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<b>IN THE MATTER OF</b>	:	<b>BEFORE THE SCHOOL</b>
<b>RASHUN STEWART,</b>	:	<b>ETHICS COMMISSION</b>
<b>ATLANTIC CITY</b>	:	
<b>BOARD OF EDUCATION</b>	:	<b>Docket No. C20-07</b>
<b>ATLANTIC COUNTY</b>	:	<b>DECISION</b>
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**PROCEDURAL HISTORY**

This matter arises from a complaint filed on May 14, 2007 by Rochelle Salway, a former member of the Atlantic City Board of Education (“Board”) against RaShun Stewart, president of the Board. The complainant alleges that the respondent violated The School Ethics Act, (“Act”), N.J.S.A. 18A:12-24 et seq. when, *inter alia*, he voted on funding for the Oceanside Charter School where he is an employee and when he failed to duly disclose that employment. The complaint did not originally specify (in counts 1 and 3) which portions of the Act were alleged to have been violated. By letter dated June 19, 2007, the complainant was provided a copy of the Act and requested to specify the alleged violation. By letter filed on July 2, 2007, she informed the Commission that the specific provisions alleged to have been violated are N.J.S.A. 18A:12-24(b), (c), (d), (f) and (h). An answer was filed on August 6, 2007.

The Commission invited the complainant and respondent to attend its meeting on May 27, 2008. Neither the complainant nor the respondent attended the meeting. The Commission tabled the discussion of this matter and its determination on probable cause until its meeting on June 24, 2008 so as to acquire additional information from the Oceanside Charter School, which was duly submitted.

At its meeting on June 24, 2008, the Commission found probable cause to credit the complainant’s allegation that respondent violated N.J.S.A. 18A:12-24(b), (c), (d), (f) and (h) of the School Ethics Act as set forth in the first count of the complaint and also found that material facts were not in dispute. The Commission found no probable cause to credit the allegations set forth in counts two and three of the complaint; these counts were dismissed accordingly. The respondent was so notified by letter dated July 9, 2008 and was accorded 30 days to submit a written statement setting forth the reasons why he should not be found in violation of the Act. The respondent submitted a written statement, as summarized below.

**THE PLEADINGS**

In the first count of the complaint, the complainant alleges that the respondent held a position in the Oceanside Charter School for fiscal year 2006-2007 as an administrative support programs coordinator at an annual salary of \$82,000. According to the complainant, on several occasions, the respondent voted on funding for Oceanside Charter School wherein he was an employee. (Complaint at paragraph 1). The complainant asserts this was a violation of N.J.S.A. 18A:12-24(b), (c), (d), (f) and (h).

In his Answer, the respondent denies that he “voted for funding” for the Oceanside Charter School while he was an employee of the Charter School. Rather, the respondent asserts that “pursuant to N.J.A.C. 6A:23-9.5(k)(1), the Board was required to initiate payments to Oceanside (Answer at p. 1) Therefore, the respondent denies the existence of a conflict of interest or any other inappropriate activity in his position as President of the Board.

In his response to the Commission’s probable cause finding, the respondent underscores that he “did not vote for funding of the Charter School.” Rather, according to Mr. Stewart, “I voted to approve the business office to carry out the duties pursuant to N.J.A.C. 6A:23-9.5(k)(1) of initiating payments to receiving Charter Schools based on their projected enrollment of district pupils.” (Stewart Statement at p. 1) The respondent further states that prior to this complaint being filed in May 2007, a concern was never raised as to this matter. The respondent continues, “When I received information as it relates to this concern, I immediately consulted with our board attorney. As a result of this consultation, I have abstained from taking action/voting on all district payment approvals and open request for payments for over a year now.” (Id. at pp. 1-2) Thus, Mr. Stewart reasons that the issue has been duly addressed by the Board, in consultation with its counsel. Additionally, he contends that a violation issued by the School Ethics Commission will not just affect him individually, but has a “collective effect on the Board’s overall governance rating an ability.” (Id. at p. 2)

## **EVIDENCE**

With respect to the remaining count against Mr. Stewart, the Commission subpoenaed from the Board all minutes for meetings held from May 2006 through May 2007 wherein the Board took action relative to the Oceanside Charter School. These documents show that the respondent presided over the following meetings and voted on resolutions, as follows:

