
IN THE MATTER OF	:	BEFORE THE SCHOOL
FRANK MINNITI	:	ETHICS COMMISSION
GREENWICH TOWNSHIP BOARD OF	:	
EDUCATION	:	Docket No. C08-09
GLOUCESTER COUNTY	:	DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 27, 2009 by Frederick Reel alleging that Frank Minniti, a member of the Greenwich Township Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The respondent filed an answer on April 9, 2009. The matter was scheduled for a probable cause determination by the Commission on January 26, 2010, at which time the Commission voted to find probable cause to credit the allegation in the complaint. The Commission also determined to resolve this matter on a summary basis pursuant to N.J.A.C. 6A:28-6.8(b), in that the material facts are not in dispute.¹

Pursuant to N.J.A.C. 6A:28-6.8(b), the respondent was accorded 30 days from the mailing date of the Probable Cause Notice (February 24, 2010) to submit a written statement of the reasons he should not be found in violation of the Act based on the undisputed facts set forth in this Probable Cause Notice. On March 23, 2010, the respondent filed his statement. Therein, the respondent quoted from his answer to the complaint where he stated:

I do not believe it is reasonable for the public to expect a Board Member, with a spouse who is employed as a secretary in the district, who chooses to vote on the Business Administrator's contract for said secretary to gain any financial benefit or special privilege especially since said secretary is governed by a collective bargaining agreement. (Responsive Statement at p. 1, citing to answer at page 2)

The respondent explains that by the term "governed," he meant that any salary increment his wife receives is "directly tied to the bargaining agreement." Thus, if the bargaining agreement calls for a 3% salary increase, his wife would get the same. (Id.)

In his statement, the respondent underscored that he was never involved "either directly or indirectly" with negotiations regarding the contract for the Business Administrator. Rather, three days prior to the meeting, he received a copy of the Business Administrator's contract, with instructions from the chief school administrator to review the contract prior to ratification. The

¹ On April 15, 2009, the State Board of Education adopted amendments to N.J.A.C. 6A:28, the regulations governing matters that come before the School Ethics Commission. These rules became effective on May 18, 2009. However, because the complaint in this matter was filed on March 27, 2009, the Commission followed procedures and rendered its determinations herein in accordance with the rules that were in effect at the time the complaint was filed. To the extent this decision cites to regulations, they are the regulations that were in effect when the complaint was filed.

respondent asserts this was the first time he saw the document. Respondent affirms that in Executive Session, prior to reviewing the contract, he made a statement that if any negotiations were to take place, he would have to remove himself from the proceedings. According to the respondent, it was then that the Chief School Administrator recommended that the contract be ratified.” (Id. at pp. 1-2).

The respondent notes that there have been five Chief School Administrators in the District since he has served as a Board member and none has advised him not to vote on the Business Administrator’s contract. Neither has the Board solicitor advised him of the same. (Id. at p. 2) He continues:

The complainant, at the time of the vote, was politically driven along with other Board members, to remove the current Business Administrator from his position and said board members were in a lengthy [sic] and ugly contract negotiation with the Business Administrator. *** In response to my vote, my spouse’s position was used as a ploy to retaliate against me. (Ibid.)

The respondent concludes by stating that he has never acted in any capacity where a member of his family has benefited financially or in any other capacity. He affirms that he “has taken great pride as a school board of education member to never violate the public’s trust” and has always been aware of his ethical and moral responsibility to the school district and to himself. (Ibid.)

At its April 20, 2010 meeting, and upon consideration of the respondent’s arguments, the Commission found that the respondent violated N.J.S.A. 18A:12-24(c), as set forth below, and recommended a penalty of reprimand.

FINDINGS OF FACTS

The undisputed facts are as follows:

1. At all times relevant, the respondent was a Board member.
2. The respondent’s spouse is employed in the District as a secretary who reports to the Business Administrator. (Complainant’s July 13, 2009 submission, Attachment: Minutes of Regular Meeting, Greenwich Township Board of Education, June 29, 2009 at page 3.)
3. At the Board’s meeting on February 23, 2009, the respondent voted to approve the contract of the Business Administrator. The vote was five to two in favor of ratifying the contract. (Minutes of Regular Meeting, Greenwich Township Board of Education, February 23, 2009 at page 13.)
4. Minutes from the meeting on February 23, 2009 show that the Board went into Executive Session at 7:48 p.m. and returned from closed session at 9:10 p.m. The next item on the agenda was Personnel. The minutes read, in relevant part:

Motion: (Minniti/LaPalomento) to approve the following:

B. The approval of the contract for Scott A. Campbell, School Business Administrator/Board Secretary, at a salary of \$88,525.00, retroactive to July 1, 2008.

Roll Call Vote:

Frederick Reel – Yes

Louis Fabiani – No

Robyn Glocker Hammond – Yes

Lorraine LaPalomento – Yes

Frank Minniti – Yes

Michael Myers – Yes

Patrick Lani, Jr. – No

(Id.)

ANALYSIS

Based on the undisputed facts set forth above, the Commission previously found probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c) when, on February 23, 2009, he voted to approve the contract of the Business Administrator. N.J.S.A. 18A:12-24(c) provides that:

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;

The School Ethics Act at N.J.S.A. 18A:12-23 defines “member of the immediate family” as the spouse or dependent child of a school official residing in the same household. The Commission’s regulations at N.J.A.C. 6A:28-1.2 define “spouse” as “the person to whom the school official is legally married under New Jersey law and also includes a partner in a civil union couple as established in N.J.S.A. 37:1-33. Thus, the respondent’s spouse is a member of his immediate family.

