

voting on the matter, they consulted with the Board's attorney who advised that they did not have a conflict in so voting.

The respondents further underscore that C13-07 was brought by them in their respective roles as the (then) Board President and Vice President and, as such, they were not seeking to vindicate any personal interests. The complaint addressed conduct by Mr. Matthews which affected the district as a whole. Neither respondent sought any personal or private benefit or gain by filing the complaint. (*Id.* at p. 3) In support of this position, the respondents assert that in Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October 27, 2008), *aff'd*, Commissioner of Education Decision No. 123-09A, April 14, 2009, the Commission found that David Matthews violated N.J.S.A. 18A:12-24.1(d), (e) and (i) of the Code of Ethics for School Board Members; none of the violative conduct had anything to with the respondents. (*Id.* at p. 4)

The respondents further point to the Commission's finding of probable cause which recognized that it was the Board of Education that continued to maintain the obligation to retain (and presumably pay for) legal counsel. Thus, the respondents reason that they had no personal interest in the payment of legal fees "that were indisputably the responsibility of the Board of Education" and they had no "direct or indirect financial involvement" in either C13-07 or the payment of legal fees which "might reasonably be expected to impair [their] objectivity or independence of judgment." (*Ibid.*)

The respondents further argue that there is no basis to find that they had any "personal involvement that is or creates some benefit" to them with respect to prosecuting C13-07 or the payment of the invoice for legal fees. In this connection, the respondents state that at no time did the law firm in question seek to have them pay the fee, or ever indicate that if the Board did not pay their fee, the law firm would look to the respondents for payment. (*Ibid.*) The invoice on which the respondents voted was not one for which they would have been personally liable; the Board, in paying the invoice, was not assuming an obligation of the respondents. Indeed, the law firm sent the bill to the Board. (*Id.* at p. 5)

The respondents point to the Commission's decision in Luthman v. Longo, Toms River Regional Bd. of Ed., C17-08 (June 23, 2009) wherein the Commission found no probable cause to credit the allegation that the respondent Board member violated N.J.S.A. 18A:12-24(c) by voting in favor of approving the general budget for submission to the voters, when his wife was a nurse in the District. (*Id.* at p. 6) Respondents further note that in Longo, the Commission found that although the respondent had "a direct or indirect financial involvement" in the budget that was proposed, that involvement was too attenuated to find that it "might reasonably be expected to impair his objectivity or independence of judgment." Here, respondents reason there is not even a direct or indirect financial involvement. (*Id.* at pp. 8-9)

The respondents further remind the Commission that the Board sought to become a complainant in C13-07, but was advised by the Commission that it could not, as an entity, be a complainant. However, because the Commission determined that a Board of Education as an entity cannot properly be a complainant, it was left to the respondents to bring to the Commission's attention the ethical violations of one of its Board members. Respondents reason

that subjecting them “to personal liability for counsel fees that may be incurred in filing such a complaint (where a resolution was specifically passed whereby the Board of Education agreed to retain and pay for counsel) or to a finding that they in some way have a personal interest in the outcome of the complaint so as to subject them to Ethics violations will deter them from acting on their reasonable, good faith belief that conduct violative of the Rules of Ethics has occurred.” (Id. at pp. 9-10)

At its March 23, 2010 meeting, and upon further review of this matter and consideration of the respondents’ arguments, the Commission found that the respondents did not violate N.J.S.A. 18A:12-24(c), for the reasons set forth below, and dismissed this matter.

FINDINGS OF FACT

The undisputed facts are as follows:

1. At all times relevant, the respondents were Board members.
2. On or about March 26, 2007, Board President Stephen Brown and Vice President Glenn Garrison, along with then Superintendent Carol Lisa, filed a complaint against David Matthews which was docketed before the School Ethics Commission as C13-07. (Brown Certification at paragraphs 6-7 ; Garrison Certification at paragraphs 6-7)
3. C13-07 was brought against Mr. Matthews as a result of Board and administrative concerns. (Brown Certification at paragraph 8; Garrison Certification at paragraph 8; Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October 27, 2008), *aff’d*, Commissioner of Education Decision No. 123-09A, April 14, 2009))
4. Initially, Brown, Garrison and Lisa were not represented by counsel. (Brown Certification at paragraph 9; Garrison Certification at paragraph 9)
5. On August 16, 2007, the Board passed a resolution to join the complaint filed against Mr. Matthews as a party complainant. In order to do so, the Board invoked the Doctrine of Necessity because a majority of the Board was conflicted from addressing the issue of the Board’s joinder in the complaint. (Brown Certification at paragraphs 13-14; Garrison Certification at paragraphs 13-14)
6. On August 30, 2007, the Board passed a resolution to retain counsel to represent the Board in C13-07. Again, the Doctrine of Necessity was invoked prior to the August 30, 2007 resolution in that five Board members were conflicted in the vote. (Brown Certification at paragraph 15; Garrison Certification at paragraph 15)
7. The Board’s August 30, 2007 resolution was to:

[R]etain the services of Mr. Sidney Sayovitz, Esq., of the law firm of Schenck, Price, Smith & Kind, L.L.P., 10 Washington Street,

P.O. Box 905, Morristown, NJ 07963, at the rate of \$175 per hour for the purpose of representing the Board of Education in its complaint filed with [the] NJ DOE Ethics Commission. (Brown Certification at paragraph 15 and Exhibit F; Garrison Certification at paragraph 15 and Exhibit F)

