

(Corrected copy)

MICHAEL KAZMARK	:	BEFORE THE
	:	SCHOOL ETHICS COMMISSION
v.	:	
	:	
WILLIAM DEPSEE,	:	
WEST PATERSON BOARD OF	:	
EDUCATION,	:	
PASSAIC COUNTY	:	
	:	
MARGE HASKO	:	
PASSAIC VALLEY HIGH SCHOOL	:	
BOARD OF EDUCATION	:	
PASSAIC COUNTY	:	
	:	
STEVE FAZIO	:	DOCKET NO. C38-08
WEST PATERSON BOARD OF	:	PROBABLE CAUSE NOTICE
EDUCATION,	:	
PASSAIC COUNTY	:	

This matter arises from a complaint filed on December 10, 2008 by Michael Kazmark, alleging that William Depsee and Steve Fazio, members of the West Paterson Board of Education (now known as “Woodland Park”) and Marge Hasko, a member of the Passaic Valley High School Board of Education, Passaic County, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Answers were filed on behalf of the respondents on January 27, 2009; counsel for the respondents therein requested that the Commission find that the complaint was frivolous.¹ The matter was scheduled for a probable cause determination by the Commission on December 15, 2009, at which time the Commission voted to find no probable cause, for the reasons set forth below, and further determined that the complaint was not frivolous.²

¹ Affidavits from Marge Hasko and Steve Fazio were later filed on March 5, 2009; an affidavit from William Depsee was filed on March 11, 2009.

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.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

Count I (Complainant identifies as “First Complaint”)

The complainant initially asserts that respondents William Depsee and Marge Hasko endorsed a political candidate, Steve Fazio, at a public rally in August or September 2008, as he was seeking the position of mayor of the Borough of West Paterson. The complainant contends that the respondents did so in their official titles as Board members on the West Paterson Board (Depsee) and the Passaic Valley High School Board (Hasko). According to the complainant, Respondents Depsee and Hasko allowed their photographs and public endorsement to be used in Mr. Fazio’s campaign literature. The complainant asserts this is a violation of N.J.S.A. 18A:12-24(b) and (e), as well as a violation of N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. (Complaint at pp. 1-3) Attachment #1 to the complaint is a copy of a campaign flyer and Attachment #2 is a copy of the Commission’s decision, I/M/O Alphonse A. DeMao, Belleville Board of Education, C09-04, (September 30, 2004).

In their respective answers, Respondents Depsee and Hasko admit that they were sitting Board members who endorsed Mr. Fazio in the 2008 mayoral election. However, they assert that the endorsement was not undertaken in her official capacity as Board members, but as private citizens. As such, Respondents Depsee and Hasko admit that they allowed their pictures to be taken in a public endorsement, but deny giving any explicit permission for the photograph to be used in Fazio’s literature with their official titles. (Depsee and Hasko Answers at pp. 1-2)

Count II (Complainant identifies as “Second Complaint”)

The complainant next alleges that Respondents Depsee and Hasko accepted political contributions from the West Paterson Regular Republican Organization (WPRRO) for their 2008 campaigns. In this connection, the complainant asserts that these respondents maintained their campaign headquarters within the confines of the WPRRO offices and allowed the WPRRO to pay for their campaign literature and newspaper ads, notwithstanding that school board elections are supposed to be non-partisan. The complainant further asserts that there was a quid pro quo in that the WPRRO endorsed the respondents in their April 2008 election and, in turn, the respondents endorsed the WPRRO’s mayoral candidate in the November 2008 election. The complainant asserts this conduct violated N.J.S.A. 18A:12-24(e). (Complaint at pp. 3-5) Complaint Attachment #3 is a copy of respondents’ campaign literature and Attachment #4 is a copy of a newspaper campaign ad. Both indicate that they were “paid for by WPRRO.”