- July 11, 2006: On a motion made by Mrs. Salway and seconded by Ms. Callaway, the Board voted unanimously to ratify the report of payments for the period 5/19/06 to 6/21/06, which included a payment to the Oceanside Charter School;
- August 29, 2006: On a motion made by Mrs. Salway and seconded by Ms. Callaway, the Board voted unanimously to ratify the report of payments for the period 7/26/06 to 8/16/06, which included a payment to the Oceanside Charter School;
- October 10, 2006: On a motion made by Mrs. Salway and seconded by Ms. Callaway, the Board voted unanimously to ratify the report of payments for the period 8/17/06 to 9/25/06, which included a payment to the Oceanside Charter School;
- October 30, 2006: On a motion made by Mrs. Salway and seconded by Ms. Kelly, the Board voted unanimously to ratify the report of payments for the period 8/27/06 to 10/20/06, which included a payment to the Oceanside Charter School;
- November 21, 2006: On a motion made by Mrs. Salway and seconded by Ms. Jones, the Board voted unanimously to approve the report of payments for the period 10/21/06 to 11/15/06, which included a payment to the Oceanside Charter School;

- December 12, 2006: On a motion made by Ms. Callaway and seconded by Ms. Jones, the Board voted unanimously to approve the report of payments for the period 11/06/06 to 12/06/06, which included a payment to the Oceanside Charter School;
- January 30, 2007: On a motion made by Mrs. Salway and seconded by Mr. Bonanni, the Board voted unanimously to approve the report of payments for the period 12/07/06 to 1/24/07, which included a payment to the Oceanside Charter School;
- March 27, 2007: On a motion made by Mr. Dollard and seconded by Mr. Bonanni, the Board voted unanimously to ratify the report of payments for the period 1/25/07 to 2/21/07, which included a payment to the Oceanside Charter School; and
- March 27, 2007: On a motion made by Mr. Dollard and seconded by Mr. Bonanni, the Board voted unanimously to approve the report of payments for the period 2/22/07 to 3/21/07, which included a payment to the Oceanside Charter School.

Finally, the Commission subpoenaed from the Oceanside Charter School the minutes from the meeting(s) of the Board of trustees which showed the effective hiring date of RaShun Stewart, together with employment records that document the same. These records show that the respondent was hired by the Oceanside Charter School on July 1, 2006 as the Coordinator of Student Support and Related Services and his employment was again approved in July 2007.

## **FINDINGS OF FACT**

The Commission was able to discern the following facts based on the pleadings and all documents submitted:

1. At all times relevant to this complaint, the respondent was the president of the Board of Education of Atlantic City.
2. While serving as a member of the Board, the respondent was hired by the Oceanside Charter School on July 1, 2006 to the position of Coordinator of Student Support and Related Services; his employment was again approved in July 2007.
3. During the 2006-2007 school year, the respondent presided over the following meetings wherein the Board unanimously approved payments to the Oceanside Charter School, as set forth above on July 11, 2006, August 29, 2006, October 10, 2006, October 30, 2006, November 21, 2006, December 12, 2006, January 30, 2007, and March 27, 2007.
4. The respondent did not abstain from participating in these actions.

## ANALYSIS

The complainant asserts that because Mr. Stewart, during the 2006-2007 school year, voted on payments to be issued to the Oceanside Charter School wherein he was an employee, he violated N.J.S.A. 18A:12-24(b), (c), (d), (f) and (h) of the School Ethics Act. In his Answer, the respondent contends that he “did not vote to approve funding nor enter into any resolutions for the award of funds.” Rather, Mr. Stewart points out that, pursuant to N.J.A.C. 6A:23-9.5(k)(1), “the Board is required to initiate payments to Oceanside based upon projected enrollment for the school.” Thus, according to the respondent, “voting is not essential for the award to occur,” and there is no conflict of interest.<sup>1</sup> (Answer at p. 1)

Initially, the Commission considers whether the respondent violated N.J.S.A. 18A:12-24(b) and (f) which provide:

b. No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

f. 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;

Here, the Commission finds there is no evidence on this record to indicate that the respondent used his position as a Board member in the Atlantic City School District to obtain employment with the Oceanside Charter School so as to potentially violate N.J.S.A. 18A:12-24(b). Neither does the Commission discern on these facts what other unwarranted privileges or advantages may have accrued to the respondent, members of his immediate family or others, by virtue of his participation in the aforementioned votes.<sup>2</sup> Similarly, the Commission finds no evidence on this

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<sup>1</sup> N.J.A.C. 6A:23-9.5(k)(1) states, “A district board of education shall process payment(s) and payment adjustments to a charter school during any given school year as follows:

1. The district of residence and non-resident district(s) shall initiate payments to the charter school based on projected enrollment, as set forth in N.J.A.C. 6A:23-9.4(a).”

