
RAYMOND GRAHAM

V.

WALTER A. ROMAN,
EAST NEWARK BOARD OF EDUCATION
HUDSON COUNTY

:
:
: **BEFORE THE SCHOOL**
: **ETHICS COMMISSION**
:
: **Docket No.: C25-02**
:
: **DECISION**
:

PROCEDURAL HISTORY

This matter arises from a complaint that the interim board secretary of the East Newark Board of Education, Walter A. Roman, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. by serving as the administrator for the Borough of East Newark and the Acting Borough Clerk. The complaint alleges that Mr. Roman is not only serving as board secretary but also as business administrator of the Board, although he is not certified. At the time that the complaint was filed, the District was operating without a superintendent or a certified school business administrator. East Newark is a Type I school district where board members are appointed by the mayor rather than elected.

Walter Roman, in answer to the complaint, denied that he was serving as business administrator to the Board. He denied any involvement with the bills or other finances of the Board and therefore argued that there was no merit to the claim that he could not hold the positions of interim board secretary and business administrator for the Borough without violating the School Ethics Act.

The Commission invited Mr. Graham and Mr. Roman to its meeting of October 29, 2002, to present witnesses and testimony to aid in the Commission's investigation. Neither party appeared.

During its public meeting of October 29, 2002, the Commission found no probable cause to credit the allegation that Mr. Roman violated the School Ethics Act and directed its staff to prepare a decision for adoption at the next meeting. The Commission adopted this decision at its meeting on November 26, 2002.

FACTS

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

On February 1, 2002, the East Newark Board of Education changed from a Type II District to a Type I District as a result of a referendum. Prior to the change, at the December 2001 Board meeting, the former board appointed its certified public accountant as interim school business administrator because the former school business administrator had resigned from the District effective at the end of December 2001. The Board that was appointed as of February 1, 2002 did not retain this individual as interim school business administrator.

On March 18, 2002, the Board appointed Mr. Roman, who was and is employed full-time as borough administrator for the municipality of East Newark, as the interim board secretary. Mr. Roman is not a certified business administrator and was not hired to perform any duties regarding the maintenance of accounting and bookkeeping records for the District. On March 14, 2002, the solicitor for the Board provided a legal opinion advising that Mr. Roman did not have a conflict of interest in serving as borough administrator and interim board secretary, but indicated that he should recuse himself from certain matters involving both the District and the Borough.

On April 1, 2002, the chief school administrator to the former board was placed on administrative leave with pay until her resignation was effective on September 30, 2002. An interim superintendent/school business administrator was appointed by the Board effective April 2, 2002, but he resigned shortly thereafter. A second interim superintendent/school business administrator was hired on April 29, 2002, but he resigned shortly thereafter.

A Department of Education Compliance Investigation report of June 14, 2002 found that no financial record keeping had occurred since the departure of the former permanent school business administrator. It also found that the Board did not award any bids between March 20, 2002 and May 29, 2002. As of June 2002, the Board did not have a Treasurer of School Monies as required by N.J.S.A. 18A:17-31.

The Board appointed an interim chief school administrator/school business administrator on August 19, 2002. This individual holds the necessary certifications as required by statute for both positions. However, Mr. Roman has not been replaced by the Board as interim board secretary. He has not prepared minutes for the Board since July 11, 2002 due to health reasons. The subsequent minutes were prepared either by the District's attorney or the chief school administrator, each serving as acting assistant board secretary.

ANALYSIS

As an initial matter, respondent argues that, as an interim board secretary, he is not a school official subject to the jurisdiction of the School Ethics Commission. Therefore, he cannot be found in violation of the School Ethics Act.