As to this allegation, Respondents Depsee and Hasko answer as follows: They did accept political contributions from the WPRRO with respect to campaigns undertaken during 2008, but they did not maintain headquarters in the WPRRO offices. The WPRRO did not pay for their campaign literature or newspaper endorsements with their permission; the literature and advertisement were prepared by the WPRRO as an endorsement and such was without their knowledge and authorization. The newspaper campaign advertisement placed in the Passaic Valley Today newspaper on April 10, 2008 was not endorsed, reviewed or authorized by either respondent. There was no quid pro quo for the endorsement of Mr. Fazio for mayor. (Depsee and Hasko Answers at p. 2)

Count III (Complainant identifies as “Third Complaint”)

The complainant asserts that Respondent Depsee is an employee of the Office of the Superintendent of Elections for Passaic County and he has “forged an alliance” with the WPRRO by accepting contributions and, in turn, he endorsed the mayor. The complainant asserts Depsee is in violation of N.J.S.A. 18A:12-24(d), (e), (g) and (h). (Complaint at pp. 5-6) Attachment #5 to the complaint is a memorandum from the New Jersey Executive Commission on Ethical Standards dated May 18, 1999 regarding restrictions on political activity.

In his answer, respondent Depsee contends that this allegation is outside the jurisdiction of the School Ethics Commission. (Depsee Answer at pp. 2-3)

Count IV (Complainant identifies as “Fourth Complaint”)

The complainant alleges that Respondent Steve Fazio, a member of the West Paterson Board of Education, ran for mayor of West Paterson in November 2008. In so doing, the complainant contends that Respondent Fazio recruited and relied upon sitting Board members to endorse his campaign. According to the complainant, Respondent Fazio accepted endorsements from Respondents Depsee and Hasko and used their endorsements in his campaign literature, referring to them as school board members. The complainant asserts this is in violation of N.J.S.A. 18A:12-24(b) and (e), as well as a violation of N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. (Complaint at pp. 6-8)

In his answer, Respondent Fazio acknowledges that in the calendar year 2008, he was a sitting member of the West Paterson Board and, at the time, was running in the general election for the mayor of the Borough of West Paterson. Mr. Fazio states that he received endorsements from various school board members, including Respondents Depsee and Hasko, but that such endorsements were not undertaken as official endorsements, but, rather as private citizens. Mr. Fazio admits that he publicized the endorsements of Respondents Depsee and Hasko as “prominent members of the public at large.” Respondent Fazio contends that the acceptance of such personal endorsements is not a violation of the Act; he did not use his position as a Board member to obtain any advantage for himself. (Fazio Answer at p. 2)

The Commission invited the parties to attend its meeting on December 15, 2009 to aid in its investigation of this complaint. Respondents William Depsee (West Paterson), Steve Fazio (West Paterson) and Marge Hasko (Passaic Valley Regional) appeared with their counsel, Lawrence G. Tosi, Esq. The complainant did not attend the meeting.

Respondent Steven Fazio testified that he ran for mayor of West Paterson in 2008 and that he received endorsements from Respondents Depsee and Hasko. Mr. Fazio stated that Depsee and Hasko did not endorse him as Board members. Rather, they were known throughout the community as “outstanding individuals” and they were long-time friends. Mr. Fazio asserted that Depsee and Hasko never said they were providing an endorsement on behalf of the Board. He did not come to any agreement with Depsee and Hasko; there were no privileges for him or his family as a result of the endorsement. Respondent Fazio testified that he did not know how the text in his campaign flyer came to include “School Board Members” before Depsee’s and

Hasko's names. He averred that he did not put together the flyer and he did not remember whether he ever approved the flyer before it went out. Respondent Fazio stated that "Friends of Steve Fazio," as noted at the bottom of the flyer is the name of his election fund. Mr. Fazio affirmed that if anyone wrote him a check, it would have been reported in accordance with election law enforcement procedures.

Respondent William Depsee is a member of what was formerly known as the West Paterson Board of Education and he testified that he endorsed Steve Fazio when he was running for mayor of West Paterson. He never used Board letterhead to endorse Fazio and he affirmed that his endorsement was as a private citizen. He was not on any of Fazio's committees. He does not believe that he wrote Mr. Fazio any checks. Mr. Depsee stated that he did not give his permission for the words "School Board Members" to appear in the ad. He stated that he was not involved in preparing Fazio's campaign literature. Respondent Depsee affirmed that although he knew that his picture was taken, he did not know how it would be used or that he would be identified as a Board member. He saw that it said "Board Member" on the literature, but he stated that he did not think that he did anything wrong. Although he supported Fazio's campaign, he stated that he did not "remember writing a check."

