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| BERNIE SZILAGYI, | : | BEFORE THE SCHOOL |
| | : | ETHICS COMMISSION |
| V. | : | |
| | : | Docket No.: C37-02 |
| GRACE MAIELLO, | : | |
| <i>WANAQUE BOARD OF EDUCATION,</i> | : | DECISION |
| <i>PASSAIC COUNTY</i> | : | |
| | : | |

PROCEDURAL HISTORY

This matter arises from a complaint filed by Bernie Szilagyi alleging that respondent Grace Maiello violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when, as a member of the Wanaque Board of Education (Board), she applied to the Historical Preservation Office to have a Board-owned building classified as an historic landmark. Complainant also alleges that she owns three properties in close proximity to the Board property. The Complainant alleges that Mrs. Maiello violated N.J.S.A. 18A:12-22(a) and N.J.S.A. 18A:12-24.1(a) through (g). Within several days of filing his complaint, Mr. Szilagyi amended his complaint to allege that Mrs. Maiello’s conduct also violated N.J.S.A. 18A:12-24(b), (c), (d), (f) and (g).

The parties were advised of their right to attend and present witnesses and testimony to aid in the Commission’s investigation at its meeting of December 17, 2002. Both parties appeared before the Commission. Mrs. Maiello appeared with counsel, Charles Murray, Esq., the Wanaque Superintendent, the Wanaque Business Administrator/Board Secretary and her husband, who is also a board member. At its public meeting on January 28, 2003, the Commission found no probable cause to credit the allegations in the complaint against Mrs. Maiello and dismissed the complaint against her. The Commission adopted this decision at its meeting of March 25, 2003.

FACTS

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

Mrs. Maiello is a member and president of the Wanaque Board of Education. She was a member from 1989 to 1992 then was off the Board for a number of years. She won as a write-in candidate for a one-year term in 2001. Mrs. Maiello ran and was elected to a three-year term on the Board in April 2002.

The Board owns a property known as the Gladys M. Rhinesmith Administration Building (Rhinesmith Building). It has owned this property since its erection in 1902. On or about May 5, 2000, Mrs. Maiello submitted a preliminary application for registration of the Rhinesmith Building as an historical landmark. The property was vacated by the Board in December 2000. On or about February 1, 2002, Mrs. Maiello submitted the formal registration form to apply to the Historical Preservation Office to have the property designated as an historical landmark. She made some corrections to the form on April 12, 2002 and revised her significance statement on May 17, 2002. Between December 2001 and January 2002, Mrs. Maiello entered the building and took pictures, 32 of which she used to support her February 2002 application for landmark designation. She also performed an inventory of the items in the building.

Mrs. Maiello obtained the names of people who called the Historic Preservation Office to inquire about the status of her application. An office staff person denied Mr. Szilagyi a copy of that same list.

Mrs. Maiello owns three properties that are in close proximity to the Rhinesmith Building. Two of the three properties are zoned commercial.

When Mr. Szilagyi tried to raise the issue of a potential conflict of interest before the Board, he was interrupted by the Business Administrator who went on to adjourn the meeting. He presented the signatures of approximately 67 members of the public who demanded Mrs. Maiello's resignation due to the issues surrounding her application to the Historical Preservation Office.

As Board President, Mrs. Maiello appointed her husband as chair of the transportation and grounds committee, which oversees Board property.

Mrs. Maiello voted against selling the Rhinesmith Building in December 2002, after the complaint had been filed.

ANALYSIS

The complainant alleges that the above conduct of Mrs. Maiello constitutes violations of N.J.S.A. 18A:12-24.1(a) through (g) of the Code of Ethics and N.J.S.A. 18A:12-24(b), (c), (d), (f) and (g). The Commission will discuss the allegations in the order of the complaint.

A. Mrs. Maiello was a Board Member When She Applied for Historical Preservation

Complainant first alleges that because Mrs. Maiello was a board member when she applied to change the status of a board-owned property to an historic landmark, she was acting contrary to the interests of the Board and the taxpayers of the District in violation of N.J.S.A. 18A:12-24.1(a) through (g) and N.J.S.A. 18A:12-24(c), (d) and (g).

