

TED DOTY,	:	
	:	
V.	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
MICHAEL FRIEDBERGER, MICHAEL	:	Docket No.: C34-02
PUZIO, STEVE HODES and FRANK	:	
GIARRATANO,	:	
<i>ROCKAWAY TWP. BOARD OF EDUCATION,</i>	:	DECISION
<i>MORRIS COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint alleging that Rockaway Township Board of Education (Board) members Michael Friedberger, Michael Puzio, Steve Hodes and Frank Giarratano violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq., when after having been endorsed by the Rockaway Township Education Association (RTEA), they voted to ratify a contract between the Board and the RTEA, to give monetary stipends to the co-presidents of the RTEA and to approve payment of summer compensation to one of the RTEA co-presidents to develop policies and procedures for the District’s health department. The complaint also alleges that a local newspaper reported that Board members met with teachers without the attendance of a District administrator. Specifically, complainant alleges that the respondents violated N.J.S.A. 18A:12-24(e).

The respondents filed answers stating that they received the endorsement of the RTEA’s Political Action Committee (PAC), but did not accept financial contributions from it. They denied that their acceptance or subsequent votes violated the Act.

The parties were invited to attend the Commission’s meeting on October 29, 2002 at which their case was discussed. None of the parties appeared. At its public meeting, the Commission tabled decision on the complaint. At its meeting of November 26, 2002, the Commission voted to find no probable cause to credit the allegations in the complaint. The Commission found that the complaint was not frivolous. The Commission adopted this decision at its meeting of January 28, 2003.

FACTS

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

At all times relevant to this complaint, the respondents were members of the Rockaway Township Board of Education. Mr. Friedberger has served on the Board for eight years. He was last re-elected in April 2001. Mr. Puzio was newly elected in April 2001. Mr. Hodes has served on the Board for seven years. He was last re-elected in April 2002. Mr. Giarratano was newly elected in April 2002. The Rockaway Township Education Association is the bargaining unit for the teachers in the Rockaway School District.

Complainant Ted Doty campaigned for election to the Board in 2001. He was offered \$250.00 from the RTEA to assist his campaign. He declined the offer considering it an attempt to influence his vote, if elected.

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, Complainant Ted Doty and three 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.

During the spring of 2002, the RTEA PAC invited all candidates running for a position on the Board to a "Meet the Candidates Night." Mr. Hodes was invited to the meeting, but did not attend. Mr. Giarratano attended the meeting with one other candidate. At the meeting, the candidates were asked questions and the candidates stated their positions on various issues.

Mr. Hodes and Mr. Giarratano were endorsed by the RTEA PAC and had mailings sent and signs posted on their behalf. Mr. Hodes sent a letter to the Co-Chair of the RTEA stating that he felt uncomfortable with the endorsement and asked that the RTEA withdraw its endorsement. When the RTEA's signs endorsing him were not removed, Mr. Hodes began removing them, which caused legal problems for him. Although Mr. Giarratano did not seek withdrawal of the endorsement, 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.

Mr. Hodes requested an advisory opinion from the Commission in May 2002 asking whether he would violate the School Ethics Act by participating in negotiations or voting to ratify the final negotiated agreement when he was endorsed by the RTEA without his request or consent. The Commission advised him in *Advisory Opinion A11-02* that he would not.

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 May of 2002. The respondents were not members 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 team. They received advice from Board Counsel that they would not violate the Act by doing so.

On June 26, 2002, the respondents voted in favor of monetary stipends for the co-presidents of the RTEA to serve as ESL Coordinator and Head Nurse respectively, which amounted to \$3,620.00 each. Both had served in these positions for approximately five years previously and received stipends for doing so. Also, at that June 26, 2002 meeting, the respondents voted to approve payment to one of the RTEA co-presidents for the development of policies and procedures for the District's health office over the summer at the rate of \$36.20 per hour. She has received such a stipend for over five years. Both the stipends and the payment were recommended by the Superintendent.

ANALYSIS

The issue before the Commission is whether the above facts establish that Mr. Friedberger, Mr. Puzio, Mr. Hodes or Mr. Giarratano violated N.J.S.A. 18A:12-24(e), which provides:

No school official, or member of his immediate family, ..., shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties.

Because each of the respondents was a candidate for the school board, the latter half of the section regarding announced candidates for elective public office, applies to each of them.

Mr. Hodes

Mr. Hodes did not attend the March 2002 meeting with the RTEA PAC that apparently resulted in the RTEA's endorsements of him and Mr. Giarratano. When he discovered that he had been endorsed, he sent a letter to the Co-Chair of the RTEA requesting that he not be endorsed. He later attempted to take down the RTEA's signs that had been posted on his behalf, when the RTEA failed to do so.

