
**DAN MOTLEY, STEVEN DANIELI,
DIANE DEPALMA, MELISSA RUBERTO,
DIANE BRASCHI, BRIAN JENIK, AND
FRAN JENIK**

V.

**STEVEN SPARDEL
VERONA BOARD OF EDUCATION,
ESSEX COUNTY**

**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No. C25-14

PROBABLE CAUSE NOTICE

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 20, 2014, by Dan Motley,¹ Steven Danieli, Diane DePalma, Melissa Ruberto, Diane Braschi, Brian Jenik and Fran Jenik, alleging that Steven Spardel, a member of the Verona Board of Education (Board), violated the School Ethics Act (Act). N.J.S.A. 18A:12-21 et seq. By notices dated May 30, 2014 and July 31, 2014, the School Ethics Commission (Commission) informed the complainants that the Complaint was deficient and not in accordance with the standards set forth at N.J.A.C. 6A:28-6. The notice of May 30, 2014 also advised the complainants that any allegations occurring before November 21, 2013 were considered untimely as the claims exceeded the 180-day limit for filing a complaint pursuant to N.J.A.C. 6A:28-6.5. On August 8, 2014, the complainants filed a second amended complaint curing all deficiencies. The complainants therein allege that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (g), N.J.S.A. 18A:12-24.1(e) and (f), and N.J.S.A. 18A:12-26(a)(4).

New counsel for the respondent requested and received an extension of time to file a responsive pleading, and on September 15, 2014², counsel filed an answer on behalf of the respondent. By letter dated October 10, 2014, the parties were notified that the Commission would review this matter at its meeting on October 28, 2014, in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.9.

At its meetings on October 28, 2014 and November 25, 2014, the Commission reviewed the matter and found no probable cause to credit the allegations that the respondent may have violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (g), of the Act, N.J.S.A. 18A:12-24.1(e) and (f) of the Code of Ethics for School Board Members (Code), and N.J.S.A. 18A:12-26(a)(4). Accordingly, the Commission voted to dismiss the complaint for failure to state a claim, pursuant to N.J.A.C. 6A:28-10.7(d).

¹ After the filing of the 2nd Amended Complaint, the complainants selected Dan Motley to speak on their behalf and to receive service of any pleadings, correspondence or trial materials.

² The Commission deemed the Answer timely filed as it was received on September 15, 2014 by facsimile transmission.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

Counts 1—6 and Count 8

Complainants assert that on a number of occasions the respondent/Board member engaged in the planning, review and assessments of several field/sports options and the final proposal for a capital improvement referendum that evolved from a minor remediation into a major multi-sport complex designed for use by community sports groups. The complainants assert that this involvement in Board planning resulted in a benefit to the respondent personally and financially. The complainants aver this was a violation of N.J.S.A. 18A:12-24(a), (b), (c), (d), (g) and N.J.S.A. 18A:12-24.1(e) and (f).

Count 7

The complainants charge that the respondent failed to disclose his association with the Verona United Soccer Club, the Verona Baseball and Softball League, and the Verona Twins Baseball Team as required on the annual disclosure statement. The complainants assert this was a violation of N.J.S.A. 18A:12-26(a)(4).

FINDINGS OF PROBABLE CAUSE

This matter is before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.7. That is, the Commission must determine, based on the 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.

The complainants allege in Counts 1—6 and Count 8 that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (g) and N.J.S.A. 18A:12-24.1(e) and (f). Thus, the question before the Commission was whether the complainants alleged facts in these Counts, which, if true, could support a finding of probable cause to credit the allegations that the respondent violated the Act.

In reviewing the facts of this matter, the Commission considers all of the subsections together as a whole because of the commonality of purpose and to address the multi-faceted violations alleged in the complaint on the same set of facts.

The Commission first considers the allegations that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), and (g), which provide, respectively:

- a. 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;

- b. 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;
- c. 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;
- g. 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 shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24(a), the Commission would have to find evidence that the respondent had an “interest,” as defined by the Act, as 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 indication that the respondent, or a member of his immediate family, had an interest in a business organization, which was in substantial conflict with the proper discharge of his duties.

Although the complainants assert that the respondent had an interest in several business organizations, they have not demonstrated that he held a 10% interest in any team, league or club nor have they shown that any of these enterprises produced revenue, which may have created a substantial conflict for the respondent in the proper discharge of his duties. Consequently, the Commission does not find sufficient cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(a).

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24(b), the respondent would have to gain some advantage through his official position. The respondent does not deny that he is a volunteer member and Treasurer of the Verona Soccer League, but maintains that during his tenure on the Board, the League never used the field under discussion. The respondent does admit, however, that the Verona Twins, the baseball league for which he plays did use the subject field for home games. He argues that league personnel requested usage of the field and that he never sought special privileges or treatment for himself or the League. The complainants have not provided any support to demonstrate that the respondent used his official position to secure unwarranted privileges, advantages or employment for himself, members of his

immediate family or others. Under these circumstances, the Commission does not find sufficient cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b).

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24(c), the Commission would have to find evidence that the respondent had either: 1) taken action in his official capacity in a matter where he, or a member of his immediate family 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.