Mrs. Maiello began the process of designating the Rhinesmith Building as an historical landmark before becoming a board member, but submitted the formal application while serving as a board member. She submitted the application as a resident and private citizen and did not inform the Board that she did so. Her intent, she testified, was to preserve the town's historical character for the good of the children of the District as well as the citizens of the town and the state.

Of the many Code of Ethics provisions that the complainant has cited, the only ones that the Commission finds applicable are N.J.S.A. 18A:12-24.1(e) and (f), which will be addressed below. N.J.S.A. 18A:12-24(c) is inapplicable because this particular allegation does not set forth any matter in which Mrs. Maiello acted in her official capacity. N.J.S.A. 18A:12-24(g) of the Act is also inapplicable because Mrs. Maiello has not been alleged to have represented any person or party other than the school board in any matter pending before the school board. While the Commission understands that complainant believes that by filing the application, Mrs. Maiello metaphorically represented another entity, the Commission prefers to read this section more literally. Therefore, of the sections that complainant cited, the Commission will address only N.J.S.A. 18A:12-24.1(e) and (f) and N.J.S.A. 18A:12-24(d) at length.

N.J.S.A. 18A:12-24.1(e) of the Code of Ethics sets forth:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

Since Mrs. Maiello made the final application and supplemented the application as a private citizen while serving as a board member, the question is whether the private action she took was such that it may compromise the Board. The Commission believes Mrs. Maiello when she says that her intent was solely to preserve the historical culture of the town. However, the issue of whether her action had the potential to compromise the Board is a question of first interpretation. The Board owned the property and was contemplating selling it as of her application of February 2002. Mrs. Maiello points out that the designation of the building as an historical landmark sometimes results in state and federal assistance to improve the property. Based on this and the fact that the ultimate decision for the use of the property would be made by the Board, the Commission ultimately concludes that the Board was not compromised by her application. Therefore, the Commission finds no probable cause to credit the allegation that Mrs. Maiello violated N.J.S.A. 18A:12-24.1(e).

N.J.S.A. 18A:12-24.1(f) provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or the gain of friends.

Complainant alleges that Mrs. Maiello used the schools for personal gain. The Commission is without sufficient information to conclude that she would have acquired a personal gain by having the building designated as an historical site. The complainant's arguments were speculative that her commercial properties would rise in value if the building were so designated. Therefore, the Commission finds no probable cause to credit the allegation that Mrs. Maiello violated N.J.S.A. 18A:12-24.1(f).

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. The allegation at issue does not set forth any employment or service that Mrs. Maiello undertook. Based on the information provided, the Commission cannot conclude that Mrs. Maiello's action of applying for a building's historical preservation constitutes an uncompensated. Therefore, the Commission finds no probable cause to credit the allegation that Mrs. Maiello violated N.J.S.A. 18A:12-24(d).

B. Mrs. Maiello Named Her Husband to the Transportation and Grounds Committee

The complainant next alleges that Mrs. Maiello owns commercial properties that are adjacent to the Rhinesmith building that could increase in value if the building is designated a historical landmark and that, as a board president, she named her husband as Chair of the Transportation and Grounds Committee, which oversees the Board's property. Complainant alleges that as head of this committee, Mr. Maiello would recommend to the Board whether or not to accept an offer from the township to buy the property. Complainant alleges that this conduct violated N.J.S.A. 18A:12-24.1(a) through (g) and N.J.S.A. 18A:12-24(c), (d), (f) and (g).

Although complainant has set forth many provisions of the Act, the one that is truly applicable to this allegation is N.J.S.A. 18A:12-24(c), which 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.

The Commission finds complainant's initial premise that the value of Mrs. Maiello's properties will increase if the Rhinesmith Building were designated an historical site to be too speculative to create the personal or financial involvement that is required for N.J.S.A. 18A:12-24(c).

