
CHRIS ROGERS

v.

**GREGORY SOMJEN,
ROXBURY BOARD OF EDUCATION
MORRIS COUNTY**

**BEFORE THE
SCHOOL ETHICS COMMISSION**

**Docket No. C37-08
PROBABLE CAUSE NOTICE**

This matter arises from a complaint filed on December 8, 2008 by Chris Rogers alleging that the respondent, Gregory Somjen, a member of the Roxbury Board of Education, Morris County (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. An answer was filed by the respondent on December 26, 2008. In his answer, the respondent asserted that the complaint was frivolous. The matter was scheduled for a probable cause determination by the Commission on November 24, 2009, at which time the Commission voted to find no probable cause to credit the allegations that the respondent violated the Act. Pursuant to its authority set forth at N.J.S.A. 18A:12-29(e), the Commission also voted to find that the within complaint was frivolous, and to fine the complainant \$500.¹

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainant states the following in unnumbered paragraphs:

- The respondent lists “Parette Somjen Architects LLC” as a source of income on his 2007 disclosure statements;
- The respondent lists that he held an interest in “John Robert Properties LLC” located at the same address during the preceding calendar year;
- The principals of John Robert Properties were/are Marc Parette, Gregory Somjen (both of Parette Somjen Architects LLC), Robert Lanyi, William Tevald (both of Lonyi & Tevold, Inc.) and Lawrence Muse;
- Parette Somjen Architects LLC is/was the architect of record for the Middlesex Public Schools (April 2007) and evaluated and awarded a contract to Lonyi and Tevald, Inc.;

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 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.

- Parette Somjen Architects LLC is/was the architect of record for the Denville Board while the contractor for the 44 Cooper Road project was/is Lonyi and Tevald, Inc.;
- Parette Somjen Architects LLC is/was the architect of record for the Park Lake Education Service Commission of Morris County while the contractor for the Academy Street Project was/is Lonyi and Tevald;
- Parette Somjen Architects LLC was the architect of record for the Rockaway Township Board of Education. In addition, “[t]he legal counsel [for the Rockaway Board] was/is Schwartz Simon & Edelstein. In addition, the auditor was/is Nisivoccia & Company LLC. On August 28, 2008, Lonyi and Tevald won a construction bid with the District.”²
- On April 28, 2008, the respondent “voted 1) To abstain on his vote to appoint Simon, Schwartz & Edelstein as Roxbury BOE attorney (resolution 517-08), 2) But voted yes to appoint Nisivoccia & Company as Roxbury auditors even though he clearly has professional conflicts with the auditing firm as they are also the auditing firm in several other school districts where Parette Somjen Architects, LLC and Lonyi & Tevald either hold architect of record appointments or have won bids for construction services.” (Complaint at page 3) The complainant asserts this is a violation of N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), (f), (g) and (h).³

In response to the allegation regarding his vote on April 28, 2008, the respondent acknowledges that he so voted, but states that “there is absolutely no conflict or direct business relationship [with the auditors]. There have been no negotiations with them in other school districts, and we interact very little, if at all. We are merely appointed independently of one another as outside professionals for the same client.” (Answer at page 6)

As to the other “allegations” set forth in the complaint, the respondent asserts that these issues have nothing to do with his actions on the Roxbury Board inasmuch as they concern his business dealings prior to assuming Board membership. In this connection, the respondent specifically requests that the Commission find that the complaint was frivolous, pursuant to N.J.S.A. 18A:12-29(e) and impose a penalty. (Id. at pages 3, 10)

The Commission invited the parties to attend its meeting on November 24, 2009 to aid in its investigation of this complaint. The complainant, Chris Rogers attended the meeting. The respondent, Gregory Somjen also attended the meeting with counsel, Vito Gagliardi, Esq.

² Business dealings outside of the Roxbury School District were included in the complaint. After the respondent answered the complaint and specifically asserted that this information was outside of the purview of the Commission, the complainant affirmed that these facts were “included to build the landscape of the subject matter presented. They are NOT accusations listed in this complaint, and I agree with Mr. Somjen when he states that these acts are not in violation of the School Ethics Act due to the date in which they occurred. These items are therefore not within the jurisdiction of the [C]ommission.” Rather, the complainant asserts that he is asking the Commission to use these facts “to determine that a business relationship between Parette Somjen and Nisivoccia and Company DOES exist.” (Rogers Letter dated February 4, 2009 at page 2).

