the highest step on the salary guide for the GTEA while she was the confidential secretary to the Superintendent. Thus, after her involuntary transfer, Mrs. Schwenger's salary was frozen at its current level and she has not received and cannot receive any increase in salary until the salary guide catches up to her salary. However, she is eligible for longevity payments and recognition awards as are all secretaries in the bargaining unit. The salary guide is not expected to catch up to her salary in the near future so she will not receive any pay increases in the foreseeable future. Prior to her transfer, Mrs. Schwenger received salary increases on a yearly basis.

Mr. Schwenger decided to run for election to the Board after the transfer of his wife. He testified that his wife considered the transfer a demotion. Mr. Schwenger campaigned on a platform that the district needed a "change in leadership." He further testified that this was a reference to the Superintendent as well as the incumbent Board members.

Respondent John Knorr was the Board Secretary/Business Administrator for the Galloway Township Board of Education from July 1, 1995 through May 29, 1998. While Mr. Knorr served in that capacity, he was evaluated by Mr. Bowen. Mr. Bowen's evaluation of Mr. Knorr's performance for the 1997-98 school year was not positive. Mr. Bowen gave Mr. Knorr a Professional Improvement Plan on February 3, 1998 that was

signed by Mr. Knorr on February 10, 1998. Mr. Knorr did not implement the plan. Mr. Bowen indicated to Mr. Knorr that he was not being recommended for tenure for the 1998-99 school year. Mr. Knorr resigned from his employment with the district effective May 29, 1998 citing “a variety of personal and professional reasons” and stating that he had accepted the position he previously held as a County School Business Administrator for the New Jersey Department of Education.

When Mr. Knorr campaigned for election to the Board in April 1999, he made it clear in his discussion with potential voters that it was his position that Dr. Bowen’s contract should not be renewed. Out of a field of eight candidates, he was elected with over 50% of the votes cast.

Mr. Knorr, in his written submission, denies that he was notified that he was not going to be recommended for tenure because he withdrew from consideration when he decided to return to employment with the state. However, Mr. Bowen’s complaint alleged at paragraph seven of count two that “the Superintendent indicated to respondent Knorr that he was not assuredly being recommended for tenure for the 1998-99 school year.” In his answer, Mr. Knorr said, “Even though I agree that I was not assuredly being recommended for tenure for the 1998/99 school year, confidential personnel matters... are to be kept private and not appear in the newspapers.” Therefore, the Commission finds the allegation to be admitted and Mr. Knorr’s denial to be untimely.

ANALYSIS

The issue before the Commission is whether respondents violated N.J.S.A. 18A:12-24(c) when they discussed, moved and voted on motions regarding the superintendent’s contract.

George Schwenger

The Commission found probable cause that Mr. Schwenger violated N.J.S.A. 18A:12-24(c) when he participated in discussions, made the motion and voted against renewing the contract of the superintendent. N.J.S.A. 18A:12-24(c) 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 Commission found probable cause to believe that the above facts constituted a violation on the basis that Mr. Schwenger's wife will not receive her salary increases in the foreseeable future because of the Superintendent's transfer of her to a bargaining unit position. Mr. Schwenger noted that his wife considered the transfer a demotion. In addition, Mr. Schwenger admitted that he did not consider running for the Board until the 1999 elections, which took place after the transfer occurred. When the Commission considered the above factors, along with the fact that Mr. Schwenger ran on a platform that the district needed a "change in leadership," the Commission found probable cause to conclude that the public could reasonably believe that Mr. Schwenger voted against the renewal of the superintendent's contract in retaliation for the transfer of his wife. The Commission found that, pursuant to the definition of retaliation set forth in the dictionary, retaliation may be considered a benefit because the person who is retaliating does so to be compensated or made whole for what he feels was an injury to him. The Commission found probable cause to believe that the act of removing the Superintendent from his position in retaliation for her transfer conferred a benefit on Mr. Schwenger and his wife. Thus, the Commission found probable cause to credit the allegation that Mr. Schwenger acted in his official capacity in a matter in which he had a personal involvement that created a personal benefit to him and his wife in violation of N.J.S.A. 18A:12-24(c) of the School Ethics Act.

Mr. Schwenger, through counsel, makes several arguments in his written submission as to why he should not be found in violation of N.J.S.A. 18A:12-24(c). First, he argues that the Commission's interpretation of the amended N.J.S.A. 18A:12-24(c) is in error. Second, he argues that Mr. Schwenger received no "benefit" as required by the statute. Third, he argues that a finding of a violation under these circumstances will result in superintendents trying to exclude board members who may be averse to continuing their contracts by alleging a conflict of interest.

The Commission will address the first two arguments, that the Commission misinterpreted the amendment to N.J.S.A. 18A:12-24(c) and that Mr. Schwenger did not receive a benefit from his actions, simultaneously. Mr. Schwenger argues that the public's reasonable expectation that the school official cannot be objective is no longer relevant with regard to a personal involvement. Rather, in order to find a violation of N.J.S.A. 18A:12-24(c) when there is no financial involvement, the Commission must find that the matter in which the school official participated actually conferred some benefit on him. He states that no such benefit exists here. Mr. Schwenger notes that the Commission had already rejected the allegation that he could gain any advantages for his wife as a result of his vote when it dismissed the charge that he violated N.J.S.A. 18A:12-24(b). Thus, he argues, there was no benefit that he could gain as a result of his vote.

