

in need of “male leadership” because those positions should not be held by women at the same time. He accompanied his comments with a lewd hand gesture. Additionally, the complainant alleges that the respondent made promises to the same Board member that if he voted for the respondent for Board President, the Board member could have any business cards and any chair or parking space he wanted.

Count 3

The complainant asserts that during Executive Session on November 27, 2012, the respondent was observed staring at the complainant and when asked why, he continued to stare for 5-10 seconds before responding that he was not doing anything. The complainant maintains that this was hostile and intimidating.

Count 4

Complainant asserts that after the September 2012 regular meeting of the Board at which a latina was appointed B.A., the complainant contends that the respondent was heard to say disdainfully, “another Puerto Rican.”

For all Counts, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24.1(e) and (i).

The respondent states that the alleged comments in Counts 1 and 4 were not made at a public meeting and were private in nature. Respondent declares that the alleged violation in Count 3 is not actionable because staring at someone is not evidence of making a personal promise or the taking of deliberate action to compromise the Board. Finally, of Count 2, the respondent states that he was simply politicking and that this activity was not unethical.

In reply to the Motion, the complainant states that respondent’s comments were degrading and sexist, and though said in a private, they are still actionable. The complainant also explains that the hand written statements of direct witnesses in support of her claims are not self-serving because these individuals have nothing to gain.

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24.1(e) and (i) of the Code of Ethics for School Board Members.

The Commission first considers N.J.S.A. 18A:12-24.1(e), which states:

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. N.J.S.A. 18A:12-24.1(e)

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

The Commission finds that even though the respondent does not dispute that he uttered the comments or motioned the gesture as alleged or stared at the complainant, these facts are insufficient to establish a violation of N.J.S.A. 18A:12-24.1(e) as they were private in nature and not actionable even though the complainant has provided witnesses' statements in support of these claims. Moreover, the Commission also finds that the respondent did not take "private action," as alleged in Count 2 when he made the promise of a parking space to another Board member in exchange for his vote. Since the respondent is not authorized to provide such accommodations, the promise is hollow. Any attempt to execute such a promise would violate the Code as action outside the scope of the Board member's authority.

Consequently, even accepting as true all facts alleged by the complainant in Counts 1-4, the Commission determines that these facts would not constitute violations under N.J.S.A. 18A:12-24.1(e). Accordingly, Counts 1-4 are properly dismissed.

The Commission next considers N.J.S.A. 18A:12-24.1(i), which states:

I will support and protect school personnel in proper performance of their duties.

Because this provision, on its face, applies to "school personal," the Commission cannot consider the complainant's contentions in any of the Counts since a Board member is not "school personnel." Consequently, the Commission does not have jurisdiction to review these claims.

Thus, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(i). Accordingly, Counts 1-4 are properly dismissed.¹

¹ The Commission believes it would be remiss if it neglected to comment on the respondent's conduct. The Commission recognizes that the purpose of the School Ethics Act is to preserve the public trust and, as such, seeks to avoid the impression in the public's eye that its trust has been violated. The conduct complained of here is odious and repugnant; it diminishes the actor and those acted upon. Bias against women and ethnic minorities is highly offensive, has no place in public discourse and undermines the fundamental rationale of the Act. The public should never have to question the integrity of any member's vote or Board action. Being an elected official is a privilege, and the office requires the holder to be his better self, especially in public. The community has a right to expect leadership from their elected officials. They deserve nothing less.

REQUEST FOR SANCTIONS

The respondent alleged that the complaint herein is frivolous. At its meeting on May 28, 2013, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission can find no evidence which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainant should have known that the complaint was without any reasonable basis in law or equity or that it 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. Therefore, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint for failure to state a claim upon which relief could be granted. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: June 26, 2013

Resolution Adopting Decision – C08-13

Whereas, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of respondent and the complainant’s reply thereto; and

Whereas, at its meeting on May 28, 2013, the Commission determined to grant the respondent’s Motion to Dismiss and also found that the complaint was not frivolous; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

Now Therefore Be It Resolved that the Commission hereby adopts the decision and directs its staff to notify all parties to this action of its decision herein.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 25, 2013.

Joanne M. Restivo
Interim Executive Director