Complainant did not allege that Mrs. Maiello voted or participated in any board discussion on any matter concerning the Rhinesmith Building. However, it was revealed in testimony that she voted against selling the building in December 2002, after the complaint had been filed. The complaint was not amended to add Mrs. Maiello's vote at this meeting. Nevertheless, the Commission discerned no financial involvement with the vote to sell the building because Mrs. Maiello could reap no profits from the sale. While a personal benefit need not be monetary, it should be a benefit specifically to Mrs. Maiello and not one that could inure to the whole community such as historical preservation.

Also relevant is N.J.S.A. 18A:12-24(h), which N.J.S.A. 18A:12-24(h) provides:

No school official shall be deemed in conflict with these provisions if, by reason of his participation in any matter required to be voted upon, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of that business, profession, occupation or group.

In the present case, the Commission does not envision how Mrs. Maiello could gain from her application to any greater extent than any other business owner in the town.

C. Mrs. Maiello entered the Rhinesmith Building to Get Information for Her Application

Complainant's third allegation is that Mrs. Maiello entered the Rhinesmith Building on many occasions between December 2001 and January 2002 for the purpose of gathering information to support her application. He alleges that she entered the building as a Board member and her inventory lists and photographs are the property of the Board. He urges the Commission to find that her conduct violated N.J.S.A. 18A:12-24.1(a) through (g) and N.J.S.A. 18A:12-24(b), (c), (d), (f) and (g). Of the many sections that complainant has cited, the only ones that the Commission finds relevant to the above conduct are N.J.S.A. 18A:12-24.1(c), (d), (e) and (f) and N.J.S.A. 18A:12-24(b) and (f).

N.J.S.A. 18A:12-24.1(c), which requires a board member to confine her action to policy making, planning and appraisal and N.J.S.A. 18A:12-24.1(d), which states, "I will carry out my responsibility, not to administer the schools, but, together with my fellow Board members, to see that they are well run" will be addressed together. Complainant urges the Commission to find that she entered the Rhinesmith Building as a Board member and therefore, she acted outside of her authority to confine her actions to policy making and not administer the schools. The Commission cannot make those findings based on the information before it. Mrs. Maiello began the process of seeking the historical landmark status before she became a Board member. Although she was a Board member when she entered the building, she was still acting as a private citizen when she sought information to supplement her application. Therefore, the

Commission finds no probable cause to credit the allegations that Mrs. Maiello violated N.J.S.A. 18A:12-24.1(c) or (d).

N.J.S.A. 18A:12-24.1(e) of the Code of Ethics, which requires a board member to recognize that authority rests with the board of education and make no personal promises nor take any private action that may compromise the board, is more applicable to the present facts. Thus, the question is whether the conduct of Mrs. Maiello in entering the building to gather information to supplement her application was private action that may compromise the Board. Mrs. Maiello testified that she did not see what she was doing as taking action contrary to the Board because she believed that historical preservation was good for the community and could also result in grants to improve the building. However, this is a close question. The Board still had ultimate authority to determine what would happen to the Rhinesmith Building and Mrs. Maiello's actions would not affect that outcome. Therefore, the Commission concludes that her action did not compromise the Board and finds no probable cause to credit the allegation that Mrs. Maiello violated N.J.S.A. 18A:12-24.1(e).

N.J.S.A. 18A:12-24.1(f), which requires a board member to refuse to surrender his independent judgment to special interest or partisan political groups or to use the schools for personal gain or the gain of friends, while applicable, does not fit with the facts before the Commission. The Commission cannot find, for reasons previously stated, that Mrs. Maiello used the schools for personal gain. While the gain need not necessarily be monetary, the Commission does not find that the seeking of historical landmark status was an action that would yield a "personal" gain for Mrs. Maiello. Therefore, the Commission finds no probable cause to credit the allegation that she violated N.J.S.A. 18A:12-24.1(f).

Next, complainant alleges that Mrs. Maiello violated N.J.S.A. 18A:12-24(b), which prohibits a school official from using or attempting to use his or her official position to secure unwarranted privileges, advantages or employment for herself, members of her immediate family, or others. Complainant alleges that Mrs. Maiello would not have been able to access the building to take the pictures that supported her private application if she were not a Board member. This was refuted by the administrators who indicated that she did not receive any special privileges due to her status and that such a request would have been similarly granted to other members of the public. Therefore the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(b).

