VIRGINIA JEFFRIES	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
HENRY HAMILTON,	:	Docket No. C13-06
EAST ORANGE	:	
BOARD OF EDUCATION	:	DECISION
ESSEX COUNTY	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 26, 2006 alleging that Henry Hamilton, a Principal of the Whitney Houston Academy Elementary School in the East Orange School District (District) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges that Mr. Hamilton violated N.J.S.A. 18A:12-24(b) and (c) of the Act when he directed that money raised from a student dance production was to go to the Whitney Houston Parent Teacher Association (PTA), of which he is a member. She further alleges that the President of the PTA collected the funds and the money was never deposited into the student activity fund. Last, she alleges that Mr. Hamilton allowed more people into the dance production than the maximum occupancy limit permitted by placing chairs in the aisles.

Mr. Hamilton, through his attorney, Marc Zitomer, Esq. filed a timely answer pursuant to an extension granted by the School Ethics Commission. Therein, he admitted that there was a dance recital partially supervised by a member of the teaching staff. However, he stated that the recital was always a fundraising event arranged by the PTA using the school facilities; it was never a fundraiser for the Whitney Houston Academy. He admits being a member of the PTA for the 33 years that he has served as Principal. He denied committing any violations of the School Ethics Act.

FACTS

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

At all times relevant to this complaint, Ms. Jeffries was a parent of a child attending the Whitney Houston Academy and Mr. Hamilton was the principal of the Whitney Houston Academy. Mr. Hamilton is also an officer and executive board member of the PTA. The PTA's mission is to promote student welfare and encourage parental and public involvement.

There was a dance recital at the Whitney Houston Academy on May 26, 2005. Although Mr. Hamilton states that it was always a fundraiser for the PTA, Ms. Jeffries testified, and it was not refuted, that parents were not told that it was a PTA fundraiser until a flyer was sent home the week before the recital. She testified that they never gave

permission for their children to perform the recital for the PTA. Practices were held during the instructional day. The flyer, which parents received about a week before the event, was the first indication to complainant that it was a PTA event. When complainant tried to raise questions regarding the notation on the flyer that it was a PTA production, she could not get an answer. Complainant said, and it was not refuted, that the PTA did not expend any money toward this activity. The children had to provide their own costumes and the lighting and music were all done by staff members of the District.

In addition, videotapes of the children dancing were sold, although the parents never signed releases. The PTA kept the money. It is disputed whether the money was ever actually given to the school, but Mr. Hamilton says that when the PTA gives to the school, the money is not placed in a general account, but given as an in-kind contribution to a bus for a field trip or other student activity. There was no dispute that the event was sold out past maximum capacity, which is 375 people. With tickets sold at $3.00 each, Ms. Jeffries estimates that over $1,000.00 was raised that night. She said that the tickets were not numbered, as is required for fundraisers.

The PTA is under a Consent Order from the Department of Law and Public Safety Division of Consumer Affairs that took effect on January 26, 2005 due to its investigation into allegations that it had omitted all revenues related to fundraising activities from its fiscal year 2000 registration filing and failed to file the requisite forms with the Division. The Consent Order binds everyone who has anything to do with the PTA. The Order gives the PTA a 24-month probationary period. If they violate the Order, then they must pay a fine of $1,500.00. Complainant has advised the superintendent that the PTA is in violation of the Consent Order, but she has not received any response.

Complainant has been prohibited from joining the PTA and claims she was never given a reason for the prohibition. When she questioned respondent about it, he said that he cannot interfere with a private organization, although he is a member of the Executive Board.

ANALYSIS

Complainant alleges that respondent violated N.J.S.A. 18A:12-24(b) and (c) in connection with the dance recital on May 26, 2005. N.J.S.A. 18A:12-24(b) provides:

> 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.

Complainant contends that respondent directed that the PTA receive all money from the production and thus, used his position to funnel money from what was supposed to be a school event into a PTA event with the PTA taking all of the proceeds. The Commission is satisfied with Mr. Hamilton's answering certification that the dance recital was always a PTA event, although that should have been communicated to the parents at the outset, rather than on the flyer a week before the event. Since the

Commission finds that it was a PTA event, it cannot find that respondent used his position to secure any unwarranted privilege or advantage for himself or the PTA, of which he is a member. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(b).

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.

Paragraph three, alleging a violation of N.J.S.A. 18A:12-24(c), is an allegation against Lonnie Tucker, PTA President, who is not named in the complaint, for not depositing the money in the student activity fund. However, paragraph four alleges that respondent violated N.J.S.A. 18A:12-24(c) by permitting the auditorium to exceed the maximum occupancy limit by over 50 people. The Commission does not find that such action constitutes acting in one's official capacity in a matter in which one has a direct or indirect financial involvement or a personal involvement that creates a benefit to the school official. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(c).

DECISION

For the reasons expressed above, the Commission finds that Mr. Hamilton did not violate the School Ethics Act and dismisses the allegations against him.

REQUEST FOR SANCTIONS

Respondent has asked that the East Orange Board of Education be reimbursed by Mrs. Jeffries for the attorney's fees incurred in defense of this matter. There is no provision for such relief; however, the Commission will treat the request as one to find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, 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 can find no evidence that the complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. While the complainant does have reasons to dislike the PTA since it has refused to let her participate, this does not show that this complaint was filed in bad faith solely for the purpose of harassment, delay or malicious injury. Based on testimony from the complainant, it is clear to the Commission that the complainant believed that there was a reasonable basis for the complaint, although her allegations were directed more to violations of the Consent Order rather than violations of the Act. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's request for sanctions against the complainant.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C13-06

Whereas, the School Ethics Commission has considered the pleadings, the documents submitted in support thereof and the testimony in this matter; and

Whereas, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-21 et seq.; and

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

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision to dismiss as its final 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 19, 2006.

_____
Lisa James-Beavers
Executive Director

PCG/LJB/e/lisa/decisions/C1306