³ The complainant did so by attaching a copy of the Act and circling provisions “a” through “h” of N.J.S.A. 18A:12-24.

By way of opening statement, the complainant explained that, in his opinion, on April 28, 2008, the respondent violated the public trust by voting for the auditing firm, Nisivoccia & Company, which audits the Roxbury School District and other districts where Mr. Somjen's architectural firm and other business entities hold contracts and conduct business. According to the complainant, the respondent's affirmative vote on this matter creates an appearance of impropriety. Mr. Rogers explained that at the time he filed the complaint, he was not a board member; however, he was elected to the Board in April 2009. He maintains that this is not a frivolous complaint as he truly believes that the respondent violated the public trust. The complainant states that he is not saying that the respondent stole money, but he acted in the capacity of a school board member and a vendor at the same time which has created an impropriety.

The complainant testified that he intended the initial statements in the complaint to be considered background facts. He acknowledged that he ran for the Board three times, but he was not successful in getting elected until April 2009. He testified that he believes that his work on the Board is on behalf of the taxpayers. This was not a plan to get back at the respondent.

The complainant stated that he understands the responsibilities of the auditor and he agrees that they are limited. The auditor has ethical responsibilities and has an obligation to cite to any inconsistencies in billing, etc. The complainant contends that the respondent's vote on April 28, 2008 put the auditor in a precarious position because now the auditor would have to "think twice" if s/he needed to question one of the respondent's bills, as the auditor has oversight responsibility for vendors in the District. The complainant asserted that the respondent knew that this auditor performed work in other districts where his company also did work. The complainant reasons that there is an "indirect financial involvement that might reasonably be expected to impair judgment," as prohibited by N.J.S.A. 18A:12-24(c). The complainant also testified that Mr. Somjen has sub-companies that have contracts with the districts that Nisivoccia & Company audits.

In response to questioning by the Commission, the complainant could point to no financial gain or favoritism for the respondent from either the Roxbury District or the auditing firm. He did not assert that auditing procedures were not followed. Rather, the complainant testified that the financial involvement in this matter is that Nisivoccia & Company audited other districts for which the respondent was the architect of record.

The complainant stated that the respondent's vote took place at the Board's reorganization meeting in April 2008. The complainant acknowledged that at the time of the vote, he did not know of the relationship with Nisivoccia & Company and other districts. Rather, after the vote, he conducted an investigation of the respondent's business activities. The complainant was questioned why he linked the respondent's affirmative vote for Nisivoccia & Company with his abstention on the same night with respect to the Board's vote for legal counsel. The complainant stated that he would consider the auditing relationship to be more significant since the auditing firm has financial oversight of the respondent's actions, whereas the Board attorney would not.

The complainant called Maureen Castriotta, a current Board member, as a witness.⁴ Ms. Castriotta affirmed that the respondent voted for the auditor on April 28, 2008. She further testified that when the respondent filed his answer with the Commission, he asserted that the complaint was commenced in bad faith and for the purpose of harassment. As a sitting Board member, Ms. Castriotta attested that she does not view the complainant as harassing; she attested to the complainant's good character and active interest in the community. Ms. Castriotta stated that she did not believe that the complaint was retaliatory.

After Ms. Castriotta's testimony, the complainant added that he was accused of leaking this complaint to the paper.⁵ He acknowledged that he has spoken about the complaint publicly. The complainant also asserts that two Board meetings ago, Mr. Somjen spoke publicly about this matter.

Gregory Somjen testified that he has lived in Roxbury since 1992. He is a licensed architect in nine states. Parette Somjen Architects was founded in 1998. He was elected to the Board in 2008. The respondent testified that after moving to Roxbury in 1992, he coached soccer and participated in other recreational activities for the community. Because he has three children in the Roxbury District, he decided to get involved in their education. In April 2008, he ran for a seat on the Board and won. He testified that he wanted to be a voice of the students. At the time, the complainant was on a ticket running against his ticket and he did not win.