Mr. Depsee further testified that when he ran for the Board, he did not authorize an ad that was paid for by the WPRRO. He stated that he first learned of the ad when the within complaint was filed. There was no quid pro quo as a result of the WPRRO's ad on his behalf. Mr. Depsee testified that he was a member of the WPPRO and he "maybe attended a dinner."

Respondent Marge Hasko is a member of the Passaic Valley High School Board of Education; West Paterson is a sending district to the PVHS Board. She testified that she has known Mr. Fazio since she moved to West Paterson and she endorsed him because she felt that he had the qualifications to be a good mayor. Her endorsement was not on behalf of the Board. Respondent Hasko stated that she recalled being photographed. As for the reason for the photo, she stated that she did not "remember exactly why" it was taken. She was not sure what was going to be done with the photo. Ms. Hasko affirmed that she was not on any campaign committees for Fazio and she was not responsible for drafting the flyer. She did see the flyer when it came to her home. In this connection, she stated, "I did not know I was going to be included in the literature." Ms. Hasko stated that she did not contribute to the Fazio campaign. She further testified that Mr. Fazio did not promise anything to her or her family. She did not know that they were going to use her picture along with the words "School Board Member." Even after seeing the flyer, Ms. Hasko stated that it never occurred to her that anything was improper.

Ms. Hasko further acknowledged that when she ran for the PVHS Board, the WPPRO endorsed her, but she did not authorize the endorsement and did not compose the mailing referenced in the complaint. Ms. Hasko affirmed that she learned of the mailing when the information came to her home.

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).

Count I

The complainant asserts that Respondents Depsee and Hasko violated N.J.S.A. 18A:12-24(b), (e) and N.J.S.A. 18A:12-24.1(e) when they endorsed political candidate Steve Fazio in his run for mayor of the Borough of West Paterson. The material facts are not in dispute. Respondents Depsee and Hasko admit that they endorsed Mr. Fazio and that they consented to their pictures being taken with him. Mr. Fazio's flyer states, in relevant part:

STEVE FAZIO, PhD
West Paterson Mayoral Candidate
Official Endorsements

[Picture of Steve Fazio, Marge Hasko and William Depsee]
School Board Members
Marge Hasko and Bill Depsee
Endorse Steve Fazio for Mayor

Steve has demonstrated great leadership working in a bi-partisan fashion and will be an excellent mayor. (Complaint Attachment #1)

The Commission initially notes that 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;

The Commission has determined that Board members have the right to endorse candidates for public office. I/M/O Alphonse A. DeMao, Belleville Board of Education, C09-04, (September

30, 2004), Commissioner Decision No. 464-04, decided November 17, 2004. Where a board member may run afoul of the School Ethics Act, however, is by using his/her official position to the potential advantage of the candidate. Indeed, in DeMao, the Board President publicly endorsed a candidate running for the Belleville Municipal Council through a mailing to the Belleville community. The envelope bore Mr. DeMeo's official title, "President, Board of Education" under his name followed by his law office address. The letterhead bore the words "From the Desk of" in a light font. Those words were above and to the left of Mr. DeMeo's name "Alphonse A. DeMeo, Esq." The words "Board of Education President" appeared below the name in a regular size black font similar to the font in the letter. The Commission therein found that the respondent violated N.J.S.A. 18A:12-24(b) of the School Ethics Act in that "[t]he totality of the endorsement including the letterhead, the content of the letter, and the nature of the return address on the envelope, could lead someone reading the letter to reasonably assume that the endorsement was made by Mr. DeMao in his official capacity as the President of the Board." DeMao, slip op. at 5.

The circumstances in this matter, however, may fairly be distinguished from those in DeMao. Although the flyer includes the language "School Board Members," it does not refer to a specific Board and, in fact, Respondents Depsee and Hasko sit on different Boards. Further, there are no specific facts to contradict the respondents' assertion that their endorsements to Fazio were offered as private citizens and they had no involvement in preparing the literature, notwithstanding that they consented to having their picture taken. Thus, the Commission can find nothing on this record to suggest that the respondents used or attempted to use their official positions as Board members to secure an unwarranted privilege, advantage or employment for themselves or members of their immediate family or others, so as to implicate N.J.S.A. 18A:12-24(b). Accordingly, the Commission finds no probable cause to credit the allegation in Count I that the respondents violated N.J.S.A. 18A:12-24(b).

