

	:	
BRIAN VILLA,	:	BEFORE THE
	:	SCHOOL ETHICS COMMISSION
Complainant	:	
	:	
V.	:	
	:	Docket No.: C13-99
EDWIN GUTIERREZ,	:	
	:	
Respondent	:	
	:	
<i>NEW BRUNSWICK BOARD</i>	:	
<i>OF EDUCATION,</i>	:	DECISION
<i>MIDDLESEX COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

The above-captioned matter arises from a complaint filed by Brian Villa against New Brunswick Board of Education (Board) member Edwin Gutierrez. The complaint alleges that respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. because he is an appointed Board member of a Type I school district and an employee of the City of New Brunswick. Mr. Villa also alleges that Mr. Gutierrez violated the Act when he voted in favor of a contract with the Puerto Rican Action Board (PRAB) to provide pre-kindergarten services to the district when he is a founder and member of the PRAB.

Mr. Gutierrez, in his response to the complaint, stated that his employment with the City of New Brunswick does not create a conflict of interest with his membership on the Board. In answer to the second allegation, he answered that he is a founding member of PRAB, but has not been a member of the organization for many years. He denied having committed any violation of the School Ethics Act.

The parties were invited to testify at the Commission’s meeting of October 26, 1999. However, at that time, the Commission did not have a quorum to discuss the matter as one Commission member recused himself from the case. The Commission rescheduled the matter for December 21, 1999 because counsel for Mr. Gutierrez was unavailable for the November meeting. The parties appeared, respondent with counsel, and testified before the Commission in December. After the Commission’s regularly scheduled meeting was canceled on January 25, 2000 due to the snowstorm that closed the offices of the State of New Jersey, a special meeting of the Commission was held on January 31, 2000. At that time, the Commission rendered a decision finding no probable cause and dismissing the complaint against Mr. Gutierrez.

FACTS

The following facts were determined from the pleadings, documents, testimony and the Commission's investigation.

Edwin Gutierrez was appointed to membership on the New Brunswick Board of Education in May 1992. New Brunswick is a Type I school district, and its members are appointed by the Mayor, rather than elected by the public. Mr. Gutierrez was appointed by Mayor James Cahill. Mr. Gutierrez is employed by the City of New Brunswick as a bilingual (Spanish/English) Administrative Analyst, in the city's Community Development division.

Mr. Gutierrez is a founding member of PRAB¹. PRAB is a 501(c)(3) non-profit corporation.

On July 28, 1998, the Board held its public meeting at New Brunswick High School. At that meeting, the Board voted on Item F of the consent agenda, which was the approval of an agreement to contract with the PRAB for the provision of pre-kindergarten services to the district. Specifically, the resolution was to grant the PRAB a contract for \$415,583 to provide pre-kindergarten instruction for four-year old children residing in the City of New Brunswick. Mr. Gutierrez voted in favor of the motion and voted in favor of approving the consent agenda. The motion to contract with PRAB passed with a unanimous vote.

ANALYSIS

The first issue before the Commission is whether Mr. Gutierrez violated N.J.S.A. 18A:12-24(a) of the School Ethics Act by serving as a Board member in a Type I district when he is an employee of the City of New Brunswick. The second issue is whether he violated N.J.S.A. 18A:12-24(c) of the Act by voting to contract with the PRAB when he was a founding member of the PRAB.

N.J.S.A. 18A:12-24(a) provides:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

Thus, the question is whether Mr. Gutierrez's employment with the City of New Brunswick is in substantial conflict with the proper discharge of his duties in the public

¹ Mr. Villa alleges that Mr. Gutierrez is still an active member of the PRAB, but the Commission was not able to substantiate this allegation.

interest. Mr. Gutierrez is an Administrative Analyst employed by the City of New Brunswick in its Community Development division. The Commission notes that there may be issues that come before a board of education that involve the city or municipality in which it sits. Such questions could involve whether the Board or the City will provide certain services to the community, or whether the Board should accept the city or municipality's cuts to a defeated budget. In such circumstances, Mr. Gutierrez should recuse himself because such issues may require him to choose between his Board and his employer. The Commission finds that if he does not participate on questions such as these, he can continue to serve on the Board without compromising his duties to the public. The Commission does not find that Mr. Gutierrez's employment with the city constitutes a substantial conflict with the discharge of his duties as a board member and therefore finds no probable cause.

The next issue is whether Mr. Gutierrez violated N.J.S.A. 18A:12-24(c) by voting on the contract with the PRAB. 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.

PRAB, as a non-profit corporation, is a business organization as that term is defined in N.J.S.A. 18A:12-23. However, Mr. Gutierrez does not hold an "interest" in PRAB because an interest is defined in section 23 as ownership or control of more than ten percent of the profits, assets, or stock of a business. The Commission does not have any information to indicate that respondent holds such ownership or control. Therefore, the Commission must determine whether Mr. Gutierrez had a financial or personal involvement under N.J.S.A. 18A:12-24(c), since PRAB is not a business in which respondent holds an interest.

There is no allegation that Mr. Gutierrez would receive any direct or indirect financial gain from the award of the contract to the PRAB such that a financial involvement exists. Thus, the Commission must look to whether Mr. Gutierrez had a personal involvement with PRAB that created some benefit to him. The information that the Commission was able to gather through the pleadings, testimony and its investigation reveals that Mr. Gutierrez helped found the PRAB in 1971. He is listed as one of the founding members in the organization's incorporation papers. Mr. Gutierrez served on the Board of Trustees of the PRAB and in various other capacities until 1991 when he chose not to seek a seat on the Board. Considering these facts, the Commission can not find that Mr. Gutierrez continued to have a personal involvement with the PRAB in 1998. A school official does not continue to have a personal involvement in an organization that he or she establishes well after active service to that organization ceases. Rather, there

must be some consideration as to whether the connection remains close enough that the board member may extract some personal benefit from the awarding of a lucrative contract to the organization. The Commission cannot conclude in the present case that such a connection exists. The years that have lapsed between respondent's active participation and the vote on the contract have dissipated any potential conflict of interest that may have existed. Therefore, the Commission does not find probable cause that Mr. Gutierrez had a personal involvement with the PRAB that created a benefit to him in violation of N.J.S.A. 18A:12-24(c).

CONCLUSION

For all the foregoing reasons, the Commission finds no probable cause to credit the allegation that Edwin Gutierrez's employment creates a substantial conflict with his public duties in violation of N.J.S.A. 18A:12-24(a). It also finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act when he voted in favor of the PRAB. The Commission therefore dismisses both charges against him.

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 -- C13-99

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 the parties; and

Whereas, the Commission found no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-24(a) or (c) of the School Ethics Act; and

Whereas, the Commission directed its staff to set forth the reasons for its conclusion in a decision; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission adopts the proposed decision referenced as its decision in this matter finding no probable cause and dismissing the complaint against Edwin Gutierrez.

Paul C. Garbarini, Chairperson

I hereby certify that the School Ethics Commission directed that staff write this decision at its public meeting on January 31, 2000.*

Lisa James-Beavers
Executive Director

* Commissioner Mark Finkelstein abstained from this decision.