Given the foregoing set of circumstances, the Commission cannot find that Mr. Hodes accepted a campaign contribution that he knew or had reason to know was given with the intent to influence him in the discharge of his official duties. While the Commission does not draw a distinction between a monetary and an in-kind contribution, it cannot find that Mr. Hodes actually accepted the contribution. In fact, he took every action to reject the contribution. Since Mr. Hodes neither sought nor wanted the endorsement, the Commission advised him in *Advisory Opinion A11-02*, that his participation in RTEA matters after the RTEA's endorsement would not violate the Act.

The Commission would have difficulty finding that a school official violated the Act after advising him that no violation exists, but it could do so if it were presented with facts unknown to it at the time it issued the advisory opinion. Complainant has alleged that Mr. Hodes met separately with the RTEA prior to its endorsement. This was not confirmed, but even if true, it would not contradict the fact that Mr. Hodes rejected the endorsement after it was given. Thus, no facts have been set forth in the present case to give the Commission a reason to reverse its earlier advice. Therefore, the Commission finds no probable cause to credit the allegations that Mr. Hodes violated N.J.S.A. 18A:12-24(e).

Mr. Friedberger

Complainant alleges that Mr. Friedberger violated N.J.S.A. 18A:12-24(e) by accepting the endorsement of the RTEA PAC when he ran for election to the Board and, after doing so, voting to ratify the Board's agreement with the RTEA and voting in favor of a stipend and a summer salary for the co-presidents of the RTEA.

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 its endorsement. He neither requested nor solicited the RTEA PAC's support of his candidacy. He had no input into its decision to post signs or flyers on his behalf. He did vote to ratify the negotiated agreement and to approve the stipend and summer salary as complainant alleged.

Complainant has not provided any information to show that Mr. Friedberger accepted a campaign contribution knowing or having reason to know that it was given with the intent to influence him in the discharge of his official duties. Although complainant attempted to show that the stipends given to the RTEA co-presidents and the summer salary given to one of them were appreciation votes for the RTEA's endorsement of Mr. Friedberger's candidacy, the facts showed that the stipends and summer salary had been given for over five years prior to the endorsement and therefore, had no connection to his acceptance of the contribution. In addition, they were recommended by the superintendent.

For the foregoing reasons, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(e) and dismisses that charge against Mr. Friedberger.

Mr. Giarratano and Mr. Puzio

Mr. Giarratano and Mr. Puzio had set forth in their answers to a prior complaint alleging a similar violation 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. Since both were running for election to the Board for the first time when they were endorsed, they were not yet school officials subject to the jurisdiction of the Commission when they received the support of the RTEA PAC. Thus, the Commission dismissed the case against them. *Mary Macina v. Michael Friedberger et al.*, C13/C14/C15-02 (December 17, 2002). However, the present complaint is not based solely upon the fact that these respondents were endorsed by the RTEA, but rather their conduct after having been endorsed by the RTEA PAC.

Complainant alleges that the respondents violated N.J.S.A. 18A:12-24(e) by voting to ratify the negotiated agreement with the RTEA and voting to approve the stipends and a payment to the co-presidents of the RTEA. As with Mr. Friedberger, the Commission fails to find any connection between those votes and the RTEA's endorsement. In Mr. Puzio's case, the endorsement was a year before the votes took place. In Mr. Giarratano's case, the facts show that the superintendent recommended the stipends and that they had been approved every year for many years preceding his endorsement and election. With respect to the vote to ratify the negotiated agreement, there is no information to connect the vote with the endorsement. It has not been alleged that the contract was in any way unusual or out of line with that of teachers in other districts. Thus, the Commission cannot find that Mr. Puzio or Mr. Giarratano accepted a campaign contribution with the knowledge or belief that it was given with the intent to influence them in the discharge of their official duties. Therefore, the Commission finds no probable cause to credit the allegations that these respondents violated N.J.S.A. 18A:12-24(e) and dismisses the charges against them.

DECISION

For the foregoing reasons, the School Ethics Commission finds no probable cause and dismisses the case against the respondents Michael Friedberger, Michael Puzio, Steve Hodes, and Frank Giarratano.

Respondents have asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, 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. 2A:15-59.1]

Under the facts set forth, the Commission cannot find that the complaint meets either standard.

This decision constitutes final agency action and thus is directly appealable to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision - C34-02

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof; and

Whereas, at its meeting of November 26, 2002, the Commission found no probable cause to credit the allegations that Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against them; and

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

Whereas, the Commission has reviewed the 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 on January 28, 2003 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 decision was adopted by the School Ethics Commission at its public meeting on January 28, 2003.

Lisa James-Beavers
Executive Director