The Commission is persuaded that Mr. Schwenger's vote against the superintendent was made in large part in retaliation for the Superintendent's transfer of his wife. However, the Commission is also persuaded by Mr. Schwenger's written submission that the Legislature did not intend for the Commission to continue to base a finding of a violation on the public's reasonable expectation that a school official cannot

be objective when it amended N.J.S.A. 18A:12-24(c) to require that a personal involvement create some benefit to the school official. It appears that the “reasonable expectation” language no longer applies to a personal involvement. The Commission is thus required to show that Mr. Schwenger stood to acquire a benefit as a result of his vote against the Superintendent.

The Commission had noted in its probable cause determination that there was no information to show that Mr. Schwenger could have helped his wife to regain her position of confidential secretary to the Superintendent since the transfer was made for economic reasons. The Commission stated in its probable cause determination that a benefit is anything that is advantageous to the school official. Thus, it concluded that retaliation, which constitutes recompense for some wrong previously visited upon an individual, was advantageous to the person seeking to right the wrong. However, the Commission is persuaded that satisfaction that derives from retaliation is not the type of benefit that the Legislature intended. Such a finding would expand N.J.S.A. 18A:12-24(c) beyond what the Legislature intended by the amendment. Therefore, the Commission finds that Mr. Schwenger did not violate N.J.S.A. 18A:12-24(c) and dismisses the charge against him. As a result, the Commission does not need to address Mr. Schwenger’s third argument.

John Knorr

The Commission found probable cause that respondent John Knorr violated N.J.S.A. 18A:12-24(c) when he participated in discussions, made the motion and voted not to reappoint the Superintendent. Again, as set forth in the probable cause determination, the Commission believed that the facts show that Mr. Knorr had reason to retaliate against the Superintendent. The Commission found that although Mr. Knorr resigned of his own volition, he was aware that he was not going to be recommended for tenure. Further, the Commission noted that Mr. Knorr, at the time he left the district, he was going to receive a lower salary as County Business Administrator than as District Business Administrator in Galloway, although he considers the difference minimal. If his salary remained at that level, it would have resulted in a lower pension when he retired if he stayed in the position until retirement. Also, Mr. Knorr used to live in the town in which he worked, but now he commutes from Atlantic County to Burlington County. In addition, Mr. Knorr indicated that it was well known when he ran for election that he planned to remove the Superintendent if he were to win election to the Board. The Commission believes that these factors demonstrate that Mr. Knorr voted as he did in retaliation against the Superintendent.

However, as noted in Mr. Schwenger’s written submission, the question is not whether a vote was motivated by retaliation, but whether a school official acted in his official capacity in a matter in which he had a personal involvement that is or creates some benefit under the Act. The Commission held in its probable cause determination that retaliation constitutes compensation for a perceived injury or wrong, which is advantageous to the person retaliating. As set forth above, the Commission now concludes that such an interpretation is broader than the Legislature intended since there

are many votes that a board member may make that can arguably be advantageous to the board member that should not be considered a violation of the School Ethics Act. Thus, while the Commission notes that retaliation should not be a motivating factor of a board member to seek office or vote a certain way, the fact that he or she is so motivated does not constitute a violation of the Act unless the action can be linked to a benefit that he or she may gain as a result of the action. The satisfaction of having taken such action is not sufficient to constitute a personal involvement and thus, a violation of N.J.S.A. 18A:12-24(c) of the Act.

DECISION

For the foregoing reasons, the School Ethics Commission finds that respondents George Schwenger and John Knorr did not violate N.J.S.A. 18A:12-24(c) of the School Ethics Act when they participated in the discussions and voted on the superintendent's contract. It therefore dismisses the complaint against them.

This decision constitutes final agency action and thus may be appealed directly to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C12-99

Whereas, the School Ethics Commission has considered the pleadings, documents submitted, the testimony before the Commission and the post-meeting submissions; and

Whereas, the Commission had found probable cause to credit the allegations that respondents violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when they participated in the discussion and vote concerning the renewal of the Superintendent's contract and asked for written submissions as to whether a violation existed; and

Whereas, the Commission reviewed the timely written submissions of both parties; and

Whereas, the Commission now concludes that the respondents' conduct does not constitute a violation of N.J.S.A. 18A:12-24(c); and

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

Now Therefore Be It Resolved that the Commission hereby finds that George Schwenger and John Knorr did not violate N.J.S.A. 18A:12-24(c) of the School Ethics Act and dismisses the charges against them; and

Be It Further Resolved that the Commission adopts the enclosed decision referenced as its decision in this matter.

Paul Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 31, 2000.

Lisa James-Beavers
Executive Director

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