The material facts in this matter are not disputed. The respondent’s wife is a secretary to the Business Administrator and on February 23, 2009, the respondent voted in public session to approve the contract of the Business Administrator. The Commission has advised that a Board member whose spouse works in the District may not participate in discussions or vote on employment issues concerning the employee’s supervisors, including the Superintendent. *Advisory Opinion A10-00* (June 27, 2000); *Advisory Opinion A30-05* (March 10, 2006). In *A30-*

05, the Commission advised that Board member B, whose spouse worked as a secretary in the High School nurse's office, "would violate N.J.S.A. 18A:12-24(c) if he were to participate in employment issues regarding the principal of the High School and the Superintendent." (A30-05 at p. 4) The Commission further advised that Board member B must recuse himself "from all discussions **and votes** with regard to those administrators." (Id., emphasis added) See also, School Ethics Commission v. Gunning, C15-93 (September 22, 1994).

Recently, the Commission found that a Board Member violated N.J.S.A. 18A:12-24(c) when he voted to extend the contract of the Superintendent, where his wife was employed in the District as a truant officer, reporting directly to the Superintendent. I/M/O William Depsee, Woodland Park Board of Education, Passaic County, C30-09 (January 26, 2010), Commissioner of Education Decision No. 65-10, decided March 11, 2010. In I/M/O Charles Carey, Pennsauken Bd. of Ed., C33-08 (March 23, 2010),² the Commission similarly found that a Board Member violated N.J.S.A. 18A:12-24(c) when he voted to approve the 2008-2009 salary for the Superintendent, notwithstanding that the Board member's spouse, who was employed in the District as a secretary in the nurse's office, did not report directly to the Superintendent. In I/M/O Thomas Guarascio, Township Bd. of Ed., C40-08, April 20, 2010,³ the Commission found that a Board member violated N.J.S.A. 18A:12-24(c) when he voted at the Board's reorganization meeting to reappoint the Vice-Principal, Principal and Supervisor of Elementary Education where his wife was a tenured teacher in the District. The Commission finds, therefore, that when the respondent voted on February 23, 2009 to approve the contract and salary of the Business Administrator, he was acting in his official capacity in a matter where a member of his immediate family had an indirect financial involvement which a reasonable person could perceive to impair the respondent's objectivity or independence of judgment in violation of N.J.S.A. 18A:12-24(c).⁴

The Commission further notes that, in his statement, the respondent acknowledges that he was present in Executive Session when the Business Administrator's contract was discussed. The Commission, therefore, cautions the respondent that "when a school official has a conflict of interest of which the public is aware, and that school official goes behind closed doors when that item is discussed, the situation creates a justifiable impression among the public that their trust is being violated." SEC v. Michael Kilmurray, Lacey Twp. Bd. of Ed., C12-94 (January 27, 1998), Commissioner of Education Decision No. 155-98 (April 15, 1998), where the Commission therein advised that full recusal requires the conflicted school official to leave the room. See also, I/M/O Richard Filipek, Saddlebrook Bd. of Ed., C18-07 (June 24, 2008) Commissioner of Education Decision No. 317-08, decided July 23, 2008, where the Commission found that the respondent Board member, whose spouse was employed in the District, violated N.J.S.A. 18A:12-24(c) by being present in his capacity as president of the Board and running

² This decision is pending review by the Commissioner of Education, pursuant to N.J.S.A. 18A:12-29(c).

³ This decision is pending review by the Commissioner of Education, pursuant to N.J.S.A. 18A:12-29(c).

⁴ In this connection, it is also noted that the respondent made the motion to approve the contract and salary of the Business Administrator. (See, Factual Finding #4.) The Commission has found that making a motion may be considered "official action." See, I/M/O Alexander Sipos, Garfield Bd. of Ed., C20-99 (May 23, 2000) Commissioner of Education Decision No. 221-00SEC, decided July 10, 2000.

two closed session meetings of the Board when the tenure appointment of the middle/high school principal, his wife's direct supervisor, was discussed, *notwithstanding that he did not participate in the vote*. The Commission found that the respondent had a direct financial involvement in the tenure appointment of the middle/high school principal that would reasonably be expected to impair his objectivity or independence of judgment.

DECISION

For the reasons set forth above, the Commission finds that Frank Minniti violated N.J.S.A. 18A:12-24(c) when, on February 23, 2009, he voted to approve the contract and salary of the Business Administrator.

PENALTY

The Commission recommends a penalty of reprimand, as it did in matters which were both factually analogous and comparable in violation to the matter herein, for the reasons set forth in the above analysis, see, I/M/O Charles Carey, Pennsauken Bd. of Ed., C33-08 (March 23, 2010), I/M/O William Depsee, Woodland Park Board of Education, Passaic County, C30-09 (January 26, 2010), Commissioner of Education Decision No. 65-10, decided March 11, 2010 and because a penalty of reprimand is consistent with those decisions where there a respondent was found to have violated N.J.S.A. 18A:12-24(c) in a single instance of voting on matters where they were conflicted. See, I/M/O Stewart, Atlantic City Bd. of Ed., Atlantic County, C20-07 (August 26, 2008), Commissioner of Education Decision No. 410-08, decided October 9, 2008; I/M/O Diana Lobosco, Passaic County Educational Services Commission, Passaic County, C31-05 (November 22, 2005), Commissioner of Education Decision No. 7-06, decided January 10, 2006.

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.

Robert W. Bender
Chairperson

Mailing Date: May 26, 2010

Resolution Adopting Decision – C08-09

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof; and

Whereas, at its meeting on February 23, 2010, the Commission found probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; 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 April 20, 2010, the Commission determined that the respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommended a penalty of reprimand; and

Whereas, at its meeting on May 25, 2010, the Commission agreed that the within decision accurately memorializes its findings and recommendations; 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.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on May 25, 2010.

Joanne Boyle, Executive Director