8. By letter dated September 27, 2007, the parties were informed by the Commission that the Board, as an entity, could not be a complainant, in that a complainant, pursuant to statute, must be a “person.” The Commission informed, however, that Board members may individually join the complaint as complainants. (Commission Letter, September 27, 2007).
9. The Board did not take action to amend its August 30, 2007 resolution after receipt of the Commission’s letter.
10. Stephen Brown, Glenn Garrison and former Superintendent Carol Lisa, were represented by Sidney Sayovitz, Esq. in the matter docketed as C13-07.
11. At the Board’s June 26, 2008 meeting, an invoice was presented to the Board for legal services in prosecuting C13-07. Board members Brown and Garrison voted on the payment of the invoice for legal services in connection with C13-07, which were in excess of \$27,000. Prior to the meeting, respondents consulted with counsel to the Board about whether it was appropriate to vote on the resolution. Counsel advised that it was appropriate for Brown and Garrison to vote on the invoice. (Brown Certification at paragraphs 19-22 and Exhibit A; Garrison Certification at paragraphs 19-22) paragraphs 15-20, citing to Exhibit F);
12. In Brown et al. v. David Matthews, City of Englewood Board of Education, Bergen County, C13-07 (October 27, 2008), *aff’d*, Commissioner of Education Decision No. 123-09A, April 14, 2009, the Commission found, and the Commissioner of Education affirmed, that Mr. Matthews: (a) violated N.J.S.A. 18A:12-24.1(d) of the Code of Ethics for School Board Members when he, in a conversation involving an assistant superintendent, “overstepped his duties as a board member and encroached on the oversight and management functions that were specifically assigned to the Superintendent;” (b) violated N.J.S.A. 18A:12-24.1(e) when he took “private action” by attending a meeting although he was not among the delegation selected by the Board to attend the meeting, an action which could have compromised the Board; and (c) violated N.J.S.A. 18A:12-24.1(i) when he refused to cooperate with the District’s affirmative action officer (AAO) and, in so doing, engaged in offensive comments so upsetting to the employee that she resigned as the District’s AAO.

ANALYSIS

Based on the undisputed facts set forth above, the Commission previously found probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(c) when, on June 26, 2008, they voted to pay the invoice for legal counsel. N.J.S.A. 18A:12-24(c) provides:

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;

Initially, the Commission notes that the allegation herein does not involve a member of the immediate family,⁴ so it does not include this language in its analysis. In order to find a violation of N.J.S.A. 18A:12-24(c), the Commission would have to find that the respondents had either: 1) taken action in their official capacity in a matter where they had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment or 2) acted in their official capacity in a matter where they had a personal involvement that is or created some benefit to them.

While the Commission finds that the respondents clearly took action in their official capacities as Board members when they voted on June 26, 2008 to pay the invoice for legal counsel, it does not find, under these particular circumstances, that they were acting in a matter where they had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment. Here, it is undisputed that on August 30, 2007, the Board passed a resolution to retain legal counsel “for the purpose of representing the Board of Education in its complaint” filed before the Commission and docketed as C13-07. (Brown Certification at paragraph 15 and Exhibit F; Garrison Certification at paragraph 15 and Exhibit F) Thereafter, by letter dated September 27, 2007, the parties to C13-07 were informed by the Commission that the Board could not join C13-07 as an entity, although Board members may individually join the complaint as complainants. (Commission Letter, September 27, 2007) Notably, there is nothing on this record to indicate that, after having received the September 27th letter from the Commission, the Board revisited the issue of legal representation by amending its August 30, 2007 resolution.

Consequently, the Commission finds that this record supports the conclusion that, at all times, the Board remained obligated to pay the legal fee to the firm, notwithstanding that the Board, as an entity, was not a complainant in C13-07. As such, the Commission is persuaded that the respondents never had “a direct or indirect financial interest” in the payment of the legal fee as they had no personal obligation to pay that fee. Moreover, as counsel notes, “At no time did the Schenck, Price firm seek to have Mr. Garrison or Mr. Brown pay the fee incurred or ever indicate that if the Englewood Board of Education did not, they would look to the Respondents

⁴ 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.”

for payment.” (Respondents’ Statement at p. 4) Neither does the Commission find that the respondents, under these circumstances, acted in a matter where they had a personal involvement that is or created some benefit to them. Therefore, the Commission finds that the respondents did not violate N.J.S.A. 18A:12-24(c) when, on June 26, 2008, they voted to pay the invoice for legal counsel.

DECISION

The Commission finds that Stephen Brown and Glenn Garrison did not violate N.J.S.A. 18A:12-24(c) and the complaint is, therefore, dismissed. 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).

Robert W. Bender
Chairperson

Mailing Date: April 21, 2010

Resolution Adopting Decision – C26-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, the testimony presented on December 15, 2009; and

Whereas, at its meeting on December 15, 2009, the Commission found probable cause to credit the allegation that the respondents violated N.J.S.A. 18A:12-24(c), but found no probable cause to credit the allegations that the respondents violated N.J.S.A. 18A:12-24.1(a) and N.J.S.A. 18A:12-24(b), and, therefore, dismissed those claims; and

Whereas, the respondents were 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 written statement submitted on behalf of the respondents was considered by the Commission;

Whereas, at its meeting on March 23, 2010, the Commission determined that the respondents did not violate N.J.S.A. 18A:12-24(c); and

Whereas, at its meeting on April 20, 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 within decision and directs it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on April 20, 2010.

Joanne Boyle, Executive Director