The Commission next considers the allegation that Respondents Depsee and Hasko violated N.J.S.A. 18A:12-24(e), which provides:

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;

Central to a potential finding of violation of this provision would be the existence of circumstances to indicate that the school official(s) accepted a gift/loan/contribution based upon the understanding that it was offered or given for the purpose of influencing the school official(s) in the discharge of their official duties. See, I/M/O Hugh Gallagher, Keansburg Bd. of Education, C03-01 (July 23, 2002), Commissioner of Education Decision No. 387-02 decided November 6, 2002; I/M/O Judy Ferraro, Keansburg Bd. of Education, C04-01 (July 23, 2002), Commissioner of Education Decision No. 348-02 decided September 23, 2002); I/M/O Thomas Keelan, Keansburg Bd. of Ed., C06-01 (June 24, 2003), Commissioner of Education Decision No. 549-03 decided September 22, 2003. This record is devoid of any such evidence. Accordingly, the Commission finds no probable cause to credit the allegation in Count I that the respondents violated N.J.S.A. 18A:12-24(e).

The Commission next considers whether Respondents Depsee and Hasko violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members, which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

There is no allegation that Respondents Depsee and Hasko made personal promises to Fazio with their respective endorsements. Even granting that they endorsed Fazio in their role as private citizens and thus took private action,³ there is nothing on this record to suggest that their support was of such a nature that it could compromise the Board. The Commission has previously declined to find probable cause to proceed with a complaint where the respondent Board members endorsed the mayor's reelection, but did so in their roles as private citizens. In LaPorte v. Stewart et al., Atlantic City Bd. of Ed., C26-05 (September 27, 2005), the then mayor of Atlantic City held a press conference which one of the respondents attended (Stewart). At the press conference, Mr. Stewart read a statement signed by Mr. Davis (the other respondent) that supported the reelection of the mayor. Mr. Stewart did not identify himself as a Board member and did not indicate that he was at the press conference in his role as a Board member. The statement did not identify Mr. Davis as a Board member, nor did it indicate that the Board supported the reelection of the current mayor. In considering whether there was probable cause to proceed with the allegation that the respondents violated N.J.S.A. 18A:12-24.1(e), the Commission found:

that the respondents' involvement in the press conference was in their capacity as private citizens and not in their capacity as members of the Board. There is no evidence to show that respondents put forward that they were involved in the press conference on behalf of the Board. Since respondents participated in the press conference in their role as private citizens, their involvement does not reflect the opinion of the entire Board and could not have compromised the Board. There is no evidence to show that the respondents failed to recognize that authority rests

³ "Private action" means any action taken by a member of a district board of education that is beyond the scope of the duties and responsibilities of the member. N.J.A.C. 6A:28-7.1.

with the Board or that respondents took personal promises or private action that may compromise the Board. LaPorte slip. op. at p. 4.

While the Commission acknowledges that the text of the flyer does identify Respondents Depsee and Hasko as “School Board Members,” as noted above, it does not indicate the names of their respective Boards. Nor are there any facts on this record to support a finding that the respondents actions were of such a nature that they could have compromised their respective Boards of Education. Accordingly, the Commission finds no probable cause to credit the allegation in Count I that the respondents violated N.J.S.A. 18A:12-24.1(e).

