

CHARLES MANEY,	:	BEFORE THE SCHOOL
V.	:	ETHICS COMMISSION
GWEN THORNTON,	:	Docket No.: C46-02
<i>BRIDGEWATER-RARITAN</i>	:	DECISION
<i>BOARD OF EDUCATION,</i>	:	
<i>SOMERSET COUNTY</i>	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed by Charles Maney alleging that Gwen Thornton violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when, as a member and President of the Bridgewater-Raritan Board of Education (Board), she advised other members that Mr. Maney committed a violation of the School Ethics Act. Mr. Maney alleges that her actions were in violation of N.J.S.A. 18A:12-24.1(a), (e) and (g).<sup>1</sup>

Ms. Thorton filed her answer to the complaint stating that she only reviewed correspondence from the board attorney advising that Mr. Maney had a conflict of interest. She stated that she does not understand what Mr. Maney is alleging that she did wrong. She asked that the complainant be sanctioned for filing a frivolous complaint.

The School Ethics Commission advised the parties that it would discuss this matter at its meeting of February 25, 2003. Mr. Maney and Ms. Thorton appeared, Ms. Thorton with her attorney, Stephen Edelstein, Esq.

**FACTS**

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

At all times relevant to this complaint, Charles Maney and Gwen Thorton were members of the Bridgewater-Raritan Board of Education. Ms. Thorton is the president of the Board and was at the time of the events surrounding this complaint.

---

<sup>1</sup> Complainant also alleged violations of the School Ethics Act against the board attorney, but the Commission summarily dismissed the case against him due to lack of jurisdiction because he was not a school official under the School Ethics Act.

On the agenda of the August 27, 2002 Board meeting, there was a resolution requesting the Board to approve the District joining the NJSBAIG sub-fund named Eric North, Insurance, which had been effective since July 2002. Board Secretary/Business Administrator James Cardaneo presented the resolution indicating that it was an oversight that the resolution had not been presented before July. Mr. Cardaneo advised the Board that it would lose insurance coverage if it did not pass the resolution. Complainant voted in favor of the Board joining the NJSBAIG sub-fund, which he says he did to prevent the District's loss of insurance. Subsequent to the vote, Mr. Maney asked questions that Mr. Cardaneo did not answer to his satisfaction. Mr. Cardaneo agreed to arrange a later meeting to answer his questions.

On September 3, 2002, Mr. Maney spoke to an NJSBAIG representative who explained the coverage to him. After that conversation, Mr. Maney did some research and discovered that his employer was a reinsurer of the NJSBAIG. On the evening of September 3, 2002, the Board had an informational meeting on the insurance issue with its agent, NJSBAIG and the finance committee. Mr. Maney participated in the discussion regarding the NJSBAIG sub-fund. At the conclusion of the meeting, Mr. Maney announced to the Board that his employer was a major reinsurer for NJSBAIG and he did not want to be part of any discussion or decisions relating to the insurance program.

Board Attorney Daniel Soriano wrote a memorandum to the Board Secretary copied to Ms. Thorton as Board President and the Interim Superintendent dated September 16, 2002, stating that Mr. Maney's employer presented a conflict of interest with his participation in the insurance discussion. The attorney said that no further action was required, except that Mr. Maney should be advised of his conflict and of its implications for his future actions. Ms. Thorton did not distribute the memorandum to any other individuals.

On September 26, 2002, Mr. Cardaneo wrote a memorandum to Mr. Maney expressing his concern about his participation in the insurance matter in light of his employer. He set forth that he had asked the board attorney to research the area of possible conflict of interest and attached Mr. Soriano's memorandum saying that Mr. Maney should abstain from voting or participating in discussions regarding NJSBAIG in the future. Ms. Thorton and the interim superintendent were copied on the memorandum.

Mr. Maney responded that he did not know that his employer was a reinsurer for NJSBAIG before the August 27, 2002 vote. Mr. Soriano then provided a second memorandum on October 1, 2002, copying Mr. Maney in addition to the others. In this memorandum, he indicated that there would have no violation of the Act if Mr. Maney did not know of his employer's relationship to NJSBAIG, but now that he knows, he should be guided accordingly. Mr. Soriano did not speak to Mr. Maney prior to his submission of the two memoranda.

