



In the third count, the complainant asserts that the respondent defrauded the taxpayers by collecting mileage money for the trip to Atlantic City for the NJSBA Conference when she rode with another board member. The complainant alleges that the conduct of the respondent in this regard is in violation of N.J.S.A. 18A:12-24.1(a), (e) and (f).

## **ANALYSIS**

In considering a Motion to Dismiss, the Commission considers the facts in the light most favorable to the non-moving party. The question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24.1(a), (e) and (f) of the Code of Ethics for School Board Members, as set forth below. Granting all inferences to the complainant, and even assuming all facts to be true, the Commission finds that the complainant has failed to meet this standard.

The Commission initially notes that N.J.S.A. 18A:12-24.1(a) requires that school board members uphold and enforce all laws, rules and regulations of the State Board of Education, and court orders pertaining to schools. Additionally, N.J.S.A. 18A:12-24.1(a) requires that desired changes shall be brought through legal and ethical procedures. Further, the Commission's regulations require that, in order to prove factually a violation of N.J.S.A. 18A:12-24.1(a), a complainant:

shall include a copy of a final decision from any court of law or administrative agency of this State that finds the respondent(s) failed to enforce all laws, rules and regulations of the State Board of Education, and/or court orders pertaining to schools or that the respondent[s] brought about changes through illegal or unethical means. N.J.A.C. 6A:28-6.9(b).

Here, although the complainant seems to allege that the respondent acted contrary to district policy, the Commission does not have the authority to consider alleged violations of local policy; rather, the Commission's jurisdiction is limited to reviewing violations of the School Ethics Act. Further, to the extent the complainant alleges that the respondent's comments about his attendance were inappropriately made in a public rather than a closed session, such an allegation implicates the Open Public Meetings Act (OPMA) and, therefore, is not within the Commission's jurisdiction.

Additionally, at no time does the complainant assert that a final decision has been rendered with respect to the respondent from any court of law or administrative agency of this State as is his burden when bringing forth an allegation under N.J.S.A. 18A:12-24.1(a). Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(a) and its implementing regulation at N.J.A.C. 6A:28-6.9(b).

Next, the Commission notes that N.J.S.A. 18A:12-24.1(e) provides:

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.

There are no facts offered in this complaint to support the allegation that the respondent failed to recognize that authority rests with the board of education, made personal promises or took private action that was of such a nature that it might compromise the Board. Here, it is important to note that “private action” means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1. Indeed, the actions alleged to have taken place were directly related to the respondent’s duties as a board member, *i.e.*, discussion of the complainant’s attendance at a public meeting, the submission of costs for business cards and submission of costs relative to her attendance at the NJSBA Conference in 2007. (Complainant’s response at 2) Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(e).

Finally, with respect to the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f), the Commission notes that 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 for the gain of friends.

Here, the complainant offers no facts to support the allegation that the respondent surrendered her independent judgment to special interest or partisan political groups. To the extent the complainant asserts that the respondent attempted to be reimbursed for costs to which she was not entitled, and, consequently used the schools for personal gain, the Commission recognizes that board members routinely submit costs and expenditures of the type described in this complaint for consideration by the business administrator; these costs are reimbursed, *if* appropriate. Although the complainant appears to dispute the reimbursement which the board provided the respondent for mileage to the NJSBA convention, his remedy is not with this Commission. The facts as alleged by the complainant do not, alone, indicate deception on the respondent’s part. Moreover, the complainant’s own response to the motion recognizes that the respondent was never reimbursed for the cards or the visits to the gym while at the NJSBA conference to use its exercise equipment. Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts are insufficient to constitute a violation under N.J.S.A. 18A:12-24.1(f).

## **DECISION**

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini  
Chairperson

**Resolution Adopting Decision – C10-08**

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties and the Motion to Dismiss filed by the respondent; and

**Whereas**, the Commission granted the respondent's Motion to Dismiss the allegations that respondent violated N.J.S.A. 18A:12-24.1(a), (e), and (f) of the Code of Ethics for School Board Members; and

**Whereas**, the Commission has reviewed the proposed decision of its staff; and

**Whereas**, the Commission agrees with the proposed decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision granting the respondent's Motion to Dismiss as the final decision of an administrative agency and directs its staff to notify all parties to this action of its decision herein.

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Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on August 26, 2008.

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Joanne Boyle  
Executive Director