

RICHARD TULLO	:	
	:	BEFORE THE SCHOOL
V.	:	ETHICS COMMISSION
	:	
NICHOLAS CAPRIGLIONE,	:	Docket No.: C15-99
<i>PINELANDS REGIONAL SCHOOL DISTRICT</i>	:	
<i>OCEAN COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a complaint by Richard Tullo that Pinelands Regional School District Board member Nicholas Capriglione violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Specifically, complainant alleges that Mr. Capriglione violated N.J.S.A. 18A:12-24(c) and (d) by serving as a member of the Board and teaching vocational auto class at Pinelands Regional High School, although he is employed and evaluated by the Ocean County Vocational-Technical School.

Mr. Capriglione filed a timely answer to the complaint admitting to the fact that he is employed by the Ocean County Vocational-Technical School (OCVTS) and assigned to work at Pinelands Regional High School, but denying that such conduct violates the Act.

By letter of November 3, 1999, the Commission advised the parties that the above complaint would be discussed at the Commission’s meeting on November 23, 1999. Both were advised to contact the Commission if they wished to appear and present witnesses. Neither party appeared.

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 its meeting of the Commission on May 23, 2000, it adopted this decision.

FACTS

The Commission finds the following facts to be undisputed.

Nicholas Capriglione was elected to the Pinelands Regional Board of Education in April 1994. He represents Bass River Township. He was re-elected in April 1997. Mr. Capriglione has been employed by the OCVTS since 1976. In September 1995, he was assigned to teach a Recreational Vehicle Maintenance & Repair course at the satellite

center at Pinelands Regional High School pursuant to an agreement the OCVTS made to utilize two classrooms at the high school for a satellite vocational program. As an OCVTS teacher, he is supervised by OCVTS administrators, follows OCVTS procedures and is evaluated by OCVTS administrators. He makes no determinations relative to which students are accepted, rejected or removed from courses that are under the jurisdiction of OCVTS. Such decisions are made by the administration of OCVTS.

OCVTS receives state aid funding for students enrolled at the Pinelands Regional High School satellite campus in the same manner as they do for students at one of their own four campuses in Waretown, Jackson, Brick and Toms River.

Prior to Mr. Capriglione's teaching assignment to the Pinelands Regional High School, attorneys for the New Jersey School Boards Association (NJSBA), Pinelands Regional and OCVTS researched whether this assignment would constitute a conflict of interest. They concluded that Mr. Capriglione would not violate the Act and therefore could remain a member of the Pinelands Regional Board of Education.

ANALYSIS

The complainant alleges that Mr. Capriglione's teaching at the Pinelands Regional High School while serving on the Board is in violation of N.J.S.A. 18A:12-24(c) and (d). 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.

Mr. Capriglione clearly has a financial involvement with his employer, the OCVTS. However, the complainant has not set forth any official action that Mr. Capriglione has taken in a matter involving OCVTS. Mr. Capriglione sets forth in his answer that he removes himself from any and all matters relating to discussions, votes or payments of monies to OCVTS. Further, he states that he removed himself from all discussions regarding teacher negotiations. He denies having acted in his official capacity as a board member in any matter that could be determined to present a conflict of interest. The complainant has not alleged, and the Commission has not found, any information to dispute Mr. Capriglione's statements in his answer. Therefore, the Commission finds no probable cause that Mr. Capriglione acted in his official capacity in any matter in which he has a financial or personal involvement in violation of N.J.S.A. 18A:12-24(c).

Complainant also alleges that Mr. Capriglione violated N.J.S.A. 18A:12-24(d). This subsection 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. In support of this allegation, complainant alleges that although Mr. Capriglione is employed and evaluated by OCVTS, he teaches, evaluates, disciplines, grades and makes determinations whether Pinelands Regional High School students should remain or be withdrawn from his classes.

Mr. Capriglione has denied that he has any authority to determine whether Pinelands students remain or are withdrawn from his classes. However, even assuming that he had such authority, the Commission does not discern how this authority would prejudice his independence of judgment as a Pinelands Board member. Any action he took against a student would be reviewed by the OCVTS administration. If Mr. Capriglione became a witness to some school incident that came to be reviewed by the Pinelands board by way of his employment as a teacher in the high school, then he would have to recuse himself from participating as a board member. The Commission finds that any conflict that may arise by virtue of his teaching post being in the high school may be handled similarly. Mr. Capriglione has stated that he understands his duty to recuse himself from matters involving OCVTS or his status as a teacher and has been following these procedures pursuant to instructions given by the attorneys from whom advice was initially sought. The Commission concludes that there is no inherent conflict between the two positions such that Mr. Capriglione's employment might reasonably be expected to impair his objectivity in the exercise of his official duties in violation of N.J.S.A. 18A:12-24(d).

Finding no probable cause to credit the allegations that Mr. Capriglione violated N.J.S.A. 18A:12-24(c) or (d) of the School Ethics Act, the Commission dismisses the complaint against him.

REQUEST FOR SANCTIONS

The respondent has asked that the Commission find that the complaint is frivolous and impose sanctions against the complainant pursuant to N.J.S.A. 18A:12-29(e). In support of this request, he sets forth the fact that Mr. Tullo was removed from the Board by decision of the Commissioner of Education dated April 26, 1999. Mr. Capriglione adds that despite the fact that he has been serving on the Pinelands Regional Board since 1994 and teaching at Pinelands Regional High School since 1995, Mr. Tullo did not file a complaint against him until July 1999.

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 respondent's request for sanction does not set forth that the complaint was without any reasonable basis in law, but rather that it was filed in bad faith, solely for the purpose of harassment or malicious injury under the first standard.

While the timing of the complaint is suspect, given the fact that the respondent had been assigned to teach at Pinelands Regional High School since 1995, the Commission cannot find on the basis of Mr. Tullo's removal from the Board alone, that the bad faith standard has been met. The respondent's argument for sanctions does not set forth that respondent had some involvement with Mr. Tullo's removal such that the complainant may have had a particular desire to harass him. Mr. Tullo was removed for having an inconsistent interest in the form of a pending claim against the Board pursuant to N.J.S.A. 18A:12-2. The Commission does not find a motive to harass or maliciously injure Mr. Capriglione. 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 Nicholas Capriglione 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 – C15-99

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 May 23, 2000.

Lisa James-Beavers
Executive Director