On October 7, 2002, at a meeting in the Interim Superintendent's office, during which Mr. Maney questioned Mr. Soriano and Ms. Thorton why the board attorney had not made attempts to verify information, whether they investigated the employer relationship of all board

members, and why he was being held to a different standard than another board member who was also employed in the insurance industry. He also asked whether they had checked his disclosure statement that lists his employer. They had not investigated those matters.

On October 24, 2002, Mr. Maney resigned from the Board.

## ANALYSIS

Complainant alleges that Ms. Thorton's conduct constitutes a violation of N.J.S.A. 18A:12-24.1(a), (e) and (g) of the Code of Ethics for School Board Members and N.J.S.A. 18A:12-22(a).

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

I will uphold and enforce all laws, rules and regulations of the State Board of Education and court orders pertaining to schools. Desired changes shall be brought about only through legal and ethical procedures.

The Commission is unable to determine a law, rule or regulation of the State Board that Ms. Thorton is even alleged to have failed to uphold or enforce. If it is complainant's concern that she tried to bring about a change illegally or unethically, the facts do not support it. Ms. Thorton was copied on a memorandum from the Board Attorney saying that Mr. Maney violated the Act. The Commission cannot find any violation of law or ethics in the facts presented. Therefore, the Commission finds no probable cause to credit the allegation that Ms. Thorton violated N.J.S.A. 18A:12-24.1(a).

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.

The Commission fails to see any promise that Ms. Thorton made or action she took in the facts presented. Therefore, it does not see the applicability of this section and finds no probable cause to credit the allegation.

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

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Complainant alleges that the facts were either misrepresented or omitted from the information that the attorney received to arrive at his opinion in violation of N.J.S.A. 18A:12-24.1(g). The Commission does not see how any misrepresentation or omission can be attributed to Ms. Thorton. The facts provided by the complainant show only that she was copied on the memoranda from the board secretary and the board attorney. She neither contributed to the drafting of the memoranda or distributed the memoranda. Therefore, the Commission finds no probable cause to credit the allegation that Ms. Thorton violated N.J.S.A. 18A:12-24.1(g).

Last, complainant alleges that Ms. Thorton violated N.J.S.A. 18A:12-22(a), which provides:

In our representative form of government it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

The School Ethics Commission has previously ruled that it cannot find a violation of the School Ethics Act based solely upon N.J.S.A. 18A:12-22. *Nancy LoPresti v. Marlene Lindhardt-Mazer*, SEC Docket No. C08-01, (June 26, 2001). Section 22 sets forth the Legislature's findings and declarations. Although the Commission frequently cites the section because it provides guidance as to how to interpret the School Ethics Act, the section does not set forth conduct that is prohibited under the Act. Therefore, the Commission finds no probable cause to credit the allegation that Ms. Thorton violated N.J.S.A. 18A:12-22(a).

## **DECISION**

The Commission believes that Mr. Maney's complaint is really against Mr. Soriano because he did not speak to Mr. Maney before concluding that he had a conflict of interest. However, since Mr. Soriano was not a school official, the Commission had to dismiss the case against him. The Commission does not find that Ms. Thorton acted in any way to violate the School Ethics Act. For the foregoing reasons, the Commission finds no probable cause to credit the allegations that Gwen Thorton violated N.J.S.A. 18A:12-24.1(a), (e) or (g) of the School Ethics Act and dismisses the complaint against her.

## **REQUEST FOR SANCTIONS**

The respondents have 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 has insufficient information from which to conclude that the complaint was filed in bad faith. Regarding the second standard, because of the Code of Ethics is still fairly new and there are not many Commission decisions interpreting, the Commission cannot 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 – C46-02**

Whereas, the School Ethics Commission has considered the pleadings, documents and the results of its investigation; and

Whereas, the Commission has found no probable cause to credit the allegation that Ms. Thorton violated N.J.S.A. 18A:12-24.1(a), (e) or (g) or N.J.S.A. 18A:12-22(a) and dismissed the complaint against her; 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