The respondent testified that as a principal at Parette Somjen Architects, he has worked in other districts, but he has had no interaction with the auditors. He stated that he knew a few people from Nisivoccia & Company; one of the men coached a Randolph team in the 1990's and the respondent did not know until recently that he worked for the auditing firm. Another auditor lives in Roxbury, and does work for the soccer club. Thus, the respondent noted in his answer that while they were "running in the same circles," from a professional perspective, there was no interaction with the auditing firm. The respondent affirmed that in 21 years that he has served as an architect, he has never interacted with auditors in their official capacity.

The respondent testified that he did not know that Nisivoccia & Company were the auditors for Rockaway and other districts cited in the complaint until he received the complaint and its attachments. The respondent testified that although he knew Nisivoccia & Company audited districts throughout the states, he did not know which districts. The respondent stated that he now knows that that he and the auditing firm "share a few clients," but there is still no interaction. He never engaged them professionally in any of the districts. The respondent stated he has never had a school business administrator tell him that an auditor was reviewing or questioning his billing.

⁴ Respondent's counsel objected to this witness and sought a proffer of relevance for her testimony. The Commission questioned the complainant about the witness' personal knowledge. The complainant stated that the witness could confirm the vote on April 28, 2008. The complainant also sought to call the witness to affirm that he did not have ill motives in filing the complaint. The Commission allowed the complainant to call this witness for these limited purposes.

⁵ Specifically, Mr. Gagliardi argued that information about this complaint was reported in the November 24, 2009 Daily Record and that the information was leaked by the complainant.

The respondent further testified that, before becoming a Board member, he knew the auditors existed, but they did not impact his life. He now knows that the auditors are looking at procedures to make sure they are met. They would not be concerned with how a district chooses to allocate its funds, but, rather, with whether the district maintains the proper paperwork for its contracts, etc.

As for his choice to abstain on the vote for the law firm at the reorganization meeting, the respondent stated that Schwartz Simon “sits across the table from me and negotiates my architectural contracts on behalf of the [districts where I do work].” Thus, the respondent reasons, one could argue that in voting for them, he would be looking for future favor. He did not want to affect future negotiations. He testified that, as a Board member, he has also abstained from voting on all payment requests from counsel.

The respondent affirmed that he has no direct or indirect interest or involvement in the Nisivoccia & Company firm and could not point to any benefit that could result from his vote. Mr. Somjen stated that he never pursued professional work in his hometown. The respondent further testified that he has never discussed these allegations publicly, but only in executive session. When the Board was considering counsel to represent him and had to publicly vote for legal representation, he abstained from the vote and stated that he did so because the alleged ethics violations were filed against him. In response to questioning, the respondent stated that Nisivoccia & Company has been the Board’s auditing firm for the last 15 or 20 years. He does not know how they were originally chosen. The Superintendent made the recommendation to continue their appointment.

Robert E. Swartz from the firm of Swartz and Company, LLC, testified on behalf of the respondent to describe the role of a school district auditor. According to Mr. Swartz, the major principle to be followed by a school auditor is independence. Audits are performed in accordance with standards established by bodies like the Governmental Accountability Office in Washington, D.C. According to Mr. Swartz, the number one principle is that the auditor may not make any managerial decisions or be involved in any managerial decisions. The second most important principle is that the auditor may not audit his own work.

Mr. Swartz testified that when an auditor is performing an audit, s/he renders an opinion as to whether the financial statements are materially correct. Auditors do not get involved in the selection or appointment of any professionals, nor do they have any input as to services to be provided; their work is done after the year is over. While there may be early internal control studies, such control studies are completed on events that have already taken place. After the year is over, the auditor performs a variety of different tests by looking at a sampling of contracts to confirm that they meet the requirements of state law and administrative code. For instance, was a proper Board resolution included in the paperwork? Does the business have the proper registration or license? In his opinion, there is nothing in these procedures that would suggest that there would be any relationship between an auditor and a professional that would prohibit that person, if he were a Board member, from voting on an auditing firm. If there were any issues of independence, the onus is on the auditor to raise a question.

FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause. That is, the Commission must determine, based on the documentary and testimonial evidence before it, whether probable cause exists to credit the allegations in the complaint. A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted.

When making a probable cause determination, the Commission reviews the complaint and answer provided by the complainant and respondent, together with any relevant documentation. N.J.A.C. 6A:28-6.7(d)⁶. Additionally, in order to carry out the Commission's responsibilities under the School Ethics Act to determine whether probable cause exists, the Commission is authorized to conduct investigations, hold hearings, compel the attendance of witnesses and the production of documents and examine such witnesses under oath. N.J.S.A. 18A:12-28(b); N.J.A.C. 6A:28-6.7(b).

The complainant asserts this is a violation of N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), (f), (g) and (h), as set forth below. The Commission first considers N.J.S.A. 18A:12-24(a) and N.J.S.A. 18A:12-24(d), which provide, respectively:

No school official or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

No school official shall undertake 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 notes that "interest" is defined by the Act as the ownership or control of more than 10% of the profits, assets or stock of a business. N.J.S.A. 18A:12-23. This record includes no evidence that the respondent, or a member of his immediate family, had an interest in a business organization which is in substantial conflict with the proper discharge of his duties. There is nothing on this record to indicate that the respondent's architectural firm performed any work for the Board or that the Board was considering the respondent's architectural firm for any projects. To the extent the complainant may assert that the respondent engaged in a "business, transaction, or professional activity" which was in substantial conflict with the proper discharge of his duties, in violation of N.J.S.A. 18A:12-24(a), the Commission does not view the respondent's vote on April 28, 2008 to be in substantial conflict with the proper discharge of his duties.

⁶ In reaching this determination, the Commission did not consider the respondent's submissions that were distributed at its meeting on November 24, 2009 as these documents were not provided to the Commission and to the complainant at least ten days prior to the probable cause proceeding, as required by N.J.A.C. 6A:28-6.7(d)4.

Neither can the Commission find that the respondent's position as a principal with Parette Somjen Architects is in substantial conflict with the proper discharge of his Board member duties or that it is an employment which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties, especially where it is undisputed that the respondent has undertaken no work for the Board. Therefore, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(a) and (d).

The Commission next considers N.J.S.A. 18A:12-24(b), (c) and (f) which provide, respectively:

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;

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;

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;

First, there is no dispute on this record that the respondent has not performed any work for the Board or received remuneration of any kind from the Board. Thus, there is nothing on this record to suggest that the respondent used or attempted to use his official position to secure an unwarranted privilege, advantage or employment for himself, members of her immediate family or others, so as to implicate N.J.S.A. 18A:12-24(b).⁷

⁷ 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

Similarly, the Commission can find no evidence to suggest that the respondent acted in an official capacity in a matter where he, a member of his immediate family, or a business organization in which he has an interest, had a direct or indirect financial involvement *that might reasonably be expected to impair his objectivity or independence of judgment*.⁸ Indeed, the only indirect “financial involvement” that the complainant could cite was that Nisivoccia & Company audited other districts for which the respondent was the architect of record.

The Commission finds the situation herein distinguishable from those cases where the respondents voted on matters where the public could reasonably perceive there would be, or could be, some financial connection to the respondent as a result of his vote. For instance, when a Board member who was employed by a charter school in the same district presided over a number of meetings wherein the Board unanimously approved a series of payments to the charter school and the respondent did not abstain from participating in these actions, the Commission found that the respondent had an indirect financial involvement which a reasonable person could perceive to impair his objectivity or independence of judgment 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. Similarly, in I/M/O Bruce White, Ewing Township Bd. of Ed., C01-01 (July 21, 2001), Commissioner of Education Decision No. 309-01, decided September 10, 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.