Count II

In this Count, the complainant alleges that Respondents Depsee and Hasko accepted political contributions from the WPRRO for their 2008 campaigns, that they maintained their campaign headquarters within the confines of the WPRRO offices, that they allowed the WPRRO to pay for their campaign literature and newspaper ads, and that there was a quid pro quo in that the WPRRO endorsed them in the April 2008 election and, in turn, the respondents endorsed the WPRRO’s mayoral candidate in the November 2008 election. The complainant asserts this conduct violated N.J.S.A. 18A:12-24(e). (Complaint at pp. 3-5)

The material facts are not in dispute. Respondents Depsee and Hasko admit that they accepted political contributions from the WPRRO with respect to campaigns undertaken during 2008. They further admit that the WPRRO paid for their campaign literature and newspaper ads, although it was not with their expressed permission and authorization. To the extent the complainant asserts that this was a violation of N.J.S.A. 18A:12-24(e), as set forth above, the Commission again notes that this provision prohibits school official(s) from accepting a gift/loan/contribution based upon the understanding that it was offered or given for the purpose of influencing the school official(s) *in the discharge of their official duties*. However, the “quid pro quo” alleged in this complaint is that upon accepting the WPRRO’s political contributions to their respective campaigns, Respondents Depsee and Hasko, in turn, endorsed the WPRRO’s mayoral candidate in the November 2008 election. (Complaint at Count II, paragraphs 7 and 9). N.J.S.A. 18A:12-24(e) does not prohibit the respondents from doing so where they act in their capacity as private citizens. Accordingly, the Commission finds no probable cause to credit the allegation in Count II that the respondents violated N.J.S.A. 18A:12-24(e).

Count III

In Count III of the complaint, the complainant asserts that Respondent Depsee is an employee of the Office of the Superintendent of Elections for Passaic County and he has “forged an alliance” with the WPRRO by accepting contributions and, in turn, he endorsed the mayor. The complainant asserts that Depsee is in violation of N.J.S.A. 18A:12-24(d), (e), (g) and (h). (Complaint at pp. 5-6)

In his answer, respondent Depsee does not deny that he is an employee of the Office of the Superintendent of Elections for Passaic County, but rather asserts that this allegation is

outside the jurisdiction of the School Ethics Commission. (Depsee Answer at pp. 2-3) The Commission first notes that N.J.S.A. 18A:12-24(d) provides:

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;

Even assuming, for the purpose of this analysis, that Respondent Depsee is an employee of the Office of the Superintendent of Elections for Passaic County, the above provision would prohibit such service or employment where it might reasonably be expected to prejudice Depsee's independence of judgment *in the exercise of his official duties*. For instance, in I/M/O David W. Fuller, Irvington Twp. Bd. of Ed., C32-95 (November 25, 1997), Commissioner of Education Decision No. 472-12/97 decided January 21, 1998, the Commission found that a board member violated N.J.S.A. 18A:12-24(d) by serving on the Board while also serving as the Township Business Administrator based on the extent to which the duties can overlap in a Type I district. Here, however, the Commission finds that the allegations in the complaint concern the respondent's political activities as a private citizen, rather than any of his official duties as a Board member. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(d).⁴

The Commission next finds that to the extent this count alleges that Respondent Depsee's acceptance of campaign contributions from the WPRRO and his subsequent endorsement of the mayor violates N.J.S.A. 18A:12-24(e), the Commission finds no facts on this record to indicate that the respondent accepted the contribution from the WPRRO based upon the understanding that it was offered or given for the purpose of influencing him in the discharge of his official duties. Accordingly, the Commission finds no probable cause to credit the allegation in Count III that the respondent violated N.J.S.A. 18A:12-24(e).

The Commission next considers the complainant's allegation that the respondent is in violation of 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 in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision

⁴ To the extent that the complainant asserts that the respondent is prohibited under the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., from publicly endorsing or opposing candidates, (Complaint Attachment #5), the Commission notes that this statute is administered and enforced by the State Ethics Commission and, therefore, the School Ethics Commission does not have jurisdiction to consider this particular claim. <http://www.state.nj.us/ethics/>

shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

Again, even granting that Respondent Depsee is employed as alleged, and further granting that he has accepted campaign contributions from the WPRRO, 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. Accordingly, the Commission finds no cause to credit the allegation that Respondent Depsee 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 offers an exception to the prohibited acts and is not applicable in this matter.⁵ Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(h).

