

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, documents submitted, testimony and its investigation.

In March 2001, the RTEA PAC invited all candidates running for election to the Board to a question and answer session. Mr. Friedberger, Mr. Puzio and four other candidates running for the Board attended. Approximately one or two weeks after the session, the RTEA PAC decided to endorse Mr. Friedberger and Mr. Puzio among other candidates. Mr. Friedberger and Mr. Puzio were not involved in the RTEA PAC's decision to endorse them. At the end of March 2001, the RTEA PAC advised Mr. Friedberger that it was going to support his candidacy for re-election and that it was willing to make a financial contribution to his campaign. The RTEA PAC did not state or infer that the support was contingent upon any action of Mr. Friedberger that he would be expected to take as a Board member. By letter of March 30, 2001, Mr. Friedberger replied to the notice of endorsement that, although he welcomed the endorsement, he would not be influenced in his decision-making process as a Board member. He also rejected the RTEA PAC's offer to give a financial contribution to his campaign. He accepted signs and mailings that the RTEA PAC made and posted on his behalf. In March 2001, Mr. Friedberger had been serving on the Board for seven years. Mr. Puzio was seeking election to the Board and not then serving as a Board member.

During the spring of 2002, the RTEA PAC invited all candidates running for a position on the Board to a "Meet the Candidates Night." There, the candidates were asked questions and the candidates stated their positions on various issues. Mr. Giarratano attended the meeting with one other candidate. Mr. Giarratano was endorsed by the RTEA PAC and had mailings sent and signs posted on his behalf. He had no input into the endorsement or the mailings and signs done on his behalf. He did not receive any monetary contribution to his candidacy from the RTEA PAC. He was not a member of the Board prior to the election of April 2002.

The term of the current contract between the Board and the RTEA is 2002 to 2005. Negotiations for this contract began approximately early January 2002 and concluded with the signing of a Memorandum of Agreement on February 25, 2002. The contract was ratified by the Board in April or May of 2002. None of the respondents was a member of the Board's negotiating team. The respondents voted on the ratification of the Memorandum of Agreement that had been negotiated by the Board's negotiating team and the RTEA's. They received advice from Board Counsel that they would not violate the Act by doing so.

ANALYSIS

The issue before the Commission is whether the above facts establish that Mr. Friedberger, Mr. Giarratano or Mr. Puzio violated N.J.S.A. 18A:12-24(d) or N.J.S.A. 18A:12-24.1(f) or, in addition, whether Mr. Giarratano violated N.J.S.A. 18A:12-24(a) or (c) of the School Ethics Act with regard to his business activity.

Mr. Giarratano and Mr. Puzio

Mr. Giarratano and Mr. Puzio argue in their answers that they were not members of the Board when they accepted the endorsement of the RTEA PAC; and, therefore, they were not school officials subject to the jurisdiction of the Commission. The Commission is authorized to decide complaints against school officials, which, under N.J.S.A. 18A:12-23, are defined as board members, certain officers and employees of the New Jersey School Boards Association and administrators. Mr. Giarratano ran for election to the Board for the first time in 2002. Therefore, as a candidate for election he was not yet a board member and not a school official subject to the jurisdiction of the Commission. Mr. Puzio ran for election to the Board for the first time in 2001. Therefore, as a candidate for election, he was also not yet a board member and not a school official subject to the jurisdiction of the Commission. Because the fact that these respondents were endorsed by the RTEA PAC is the sole basis for the complaint that these respondents violated N.J.S.A. 18A:12-24(d) and N.J.S.A. 18A:12-24.1(f), as opposed to any conduct that they undertook after having been endorsed by the RTEA PAC, the Commission must find that the Commission has no jurisdiction over their conduct as candidates for the Board. Therefore, the Commission finds no probable cause to credit the allegations that these respondents violated N.J.S.A. 18A:12-24(d) or N.J.S.A. 18A:12-24.1(f) and dismisses the charges against them.