Here, however, there is no factual challenge to the respondent’s assertion that he had no professional relationship with Nisivoccia & Company, and no interaction with the firm. The respondent’s testimony in this regard was supported by Mr. Swartz, who testified that auditors would not influence the acquisition of professional services or affect the type of services performed. Mr. Swartz further affirmed that there is nothing in school district auditing procedures that would permit a relationship between an auditor and another professional. Therefore, should the professional (*i.e.*, the vendor) become a Board member in another district, he should not be conflicted from voting on the auditing firm. Further, the Commission notes that there is no dispute that the Board has had the same auditing firm for many years before the respondent took office. The Commission must, therefore, conclude that this was not an indirect financial involvement that might *reasonably* be expected to impair the respondent’s objectivity or independence of judgment.⁹

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.

⁸ The question of a personal involvement does not seem to be at issue here and the Commission, therefore, finds no cause to reach to a discussion in this connection.

⁹ The Commission similarly dismissed an allegation that a respondent violated N.J.S.A. 18A:12-24(c) when she voted to approve the Board attorney’s contract with the Board in 2006, notwithstanding that the respondent had retained the Board attorney’s firm to handle personal legal matters for her. Although the Commission recognized

Finally, there is no evidence on this record that the respondent used, or allow to be used, his public office, or any information, not generally available to the members of the public, which he received in the course of and by reason of his office, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated. Therefore, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b), (c) or (f).

The Commission next considers the complainant's allegation that the respondent's vote violated N.J.S.A. 18A:12-24(e), which states:

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

Again, there is no evidence on this record that the respondent solicited or accepted any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. Therefore, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(e).

The Commission next considers the complainant's allegation that the respondent's vote violated N.J.S.A. 18A:12-24(g), which provides:

No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district

that the respondent in this matter had a personal involvement with the board attorney and his firm so as to implicate N.J.S.A. 18A:12-24(c), the statute prohibits personal involvement that "is or creates some benefit" to the school official. The Commission therein found that the attorney was already serving as board counsel when the respondent chose to have him represent her on personal matters. The record further showed that the respondent did not receive any discount or reduced rate in the board attorney's fees for services rendered. Thus, the Commission could discern no benefit to the respondent or her family for having voted to approve the attorney's contract. Dressel v. Spitzer, Monroe Township Board of Education, C10-07 (August 26, 2008).

in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

There is nothing in the record before the Commission to indicate that the respondent represented a person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves simply by virtue of his vote in favor of Nisivoccia & Company as the Board's auditor. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(g).

Finally, as to the allegation that the respondent violated N.J.S.A. 18A:12-24(h), the Commission notes that this provision provides an exception to the prohibited acts, as set forth above and is not applicable in this matter.¹⁰ Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(h).

REQUEST FOR SANCTIONS

The respondent has asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to its expressed authority to do so under N.J.S.A. 18A:12-29(e). A "frivolous complaint" is defined as a complaint determined by the Commission to be *either*:

- 1) Commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) One which the complainant knew, or should have known, 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.A.C. 6A:28-1.2.

As per the language of the regulation, the Commission need only find that one prong is applicable to support a finding of violation. In so doing, the Commission considers the totality of the circumstances in determining whether a complaint meets the above standard. See, Patricia Lee v. Barri Beck, Union Township Bd. of Education, C51-05 (September 27, 2005). Here, on the basis of the record before it, the Commission finds that this complaint satisfies both prongs of the standard set forth above. In this analysis, the Commission first looks to the respondent's answer to the complaint. The respondent affirmed:

The complainant is an individual who this past April [2008] ran unsuccessfully against me and others in a seat for the Roxbury

¹⁰ N.J.S.A. 18A:12-24(h) states: "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."

Board of Education. This was his second or third unsuccessful attempt. ***

Shortly after my election the complainant questioned if I was in violation of the school ethics act because “I was an architect working for other Board of Educations.” Mind you I have never worked for the Roxbury Board of Education personally or professionally. This was a conscious decision on my part even before I chose to run for the Board of Education because I did not want to work within the community I live. I have and continue to represent a variety of school boards throughout New Jersey as well as municipalities, which is neither an ethical violation nor a conflict of interest.