<sup>2</sup> Contrast, IMO Raymond Bonker, Lenape Valley Regional Bd. of Ed., C11-97, (March 30, 1998) wherein the Commission found that a Board member attempted to secure an unwarranted privilege for himself in violation of N.J.S.A. 18A:12-24(b) when, prior to the Board’s approval, he released staff email addresses in his campaign literature which detailed his technology-related accomplishments in the district; IMO Lawrence James, Chesilhurst Bd. of Ed., C10-98, (December 15, 1998) wherein the Commission found that a Board member violated N.J.S.A. 18A:12-24(b) when he used his official position to secure privileges for himself with a bank when he asked the Business Administrator to intercede for him in acquiring an unsecured loan from the bank that held the Board’s accounts; and IMO Alphonse DeMao, Belleville Bd. of Ed., C09-04, (September 30, 2004) wherein the Commission found that a Board member violated N.J.S.A. 18A:12-24(b) when he endorsed a candidate for the municipal council through a mailing of letters to members of the community where the letterhead, envelope and contents of the letter could mislead recipients to believe that the endorsement was made in his official capacity as Board president.

record to indicate that the respondent used, or allowed to be used, his public office or employment, or any information, not generally available to the members of the public, which he received or acquired 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 violation of N.J.S.A. 18A:12-24(f). Accordingly, the Commission dismisses the allegations that the respondent violated N.J.S.A. 18A:12-24(b) and (f).

The Commission next notes that the complainant does not assert that the respondent's employment with the Oceanside Charter School created an inherent conflict with his official board member duties. Therefore, the Commission dismisses the allegation that Mr. Stewart violated N.J.S.A. 18A:12-24(d), since this provision 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 Commission next considers whether the respondent's participation in the votes for payments to the Oceanside Charter School violated N.J.S.A. 18A:12-24(c), as set forth below:

c. No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has 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;

Here, the Commission finds that, as an employee of the Oceanside Charter School, the respondent had an indirect financial involvement which a reasonable person could perceive to impair his objectivity or independence of judgment. In IMO Bruce White, Ewing Township Bd. of Ed., C01-01 (July 21, 2001), the Commission determined that the respondent Board member, who was employed as a Principal by the Mercer County Vocational School District (MCVSD), had an indirect financial involvement that would reasonably be expected to impair his objectivity in violation of N.J.S.A. 18A:12-24(c) when he voted on the payment of tuition to the MCVSD for the students who would be attending the alternative school for which the MCVSD served as the local education agency. Similarly, in the matter entitled IMO Rosemary Jackson, Camden City Bd. of Ed. C11-01 (June 26, 2001), the Commission and a respondent Board member reached a settlement wherein they agreed that the respondent violated N.J.S.A. 18A:12-24(c) when she inadvertently voted on a bill list that contained a bill of her employer. In IMO James Carpenter, Pennsville Bd. of Education, C21-01, C22-01 (consolidated) (November 27, 2001), a Board member was found to have violated N.J.S.A. 18A:12-24(c) when he participated in the discussion and vote on the resolution to continue the appointment of his employer as the depository for the Board of Education.

Thus, while the Commission acknowledges that pursuant to N.J.A.C. 6A:23-9.5(k)(1), payments to the charter school are required by the Board, and are arguably perfunctory, the Commission is mindful of the purpose of the School Ethics Act: to avoid conduct which is in violation of the public trust or which creates a justifiable impression among the public that such trust is being violated. N.J.S.A. 18A:12-22(a). Mr. Stewart also appears to recognize this principle, as he states:

Even though my voting pattern did not influence or manipulate the predetermined calculations and district required actions[,] I clearly understand the concerns of the Commission and how such actions may create the justifiable impression among the public that these actions could yield personal gain. (Stewart Statement at p. 1)

Mr. Stewart's subsequent abstention from voting regarding payments to the charter school, upon receiving counsel from the Board's solicitor after this complaint was filed, further supports the conclusion that his participation in votes to authorize payments to the Oceanside Charter School during the 2006-2007 school year was a violation of N.J.S.A. 18A:12-24(c).