First, there has been no evidence in the Complaint that the respondent used his official capacity in a matter where he, or a member of his immediate family, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. The Complaint simply does not provide sufficient fact to demonstrate support for such a finding and the Commission will not infer one. Moreover, the referendum project was the subject of a public vote, which passed by a vast majority of the voters. The complainants do not provide evidence that the respondent used his official position to advance the referendum or that he or his immediate family benefited from its passage or its development. There has been no evidence that the respondent benefitted any more from the use of the field than any other player for any other league. Any notion that future benefits may inure to the respondent and his teams are purely speculative, attenuated and not ripe for adjudication. In this Count, the complainants failed to provide any facts to support the allegation that the respondent violated this subsection. Under these circumstances, the Commission does not find sufficient cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c).

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24(g), the Commission would have to find evidence that the respondent first had a business interest in the leagues for which he plays, and then find evidence that the respondent represented those leagues in some other forum or before some other entity. Additionally, the Commission would also have to find evidence that the respondent represented his own business interest contrary to some cause, proceeding, application or other matter then pending before the school district. The referendum project was fully supported not just by the respondent but by the town as well, and the complainants have provided no evidence that respondent represented any person or party in 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. Under these circumstances, the Commission does not find sufficient cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(g).

The Commission next considers the remaining allegation of prohibited acts that the respondent violated N.J.S.A. 18A:12-24(d), which provides:

- d. 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 complainants argue that the respondent participated in the development and expansion of the initial plan envisioned by the referendum for the benefit of his teams. Although the

complainants allege that the respondent has an established involvement with the Verona United Soccer Club, the Verona Baseball and Softball League, and the Verona Twins Baseball Team, the Commission determines that the complaint fails to demonstrate how the respondent used his official position for his benefit or for the benefit of others. The alleged benefits, if any, are too speculative to warrant consideration. Consequently, the Commission finds that there are insufficient facts to support a finding that the respondent may have violated N.J.S.A. 18A:12-24(d).

The Commission next considers the allegations that the respondent violated N.J.S.A. 18A:12-24.1(e) and (f), which provide, respectively:

- e. 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.
- f. I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24.1(e), the Commission's regulations require:

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.

There is no allegation in this matter that the respondent made personal promises to anyone or that he took private action that, by its nature, had the potential to compromise the Board. Without proof, this allegation is mere suspicion, conjecture and surmise. Consequently, the Commission does not find sufficient cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e).

In order to credit this allegation with respect to a violation of N.J.S.A. 18A:12-24.1(f), the Commission's regulations require:

Factual evidence shall include evidence that the respondent(s) took action on behalf of, or at the request of, a special interest group or persons organized and voluntarily united in opinion and who adhere to a particular political party or cause; or evidence that the respondent(s) used the schools in order to acquire some benefit for the respondent(s), a member of his or her immediate family or a friend. N.J.A.C. 6A:28-6.4(a)6

In light of the foregoing, the Commission determines that the complainants failed to provide evidence which supports the allegation that the respondent surrendered his independent judgment for the benefit of his teams or that he attempted to acquire some benefit for his friends and teammates by ensuring better playing fields and conditions, such as lighting. These are benefits that

inure to anyone who plays on the improved fields and not just to the respondent. Consequently, the Commission finds insufficient cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f).

Last, the Commission considers complainants allegation in Count 7 that the respondent violated N.J.S.A. 18A:12-26(a)(4). In accordance with the Act, every school official is required to file an annual Personal/Relative and Financial disclosure statement, listing the names and addresses of all business organizations in which the school official or a member of his family had an interest during the preceding calendar year. Failure to do so or failure to provide accurate information shall subject the school official to a penalty. The complainants aver that the respondent failed to disclose a business relationship with the teams and leagues which are the subject of this controversy. The Commission determines that the Act and its regulations do not require disclosure of these types of relationships and that there is no evidence that these organizations were a source of income for the respondent. Therefore, the Commission finds insufficient cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-26(a)(4).

DECISION

Based on the foregoing and pursuant to its discretion, the Commission dismisses the within complaint for failure to state a claim that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (g), of the Act, N.J.S.A. 18A:12-24.1(e) and (f) of the Code, and N.J.S.A. 18A:12-26(a)(4). 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: November 26, 2014

Resolution Adopting Decision – C25-14

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

Whereas, at its meetings on October 28, 2014 and November 25, 2014, the Commission reviewed the matter and found no probable cause to credit the allegations that the respondent may have violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (g), of the Act, N.J.S.A. 18A:12-24.1(e) and (f) of the Code, and N.J.S.A. 18A:12-26(a)(4); and

Whereas, at its meeting on November 25, 2014, the Commission voted to dismiss the complaint for failure to state a claim, pursuant to N.J.A.C. 6A:28-10.7(d); and

Whereas, at its meeting on November 25, 2014, the Commission agreed that the within probable cause notice accurately memorializes its findings;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed probable cause notice in this matter and directs its staff to notify all parties to this action of said notice.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 25, 2014.

Joanne M. Restivo
Acting Executive Director