Count IV

In Count IV, the complainant alleges that Respondent Steve Fazio, while serving as a Board member in West Paterson and also running for mayor of West Paterson in November 2008, “recruited and relied upon sitting Board members to endorse his campaign” by accepting endorsements from Respondents Depsee and Hasko and using their endorsements in his campaign literature, referring to them as school board members. The complainant asserts this is a violation of N.J.S.A. 18A:12-24(b) and (e), as well as a violation of N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. (Complaint at pp. 6-8)

The material facts are not in dispute. Respondent Fazio acknowledged that in the calendar year 2008, he was a sitting member of the West Paterson Board and, at the time, was running in the general election for the mayor of the Borough of West Paterson. Mr. Fazio admitted that he received endorsements from various school board members, including Respondents Depsee and Hasko. In his testimony, Mr. Fazio asserted that such endorsements were not undertaken as official endorsements, but, rather from the individuals as private citizens. Mr. Fazio affirmed that he did not use his position as a Board member to obtain any advantage for himself. (Fazio Answer at p. 2)

As set forth above, N.J.S.A. 18A:12-24(b) prohibits a school official from using, or attempting to use his official position, to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. However, there are no specific facts before the Commission to contradict Mr. Fazio’s sworn testimony that he accepted the endorsements from Respondents Depsee and Hasko because they were known throughout the community as “outstanding individuals” and they were long-time friends, not because of their

⁵ 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 member status. Thus, there is nothing on this record to suggest that Respondent Fazio used or attempted to use, his official position as a Board member to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b).

As set forth above, N.J.S.A. 18A:12-24(e) prohibits a school official, a member of his immediate family or a business organization in which he has an interest, from soliciting or accepting 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. The provision also states,

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;

Once again, this record is devoid of any evidence to suggest that when Respondent Fazio accepted the political endorsements from Depsee and Hasko, he did so with the knowledge that the campaign support, if accepted, was given with the intent to influence him in the discharge of his official duties. Accordingly, the Commission finds no probable cause to credit the allegation in Count IV that the respondent violated N.J.S.A. 18A:12-24(e).

Finally, as set forth above, N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members requires that Board members recognize that authority rests with the board of education and that they shall make no personal promises nor take any private action that may compromise the board. There is no allegation that Respondent Fazio made personal promises to Depsee and Hasko. Even granting that Respondent Fazio sought the endorsements of Depsee and Hasko in his role as a private citizen, and thus took private action, there are no facts on this record to support a finding that this action was of such a nature that it could compromise the Board. See, LaPorte v. Stewart et al., Atlantic City Bd. of Ed., C26-05 (September 27, 2005). Accordingly, the Commission finds no probable cause to credit the allegation in Count IV that the respondent violated N.J.S.A. 18A:12-24.1(e).

REQUEST FOR SANCTIONS

At its meeting on December 15, 2009, the Commission considered the respondents' request that the Commission find that the complaint was frivolous and impose a fine pursuant to N.J.S.A. 18A:12-29(e), but declined to find that the complaint herein was frivolous. The Commission does not find that the complainant "[c]ommenced, used or continued [this matter] in bad faith, solely for the purpose of harassment, delay or malicious injury;" or that the complainant "knew, or should have known," that the matter "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. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondents’ request for sanctions against the complainant.

NOTICE

Pursuant to N.J.S.A. 18A:12-29b, the Commission hereby notifies the complainant and respondents that it finds no probable cause to credit the allegations that the respondents violated N.J.S.A. 18A:12-24(b), (d), (e), (g), and (h) or N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members; the Commission, therefore, dismisses the complaint.

Notwithstanding this determination, the Commission finds that the circumstances surrounding the claims set forth in Counts I and IV of this complaint warrant a cautionary note to the respondents. While the undisputed testimony herein indicated that Respondents Depsee and Hasko offered their endorsements to Mr. Fazio in his mayoral campaign in their respective roles as private citizens, and it is perfectly plausible that a campaign would publish literature without conferring with those who endorse the candidate, apparently neither Board member, upon the discovery of the text used in the campaign literature, took measures to confront the fact that Fazio’s campaign literature was potentially problematic, as would have been good practice.

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 – C38-08

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 no probable cause to credit the allegations that the respondents violated N.J.S.A. 18A:12-24(b), (d), (e), (g), and (h) of the Act or N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members; the Commission also found that the complaint was not frivolous; and

Whereas, the Commission dismissed the complaint; and

Whereas, at its meeting on January 26, 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 its public meeting on January 26, 2010.

Joanne Boyle, Executive Director