The Commission finally considers whether N.J.S.A. 18A:12-24(h) applies in this matter so as to permit an exception to the acts which are prohibited under N.J.S.A. 18A:12-24. The provision states:

h. 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;

The Commission has narrowly applied this exception to instances where Board members have children attending school in the district so as to enable their participation in decisions involving a larger group of students. Where no material gain can be expected to accrue to the Board member's child to any greater extent than the other children, the Board member's participation was found not to be in violation of the Act. Hoboken Education Association v. Anthony, Hoboken Bd. of Ed., C11-08 (December 19, 2000); Advisory Opinion A01-98 (February 27, 2008).

Additionally, in IMO Bruce Freilich, Washington Township Bd. of Ed., C18-04 and C19-04 (April 4, 2005), the Commission found that N.J.S.A. 18A:12-24(h) could be applied where the respondent Board member voted in the affirmative on a bill list which included a \$375.50 reimbursement to him for aid in lieu of transportation, as required by the transportation statute, N.J.S.A. 18A:39-1. The Commission therein based its decision on the unique circumstances established in statute, finding that Mr. Freilich was a member of a group created by N.J.S.A. 18A:39-1 et seq. and, as a member of that group, he received aid in lieu of transportation in the amount set by the statute. The Commission noted that if a parent qualified for aid in lieu of

transportation, the Board would have no discretion in the amount of aid that the parent was entitled to receive. The Commission reasoned that since the amount of aid is set by statute, Mr. Freilich could not have received aid in lieu of transportation in an amount greater than any member of the group that received such aid from the Board. Furthermore, as a board member, he had no discretion in setting the amount of the aid that he would receive. Freilich at page 7.

Here, however, the Commission does not find the existence of such unique circumstances in that the respondent is not a member of a particular business, profession, occupation or group. Thus the Commission finds that, as an employee of the Oceanside Charter School, the respondent had an indirect financial involvement which a reasonable person could perceive to impair his objectivity or independence of judgment and his failure to recuse himself on matters which involved funding to the charter school constituted a violation of N.J.S.A. 18A:12-24(c).

## **DECISION**

For the reasons expressed above, the Commission finds that RaShun Stewart violated N.J.S.A. 18A:12-24(c) of the School Ethics Act.

## **PENALTY**

The Commission recommends that the Commissioner of Education impose a penalty of reprimand. In Jackson, the Commission recommended a penalty of reprimand and the Commissioner concurred. IMO Rosemary Jackson, Camden City Bd. of Ed., Commissioner's Decision, July 27, 2001. Similarly, in Carpenter, the Commission recommended a penalty of reprimand and the Commissioner concurred. IMO James Carpenter, Pennsville Bd. of Education, Commissioner's Decision, January 31, 2002. Although the Commission recommended a penalty of censure in White, it also noted that Mr. White had been previously found in violation of the School Ethics Act. White at p. 4.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: 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.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at N.J.A.C. 6A:4 within **30 days** of the filing date of the

decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Paul C. Garbarini  
Chairperson

Mailing Date:\_\_\_\_\_

## Resolution Adopting Decision – C20-07

**Whereas**, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and documents brought to the record pursuant to its investigation; and

**Whereas**, at its meeting of June 24, 2008, the Commission found probable cause to credit the complainant's allegation that respondent violated N.J.S.A. 18A:12-24(b), (c), (d), (f) and (h) of the School Ethics Act as set forth in the first count of the complaint; and

**Whereas**, the respondent was so notified and accorded 30 days to submit a written statement setting forth the reasons why he should not be found in violation of the Act.

**Whereas**, the respondent submitted a written statement which was considered by the Commission;

**Whereas**, at its meeting on August 26, 2008, the Commission determined that the respondent violated the School Ethics Act and adopted this decision consistent with the aforementioned conclusion; and

**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.

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Paul C. Garbarini, Chairperson

I hereby certify that this 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