

Before the School Ethics Commission
Docket No.: C61-21
Decision on Motion to Dismiss

Sharon DeVito,
Complainant

v.

Vito Galluccio,
Robbinsville Board of Education, Mercer County,
Respondent

I. Procedural History

This matter arises from a Complaint that was filed on October 25, 2021, by Sharon DeVito (Complainant), alleging that Vito Galluccio (Respondent), a member and President of the Robbinsville Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) of the Code of Ethics for School Board Members (Code).

On October 27, 2021, the Complaint was served on Respondent, via electronic mail, notifying him that charges were filed against him with the School Ethics Commission (Commission), and advising that he had twenty (20) days to file a responsive pleading.¹ On December 3, 2021, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and Complainant filed a response to the Motion to Dismiss on December 23, 2021.

The parties were notified by correspondence dated January 28, 2022, that this matter would be placed on the Commission's agenda for a special meeting on February 4, 2022, in order to make a determination regarding the Motion to Dismiss. At a special meeting on February 4, 2022, the Commission considered the filings in this matter and, at a special meeting on February 25, 2022, the Commission voted to grant the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f).

II. Summary of the Pleadings

A. *The Complaint*

Complainant asserts that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) because he used his position as a member and President of the Board to endorse

¹ Due to the ongoing Coronavirus (COVID-19) pandemic, service of process was effectuated by the Commission through electronic transmission only.

his friend, Mike Todd (Mr. Todd), for a position on the Robbinsville Township Council (Township Council). According to Complainant, “[a]lthough the audio of the video included the disclaimer [that Respondent] is speaking as a private citizen,” postings on social media give “the impression” that Respondent is endorsing Mr. Todd in his official capacity as a member and President of the Board. By offering an endorsement in his capacity as a member and President of the Board, Complainant argues that Respondent took private action that may compromise the Board (in violation of *N.J.S.A.* 18A:12-24.1(e)), and used the schools for personal gain or the gain of friends (in violation of *N.J.S.A.* 18A:12-24.1(f)).

B. *Motion to Dismiss*

Following receipt of the Complaint, Respondent filed a Motion to Dismiss and asserts that he “recorded a video supporting Mr. Todd’s candidacy which was posted to a campaign ‘Facebook page’ run by the campaign, not [Respondent].” According to Respondent, in the video, he “unequivocally states that he is speaking as an individual and resident of Robbinsville, not in his capacity as President of the ... Board, and in no way indicates that the Board is endorsing a candidate for the Township Council.” More specifically, Respondent’s disclaimer stated:

Hello, my name is Vito Galluccio. I currently serve as the President of the Robbinsville School Board, *but I am speaking to you today as a Resident, a private citizen and friend of Mike Todd. Mike is a Township Council candidate and I strongly believe he will make an excellent elected official for Robbinsville* ... (emphasis added).

As to the alleged violation of *N.J.S.A.* 18A:12-24.1(e), Respondent argues Complainant has not provided any evidence to support that Respondent made “any personal promises or took any private action which could have compromised the Board.” Respondent submits his “personal remarks” in support of Mr. Todd’s candidacy “are protected free speech.” Respondent maintains that he did not take any “private action on any matter related to the Board or its business when he endorsed a candidate for Township Council in his capacity as a resident of Robbinsville.”

Regarding the alleged violation of *N.J.S.A.* 18A:12-24.1(f), Respondent asserts his “statement of endorsement did not implicate the [Board] in any manner, and therefore there can be no determination that he ‘used the school’ for anyone’s benefit.”

For the foregoing reasons, Respondent argues that his Motion to Dismiss should be granted in its entirety.

C. *Response to Motion to Dismiss*

In response to the Motion to Dismiss, Complainant maintains that although Respondent’s “verbal endorsement” included a disclaimer, the “caption on the posting is extremely misleading” and suggests he, as Board President, “is endorsing his friend, the candidate.” Complainant contends that Respondent originally posted his endorsement on October 19, 2021, and then after the Complaint was filed (on October 27, 2021), the phrase “current Robbinsville

Board of Education President” was removed from his endorsement (on October 28, 2021). Complainant further contends the Complaint “was directed at the posting” and although Respondent included a disclaimer in the audio, if an individual does not listen to the audio, Respondent’s posting gives “the impression that he is speaking on behalf of the [B]oard.” Although Complainant acknowledges that Respondent is “within his rights to express his opinion in the audio section of the posting,” his posted words, “current Robbinsville Board of Education President” can be interpreted as Respondent endorsing the candidate as a member and officer of the Board. Therefore, Complainant argues that the Motion to Dismiss should be denied.

