

The Commission found that the material facts were not in dispute with respect to the issue upon which it found probable cause and, therefore, the Commission advised respondent that it would decide the matter on the basis of written submissions. Ms. Smith was invited to provide a written submission to the Commission within 30 days of the date of the probable cause decision to set forth why the Commission should not find Mr. Hatchett in violation of N.J.S.A. 18A:12-24(c) in relation to the hiring of his son. Ms. Smith was also told that her written submission should include the respondent's position on an appropriate sanction should the Commission determine that the Act was violated.

Ms. Smith submitted a timely response on October 20, 2004, averring that the vote on respondent's son was improperly recorded in the minutes. However, respondent admitted that the incorrect recording was further compounded by his failure to notice and correct same. Ms. Smith noted that respondent stood by his testimony at the Commission's August 24, 2004 meeting that he abstained from the vote on the hiring of his son. Ms. Smith submitted that due to these circumstances, the appropriate sanction would be at most a reprimand.

FACTS

The Commission based its finding of probable cause on the following facts.

Mr. Hatchett testified that, at the October 21, 2003 Board meeting, prior to the vote, Board counsel instructed him to abstain from voting on his son's appointment and salary. Mr. Hatchett also testified that he abstained from voting on his son's appointment and hiring. The minutes from the October 21, 2003 Board meeting show that Mr. Hatchett voted on his son's appointment and salary. In response to a question from the Commission, Mr. Hatchett testified that it is Board practice to approve the minutes of Board meetings and that he did not read the minutes before he voted to approve them. Mr. Hatchett further testified that he did not ask for the minutes to be corrected because he was unaware that they were incorrect.

ANALYSIS

The Commission found probable cause that Mr. Hatchett violated N.J.S.A. 18A:12-24(c) of the Act in relation to the hiring of his son at the October 21, 2003 Board meeting.

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. Hatchett has testified that he abstained from voting on his son's hiring and salary. However, the Board minutes of October 21, 2003, indicate that he voted on his son's hiring. Mr. Hatchett did not review the Board minutes nor request for them to be changed to reflect his abstention. While Mr. Hatchett asserts that he abstained from the vote, the minutes, which are the public record of the meeting, indicate otherwise. In making its probable cause determination, the Commission considered the Open Public Meetings Act (OPMA), which provides:

Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the action taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with N.J.S.A. 10:4-12. [N.J.S.A. 10:4-14].

The Commission has already noted in its probable cause determination in this matter that construction of any statute must necessarily begin with consideration of its plain language. Merin v. Maglaki, 126 N.J. 430, 434 (1992). The plain language of the above statute is clear that the minutes of a public body are to show the action taken and the vote of each member. If, after the minutes are approved and made available for dissemination to the public, a board member argues that he did not vote in the way that the minutes indicate, the OPMA is undermined. In such a case, the public would have received information that the board member has voted a certain way, while the board member argues to another agency in a closed proceeding that it should find that he did not vote in the way that the official minutes indicate. See I/M/O Mary Adams, C44-02 (May 1, 2003). It would not be acceptable to make such a finding. The purpose of the Open Public Meetings Act is to give full access to all public meetings of governmental bodies and to protect against secrecy in public affairs. Aronowitz v. Planning Bd. of Twp. of Lakewood, 257 N.J. Super. 347 (Law Div. 1992).

Ms. Smith argues that notwithstanding the OPMA, Mr. Hatchett testified honestly and credibly that he abstained from voting on his son and the minutes are in error, compounded by his failure to change them. While the Commission found Mr. Hatchett to be credible, it is faced with the competing interest of the public in being able to trust the minutes of a public meeting to accurately reflect the actions taken and votes made. Therefore, the Commission is constrained to find that because the minutes indicate that he voted for his son and he voted to approve the minutes, he violated the Act by his vote. His vote violates the Act because of his personal involvement related to the hiring of his son. This involvement is a benefit to him in that he receives personal satisfaction because his involvement ensures that his son obtains employment. The Commission therefore finds probable cause to credit the allegation that Mr. Hatchett voted to approve the hiring

and salary of his son at the October 21, 2003, Board meeting and that conduct violated N.J.S.A. 18A:12-24(c).

DECISION

For the reasons discussed above, the Commission finds that David Hatchett violated N.J.S.A. 18A:12-24(c) for his vote on the hiring of his son at the October 21, 2003 Board meeting. The Commission recommends that the Commissioner of Education impose a penalty of reprimand due to the circumstances regarding the minutes and the credible testimony of Mr. Hatchett.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was mailed to the parties, Ms. Smith may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C35-04

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

Whereas, at its meeting of October 26, 2004 the Commission found that David Hatchett violated N.J.S.A. 18A:12-24(c) of the Act and recommended that the Commissioner of Education impose a sanction of reprimand; and

Whereas, at its meeting of November 23, 2004, the Commission reviewed a draft decision prepared by its staff 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.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 21, 2004.

Lisa James-Beavers
Executive Director

PCG/LJB/MET/ethics/decisions/C35-04