In my short exposure to the complainant he is an individual that is only interested in one thing which is to allege all he can and see what “stick”. However, it is my personal opinion that the complainant abuses the “system” in place by filing frivolous complaints such as this one. ***

My representing other school districts in the State of New Jersey was brought up before by the complainant at a public meeting. It was researched by the Board attorney; researched by the New Jersey School Boards and identified as not a conflict. Yet the complainant continues to persist and pursue issues to besmirch my name and potential status in the community to potentially advance his own agendas. Many of his allegations have nothing to do with me as a Board Member but my professional practice further reinforcing my position that his intent is to merely create issues where there are none. Further examples of his actions since April 2008 include postings on blogs; posting on web pages; letters to the newspaper and now a formal complaint to the School Ethics Commission. (Answer at pages 3 and 7; emphasis in text)

The respondent concluded,

I believe that the complainant is merely looking to find anything and everything to allege hoping that some small piece will be frowned on so he can “I got you.” I bring your attention to two postings on complainant’s web page/blog (Exhibit 2) and would like special attention paid to the date of the posting. December 6th one day after the complainant signed the certification under oath paperwork. While no specific reference is given to who or what alleged ethical violations he has “uncovered” he is practically gloating about “what he’s found” and can’t wait to share it with everyone. The dialogue/postings in this exchange were under an

article he wrote of which I was the focus. Based on the date and the fact that the exchange took place within the posts under that specific article I believe it is safe to say he is referencing the allegations against me. (Id. at page 9)

A finding of frivolousness is based on the totality of the circumstances. Thus, the Commission finds that viewing the totality of the circumstances, it may reasonably conclude that the complainant commenced this action in bad faith after losing the April 2008 election and for the purpose of harassing or discrediting the respondent. In so doing, the Commission notes that the complainant lost his bid for a Board member seat in April 2008 when he ran against the respondent, who was successful. The vote which is the subject of the within complaint took place at the April 28, 2008 reorganization meeting, the respondent's first Board meeting. The complainant acknowledged in his testimony that at the time of the respondent's vote, he knew of no "relationship" between the auditing firm and the respondent. However, after the vote, Rogers did his research. The record indicates that the complainant researched the respondent's business activities and compiled a series of documents through Open Public Records Act (OPRA) requests that paint a picture of the respondent's business activities *prior* to his election to the Roxbury Board, and not involving the Roxbury Board. While the complainant admitted that the Commission has no jurisdiction over these activities and asserted that they are merely background facts "to determine that a business relationship between Parette Somjen and Nisivoccia and Company DOES exist," (Rogers Letter dated February 4, 2009 at page 2), the Commission also cannot dismiss the respondent's contention that the complainant was putting this information before the Commission and indiscriminately asserting violations to see what would "stick." The Commission has looked unfavorably upon complainants who submit information to the Commission such that it appears the complainant "may have an intention other than to determine whether the [respondent's] actions alleged in the complaint violated the Act." (I/M/O Persi, et al., Edison Twp. Bd. of Ed., C29-96 (April 8, 1997, where the Commission found no basis for the complaint other than a means to launch a personal attack. The complainant was fined \$500.)

The exhibit which the respondent references above in his answer is a copy of a blog statement attributed to Chris Rogers and dated December 6, 2008. The entry states, "Give it a week or two. I think you will be shocked with just how many ethics violations I have found in the documents I have requested." (Id. at Exhibit 2) The Commission also notes in this connection that the respondent did not deny or dispute the statement included in the respondent's answer as Exhibit 2 when he submitted his letter to the Commission dated February 4, 2009 in reply to the respondent's claims that the within complaint was frivolous.¹¹ Indeed, the complainant admitted in testimony that he spoke publicly about the complaint, notwithstanding the Commission's request to maintain confidentiality.¹²

¹¹ By letter dated January 14, 2009, the Commission forwarded Mr. Rogers a copy of the respondent's answer and certification. The Commission specifically directed Mr. Rogers' attention to the allegation that the complaint was frivolous and allowed Mr. Rogers the opportunity to respond to that allegation by February 6, 2009.

¹² The Commission so requested in its letter dated December 8, 2008, acknowledging receipt of the complaint.

