
**IN THE MATTER OF
CHARLES CAREY
PENNSAUKEN BOARD OF
EDUCATION
CAMDEN COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**Docket No. C33-08
DECISION**

PROCEDURAL HISTORY

This matter arises from a complaint filed on October 1, 2008 by Michael Stargell alleging that Charles Carey, a member of the Pennsauken Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. An answer was filed on behalf of the respondent on December 15, 2008.¹ The matter was scheduled for a probable cause determination by the Commission on November 24, 2009, at which time the Commission voted to table the matter. At its meeting on December 15, 2009, the Commission found probable cause to credit the allegation in the first count of the complaint that the respondent violated N.J.S.A. 18A:12-24(c) when, on August 28, 2008, he voted to approve the 2008-2009 salary for the Superintendent. 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.²

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 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 February 2, 2010, the respondent filed his statement. Therein, the respondent underscored that he excused himself from the Executive Session when the Superintendent's annual increase to his existing contract was discussed, although he did not abstain on the vote. As to the continued significance of the advice rendered by the Commission in *Advisory Opinion A30-05* (March 10, 2006), the respondent states:

Also, A30-05 was a decision made regarding our organization in 2005. Things change and the hierarchy in our district Administration has changed. For example, at least two new Assistant Principal [p]ositions were added to the High School, a

¹ By notice dated January 4, 2010, received by the Commission on January 12, 2010, the respondent notified the Commission that he was no longer represented by counsel and that he would be proceeding *pro se* in this matter.

² 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 before May 18, 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.

Director of Curriculum was added; we have a new Special Services Director and a new Business Administrator. From these and all other changes has come a change of responsibilities. ***

As far as the meeting of August 28th, 2008, after the superintendent's increase was approved by the **majority** of board members attending, I voted yes to show my support for the superintendent. I have done this in the past. At one public meeting, after a great deal of discussion, we were deadlocked 4-4 on a resolution and I was one of the no votes. I **changed** my vote to yes to show my support for the Superintendent. I believe that one of the President's tasks is to support the Superintendent. (Respondent's Statement at page 2)

FINDINGS OF FACT

The undisputed facts are as follows:

1. At all times relevant, the respondent was a Board member.
2. The respondent's wife is a secretary for the nurses in the Pennsauken High School's nursing office. His wife reports to the school nurse and the school physician; her evaluation is performed by the Assistant Principal or the Principal. The Assistant Principal is evaluated by the Principal and the Principal is evaluated by the Superintendent. (Answer at page 5)
3. The respondent attended a Board meeting on August 28, 2008. Item 38 of the Board's agenda included a resolution approving the 2008-2009 salary for the Superintendent. The respondent voted to approve the Superintendent's salary, although he did not participate in any discussions regarding Item 38, including the amount of annual increase to be accorded to the Superintendent. (Id. at pages 1-4)
4. The respondent is "Board Member B" in *Advisory Opinion A30-05* (March 10, 2006).

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 August 28, 2008, he voted to approve the 2008-2009 salary for the Superintendent. 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;

In order to find a violation of N.J.S.A. 18A:12-24(c), the Commission must find evidence that the respondent has either: 1) taken action in his official capacity in a matter where he, or a member of his immediate family³ had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment or 2) acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that is or created some benefit to him or the member of his immediate family.

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 the instant matter, there is no dispute that the respondent's wife is employed in the District as a secretary for the nurses in the Pennsauken High School's nursing office. According to the respondent, his wife's evaluation is performed by the Assistant Principal or the Principal. The Assistant Principal is evaluated by the Principal and the Principal is evaluated by the Superintendent. (Answer at page 5) Thus, while the respondent argues in his responsive statement that the existing reporting hierarchy in the District renders *A30-05* inapplicable,⁴ the Commission notes that the facts presented for the purpose of that advisory were not appreciably different from those set forth above. Specifically, *A30-05* includes the following recitation of facts:

You have further set forth that board member B has a spouse employed in the district as a secretary in the office of the nurse at the high school. The principal of the high school is the direct and immediate supervisor of the spouse. The Superintendent is the immediate supervisor of the principal of the high school. Board member B's spouse is a member of the secretaries' union and the majority of the terms, conditions and benefits of her employment are subject to collective bargaining. (*A30-05* at p. 2)

Thus, in *A30-05*, the Commission stated, in relevant part:

With regards to board member B, since the high school principal is the direct and immediate supervisor of the board member's spouse, for the reasoning noted above, the board member would violate

³ 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.

⁴ The respondent in this matter is identified as Board Member B in *A30-05*.

N.J.S.A. 18A:12-24(c) if he were to participate in any employment issues regarding the principal. **Similar to A10-00, since the Superintendent is the direct supervisor of the principal, there is an opportunity for the spouse's employment to be affected by the board member's involvement in employment issues related to the Superintendent in terms of the way the administrators treat and evaluate the spouse, even if such impact does not affect the contractually determined salary.** Therefore, board member B has an indirect financial involvement that might reasonably be expected to impair his objectivity of judgment in violation of N.J.S.A. 18A:12-24(c). (A30-05 at p. 4, emphasis added)

Consequently, the Commission advised that Board member B “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.**” The Commission further advised that Board member B must recuse himself “from all discussions **and votes** with regard to those administrators.” (Id., emphasis added) Thus, while the Commission accepts that the affiliation between the respondent's spouse and the Superintendent is indirect, it must nevertheless recognize that the Superintendent has general supervision over all aspects of the schools, N.J.S.A. 18A:17-20, which allows for a variety of managerial actions or decisions that could affect the employment of the respondent's spouse. The Commission finds, therefore, that when the respondent voted to approve the 2008-2009 salary for the Superintendent, 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).

DECISION

For the reasons set forth above, the Commission finds that Charles Carey violated N.J.S.A. 18A:12-24(c).

PENALTY

The Commission recommends a penalty of reprimand, as it did in similar matters where Board members were 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 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; 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. As such, the Commission recognizes that the facts in this matter, as set forth in the Factual Findings, may be distinguished from those in School Ethics Commission v. Gunning, C15-93 (September 22, 1994), where the Commission recommended a penalty of censure for a board member found to have violated N.J.S.A. 18A:12-24(c), when he voted on the

Superintendent's raise notwithstanding that his spouse was employed as a confidential secretary to the Superintendent, was directly supervised by him and was not a member of a collective bargaining unit. (Gunning, slip. op. at p. 3)

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 Bender
Chairperson

Mailing Date: March 24, 2010

Resolution Adopting Decision – C33-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, the testimony presented on November 24, 2009 and the documents submitted to the Commission thereafter; and

Whereas, at its meeting on December 15, 2009, 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 February 23, 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 March 23, 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 it decision in this matter and directs it 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 it public meeting on March 23, 2010.

Joanne Boyle, Executive Director