Mr. Roman does not have a certificate to serve as a school business administrator. If an employee in a school district is not certificated, then he falls under the definition of a “school official” under the Act only if he is responsible for making recommendations regarding hiring or the purchase or acquisition of any property or services by the local school district. N.J.S.A. 18A:12-23. Mr. Roman has denied that he has or ever had such responsibility. However, there was clearly a period of time between May and August 2002 during which the Board did not have a school business administrator or a superintendent. During this time, he had responsibility for making recommendations regarding hiring and the purchase of property and services even if he did not exercise it. Therefore, the Commission finds that Mr. Roman was a school official subject to its jurisdiction. While it is less clear what his responsibilities are now, especially given his illness, the Commission must conclude, based on the history in the District, that Mr. Roman could make recommendations regarding hiring and purchasing although he may never have done so. Therefore, the Commission finds Mr. Roman to be a “school official” under N.J.S.A. 18A:12-23 of the Act.

Complainant did not cite to any specific provision of the School Ethics Act that Mr. Roman is alleged to have violated, but cited the Commission’s decision, *Irvington Municipal Council v. Michael Steele and the Irvington Board of Education*, C11-93 and C12-93 (December 23, 1994) aff’d Commissioner of Education (March 9, 1995), aff’d State Board of Education (September 12, 1995). This decision held that Michael Steele violated N.J.S.A. 18A:12-24(a) and (d) of the Act by serving as Mayor of Irvington and business administrator for the Irvington Board of Education. Therefore, the Commission analyzed the present case under N.J.S.A. 18A:12-24(a) and (d) as in the *Irvington* case. 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.

In the *Irvington* case, the Commission found a substantial conflict with a mayor appointing the Board that employed him as school business administrator and reviewing the Board’s budget. The present case does not raise such concerns. The mayor appointed the Board and the Board appointed Mr. Roman as the interim board secretary. The fact that the interim board secretary works for the mayor does not create a substantial conflict with the proper discharge of his duties as interim board secretary. There is no substantial conflict if the interim board secretary has no responsibility for the budget, financial

records or bills. The Commission is satisfied that Mr. Roman can recuse himself from participating in such matters even if the Board lacks a school business administrator making it seem as though Mr. Roman is the only person available to make such recommendations. Indeed, the Commission finds no probable cause to credit the allegations that Mr. Roman violated N.J.S.A. 18A:12-24(d) based on his representations that he has not participated in such matters and will not do so while he is serving concurrently as interim board secretary and Borough Administrator. The Commission, having no evidence to the contrary, therefore dismisses this allegation.

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. In the *Irvington* case, the school business administrator's budget decisions were found to be prejudiced by his position as Mayor of the municipality. Mr. Roman does not make such decisions as interim board secretary. Although the Commission questions why he has not resigned from the position or why the Board has not appointed a board secretary/school business administrator as the Division of Finance recommended in its June 2002 report, the Commission must deal with the facts as they exist. Therefore, as long as Mr. Roman still serves in the position as interim board secretary, the Commission must give notice to him that he must recuse himself from matters of budget and finance if he is ever called upon to give an opinion on such matters. He must also recuse himself from other matters of conflict or potential conflict between the Board and the Borough. Based on the facts presented, the Commission finds no probable cause to credit the allegation that Mr. Roman violated N.J.S.A. 18A:12-24(d) and dismisses that charge against him.

DECISION

For the foregoing reasons, the Commission finds no probable cause that Mr. Roman violated the School Ethics Act and dismisses the complaint against him. Although the Commission finds no probable cause that Mr. Roman violated the School Ethics Act, since Mr. Roman continues to serve as interim board secretary, the Commission admonishes Mr. Roman that he must continue to recuse himself from any matters before the Board concerning the budget, financial matters and any other potential sources of conflict between the Borough and the Board.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Mark Finkelstein
Acting Chairperson

Resolution Adopting Decision – C25-02

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof and the information obtained from its investigation; and

Whereas, at its meeting of October 29, 2002, the Commission 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 dismissed the charges against him; and

Whereas, the Commission requested that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas, the Commission has reviewed the draft decision 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.

Mark Finkelstein, Acting Chairperson

I hereby certify that this Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on November 26, 2002.*

Lisa James-Beavers
Executive Director

*Paul C. Garbarini abstained from discussions and the decision on this matter.