While the Commission underscores in this analysis that it points to no statutory or regulatory prohibition to a complainant speaking publicly about a complaint that has been filed, it has considered a complainant's own writings as evidence of harassment, under certain circumstances. (See, Young v. Kreimer, Moorestown Board of Education, Burlington County, C02-08 (January 27, 2009), where, after having filed a complaint against a Board member, the complainant e-mailed the business administrator and stated her intention to monitor the legal costs associated with the respondent's defense in connection with the very complaint which she filed against him, "thus embarking on a course to keep a watchful eye on a board member who had a legal right to defend himself in this action.")

In point of fact, the record herein is devoid of any information that would suggest there is a financial involvement that might *reasonably* be expected to impair the respondent's objectivity or independence of judgment. When questioned on this issue, the complainant could only reiterate that the respondent's vote created an "an appearance of impropriety." Moreover, the Commission notes that since April 2009, the complainant has been a member of the Board and should be familiar with the role of a school auditor, vis a vis district vendors. Consequently, the complainant has had a fair opportunity to reconsider the basis for this complaint, particularly in light of the respondent's forceful reply.¹³

Thus, the Commission finds that the complainant knew, or should have known, that this 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. Alleging violations of the School Ethics Act is a matter taken seriously by the Commission and by respondents whose lives may be disrupted for a period of time pending review of the matter. Alleging violations of the School Ethics Act without any reasonable basis in law or equity *and* where there may be a reasonable inference drawn by the Commission that the complaint was derived from a personal animus may fairly result in a sanction.

In Kreimer, supra, the found that the complaint was frivolous in that it satisfied both prongs of the standard, set forth above. The Commission assessed a \$500 penalty against the complainant for filing a frivolous complaint. The Commission therein distinguished the matter from one in which lesser penalties were assessed and acknowledged that the respondent had persuasively argued that the complainant was merely seeking to retaliate against him. The Commission underscored that:

[T]he School Ethics Act, and the specific prohibitions set forth therein, were intended to establish ethical standards for school officials along with a mechanism "to weed out the few people who would use our schools for personal gain." (Office of the Governor, News Release, January 16, 1992, "Governor Florio Signs Law Imposing Greater Accountability for School Districts") The Commission recognizes that Board members are volunteers who make considerable sacrifices to hold their public offices. **Quite**

¹³ While the regulations under which this matter was considered do not include procedures for withdrawal of a complaint, the Commission has historically permitted a complainant to make a request for the withdrawal of a complaint, which is then considered at a Commission meeting.

aside from the many demands that the Commission faces with limited time and increasingly limited resources to adjudicate complaints, the Commission cannot allow itself to become a vehicle for the community to retaliate against individual board members for duly carrying out their Board's policies and procedures. (Kreimer, supra, emphasis added)

While the complaint herein did not result from the respondent taking action in furtherance of Board policies and procedures, like Kreimer, and notwithstanding the complainant's pleas to the contrary, this complaint "takes on the appearance of a personal attack against the respondent rather than an action to safeguard the public's trust" (id.) which the Commission does not tolerate. For the foregoing reasons, the Commission finds the complaint to be frivolous pursuant to N.J.S.A. 18A:12-29(e) and orders that the complainant pay a fine in the amount of \$500.00.

NOTICE

Pursuant to N.J.S.A. 18A:12-29b, the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e), (f), (g) and (h) of the Act and the Commission dismisses the complaint against him. The Commission also concludes that the within complaint was frivolous, pursuant to its authority set forth at N.J.S.A. 18A:12-29(e) and hereby fines the complainant \$500.

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

Resolution Adopting Decision – C37-08

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

Whereas, at its meeting of November 24, 2009, the Commission found no probable cause to credit the allegations that the respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* and therefore dismissed the charges against him; and

Whereas, the Commission finds that the complaint meets the standard set forth at N.J.A.C. 6A:28-1.2 for a frivolous complaint and further finds that a sanction of \$500.00 is appropriate; and

Whereas, at its meeting on December 15, 2009, 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 the complainant is hereby **ORDERED** to pay a \$500.00 fine for the filing of a frivolous complaint. The Commission directs its staff to notify all parties to this action of the Commission's decision herein and to collect the fine imposed above.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on December 15, 2009.

Joanne Boyle, Executive Director
School Ethics Commission