Mr. Giarratano's Business Activity

The complaint against Mr. Giarratano also alleges that he owns a business that was directly paid by the association's political action committee for the mailings and signs that endorsed his candidacy. The complainant alleges that his conduct is in violation of N.J.S.A. 18A:12-24(a) and (c). Again, the complainant is alleging that Mr. Giarratano violated the Act as a candidate for the Board, rather than as a board member. Therefore, the Commission finds that it has no jurisdiction over his conduct prior to his becoming a school official and dismisses the charges against him.

Mr. Friedberger

Complainant alleges that Mr. Friedberger violated N.J.S.A. 18A:12-24(d) and N.J.S.A. 18A:12-24.1(f) by receiving financial support from the Rockaway Township Education Association (RTEA) Political Action Committee when he ran for election to the Board. Unlike

Mr. Giarratano and Mr. Puzio, Mr. Friedberger was a member of the Board at the time that he accepted the endorsement of the RTEA PAC.

N.J.S.A. 18A:12-24(d) prohibits a school official from undertaking any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. The Commission has noted above that Mr. Friedberger declined financial contributions from the RTEA PAC, but received signs and mailings in support of his candidacy as a result of the endorsement by the RTEA PAC. The Commission fails to discern how this can be interpreted as “undertaking any employment or service.” Mr. Friedberger did not perform any service for the RTEA PAC, rather, in the context of his election campaign, the RTEA PAC provided a service for him. The Commission therefore concludes that N.J.S.A. 18A:12-24(d) is inapplicable to the facts of this matter. It therefore finds no probable cause to credit the allegation that Mr. Friedberger violated that section and dismisses that allegation.

Complainant also alleges that Mr. Friedberger violated N.J.S.A. 18A:12-24.1(f) of the Code of Ethics, which states:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or the gain of friends.

Complainant has not provided any information to show that Mr. Friedberger has surrendered his independent judgment to a special interest group or used the schools for personal gain or the gain of friends and the Commission was unable to discern such information from the documents presented. Accepting the endorsement of an interest group alone does not show the surrender of one’s independent judgment to the group. A complainant would have to show some conduct after acceptance of the endorsement indicating that the board member did not exercise his independent judgment in order to sustain a violation of N.J.S.A. 18A:12-24.1(f). For the foregoing reasons, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(f) and dismisses that charge against Mr. Friedberger.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Respondents Michael Friedberger, Frank Giarratano or Michael Puzio violated N.J.S.A. 18A:12-24(d), (a) or (c) or N.J.S.A. 18A:12-24.1(f) of the School Ethics Act and dismisses the complaints against them.

The respondents have asked that the Commission find the complaints to be frivolous pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint was frivolous, the Commission must find on the basis of the pleadings, its investigation or the evidence presented 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. 18A:12-29(e); N.J.S.A. 2A:15-59.1]

The Commission does not have any information to suggest that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. Therefore, it cannot find the complaint to be frivolous on that basis. Further, the Commission does not find that the complaint was without any reasonable basis in law and could not be supported by a good faith argument for an extension, modification or reversal of existing law. The Commission had not previously ruled on the issue of whether endorsements by a political action committee of a local bargaining unit created a conflict of interest in violation of the Act or the Code of Ethics, which just became a part of the Act in July 2001. Therefore, the Commission could not find the complaint to be frivolous based on the second standard.

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 – C13-02, C14-02 and C15-02

Whereas, the School Ethics Commission has considered the pleadings, documents and its investigation; and

Whereas, the Commission has found no probable cause to credit the allegations that respondents violated N.J.S.A. 18A:12-24(d), (a), or (c) or N.J.S.A. 18A:12-24.1(f); and

Whereas the Commission has reviewed a draft decision; and

Whereas, the Commission agrees with the draft decision;

Now Therefore Be It Resolved that the Commission hereby adopts the decision 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 School Ethics Commission adopted this decision at its public meeting on December 17, 2002.

Lisa James-Beavers
Executive Director