Last, complainant alleges that Mrs. Maiello violated N.J.S.A. 18A:12-24(f), which provides:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

In the present case, the Commission is without sufficient information to conclude that Mrs. Maiello entered the building using her public office. It was refuted by the District administrators that Mrs. Maiello used her husband's role as head of the grounds committee to enter the building. It was also denied that she received special privileges as a board member. In addition, the key phrase in N.J.S.A. 18A:12-24(f) is "for the purpose of securing financial gain for himself." The information presented to show that Mrs. Maiello stood to gain financially by having the building designated as an historic landmark was too speculative for the Commission to conclude that her purpose was to secure a financial gain, even it believed that only entered the building by reason of her membership on the Board.

D. Mrs. Maiello Improperly Used Her Influence as a Board Member

Complainant last alleges that Mrs. Maiello unduly used her influence to obtain a list of names of those who inquired about the Rhinesmith Building from the Historical Preservation Office and to have her critics, namely himself, silenced by school administrators in violation of N.J.S.A. 18A:12-24.1(a) through (g), (i) and (j) and N.J.S.A. 18A:12-24(b), (c) and (g). The Commission finds that these issues have been substantially addressed above, but will separately address the most applicable section, which is N.J.S.A. 18A:12-24(b) -- the only one that focuses on a board member's use of her influence.

In order to find probable cause under N.J.S.A. 18A:12-24(b), which prevents a board member from using or attempting to use her official position to secure unwarranted privileges for herself, there must be information that she received a privilege or advantage that she would not have obtained if she were not a board member. The Commission does not have such information. She did not state in her February 2002 application that she was a Board member and the Commission does not discern what influence she could have over an employee of the Historical Preservation Office as a member of the Board. Further, it is just as likely that the Office cooperated with her requests because she had filed her application in 2000 and she was known as someone who had been pursuing this matter for two years. Regarding the attempt of administrators to keep complainant from raising issues about Mrs. Maiello's conflict of interest, there is no information from which to conclude that she said anything or took any action to make the superintendent and the business administrator respond to him in the way that they did. Rather, they believed that complainant was being confrontational to Mrs. Maiello at a public meeting and that his comments were inappropriate. The Commission makes no determination as to whether complainant or the administrators were right in this instance, but finds only that Mrs. Maiello did not use her position to secure an unwarranted privilege in making the administrators act as they did. The Commission therefore finds no probable cause to credit the allegation that Mrs. Maiello violated N.J.S.A. 18A:12-24(b).

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Mrs. Maiello violated N.J.S.A. 18A:12-24.1(a) through (g), (i) or (j) or N.J.S.A. 18A:12-24(b), (c), (d), (f) or (g) of the School Ethics Act and dismisses the complaint against her.

REQUEST FOR SANCTIONS

The respondent has asked that the Commission find the complaints to be frivolous pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint was frivolous, the Commission must find on the basis of the pleadings, its investigation 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]

The Commission determined that Mrs. Maiello's ownership of adjacent property in the area of the Rhinesmith Building could create an appearance of a conflict of interest although, as set forth above, there was no allegation that she had participated in discussions or voted on any matter having to do with the property as of the filing of the complaint. The Commission finds that she did the right thing by abstaining on matters concerning the disposition of the building. Therefore, the Commission does not find the complaint to have been filed in bad faith and does not find that the complaint was without any reasonable basis in law and could not be supported by a good faith argument for an extension, modification or reversal of existing law. Thus, the Commission does not find the complaint to be frivolous and declines to impose sanctions.

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 – C37-02

Whereas, the School Ethics Commission has considered the pleadings, documents and the testimony before it; and

Whereas, the Commission has found no probable cause to credit the allegation that Grace Maiello violated N.J.S.A. 18A:12-24(b) and dismissed the complaint against them; and

Whereas the Commission has reviewed a draft decision; and

Whereas, the Commission agrees with the draft decision;

Now Therefore Be It Resolved that the Commission hereby adopts the decision 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 School Ethics Commission adopted this decision at its public meeting on March 25, 2003.

Lisa James-Beavers
Executive Director