III. Analysis

A. Standard for Motion to Dismiss

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the non-moving party (Complainant), and determine whether the allegation(s), if true, could establish a violation of the Act. Unless the parties are otherwise notified, a Motion to Dismiss and any response is reviewed by the Commission on a summary basis. *N.J.A.C.* 6A:28-8.1 *et seq.* Thus, the question before the Commission is whether Complainant has presented sufficient facts which, if true, could support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f).

B. Alleged Code Violations

In this case, it is asserted that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f). These provisions of the Code provide:

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.

As further detailed above, Complainant contends that, despite providing a disclaimer in his video/verbal endorsement of Mr. Todd for a position on Township Council, Respondent violated *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) because postings on social media give “the impression” that Respondent used his position as a member of the Board. By using his position on the Board, Complainant argues that Respondent took private action that may compromise the Board, and used the schools for personal gain or the gain of friends.

In response, Respondent maintains that his disclaimer “unequivocally states that he is speaking as an individual and resident of Robbinsville, not in his capacity as President of the ... Board, and in no way indicates that the Board is endorsing a candidate for the Township Council”; Complainant has not provided any evidence to support that Respondent made “any personal promises or took any private action which could have compromised the Board”; his

“personal remarks” in support of Mr. Todd’s candidacy “are protected free speech”; he did not take any “private action on any matter related to the Board or its business when he endorsed a candidate for Township Council in his capacity as a resident of Robbinsville”; and his “statement of endorsement did not implicate the [Board] in any manner, and therefore there can be no determination that he ‘used the school’ for anyone’s benefit.”

As set forth in *N.J.A.C. 6A:28-6.4(a)(5)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(e)* shall include evidence that Respondent made personal promises or took action beyond the scope of his duties such that, by its nature, had the potential to compromise the board. Further, pursuant to *N.J.A.C. 6A:28-6.4(a)(6)*, factual evidence of a violation of *N.J.S.A. 18A:12-24.1(f)* shall include evidence that Respondent 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 Respondent used the schools in order to acquire some benefit for himself, a member of his immediate family or a friend.

Based on its review of the Complaint, the Commission finds that even if the facts as set forth in the Complaint are proven true by sufficient credible evidence, they would not support a finding that Respondent violated *N.J.S.A. 18A:12-24.1(e)* and/or *N.J.S.A. 18A:12-24.1(f)*. When, and how, school officials must use disclaimers to avoid violations of the Act has been discussed by the Commission in a number of recent decisions. For example, in [*I/M/O Treston*](#), the Commission stated:

... Now, more than a decade later, when use of social media and online publications has become commonplace, prolific, pervasive, and often times divisive, and given that there has been a significant influx in the number of complaints filed with the Commission regarding use (or nonuse) of disclaimers in electronic publications (not just on social media), *it is now more critical than ever to underscore and emphasize that when Board members want to speak as private citizens, they must include an appropriate disclaimer that makes the capacity in which they are speaking clear and unambiguous.* In addition, even if an appropriate disclaimer is used, a school official must never negate the import of the disclaimer by proceeding, under the purported protection of a disclaimer, to discuss or comment on Board business or matters in a way that leads a member of the public to believe that the individual is speaking on behalf of, and as a representative of, the Board. ...

[*I/M/O Treston*](#), Randolph Township Board of Education, Commission Docket No. C71-18, at 12 (emphasis added).

As applied here, Respondent’s disclaimer in the video/verbal endorsement was clear and unambiguous. Although, as part of the video/verbal endorsement, Respondent did refer to his position on the Board, he did so *biographically* and then immediately, and appropriately, disclaimed that his statements were not being offered on behalf of the Board, but rather from him (personally) as a “[r]esident [of Robbinsville], a private citizen, and friend” of Mr. Todd.

Although, as noted by Complainant, postings on two different social media pages (“Re-Elect Cipriano Elect Blakely & Todd for Robbinsville Township Council” and “Mike Todd’s” personal Facebook page) *might* have caused confusion about the capacity in which Respondent was speaking during his video/verbal endorsement of Mr. Todd, there is no evidence or facts to suggest that the social media pages in question (“Re-Elect Cipriano Elect Blakely & Todd for Robbinsville Township Council” and “Mike Todd’s” personal Facebook page) belong to or are otherwise associated with, Respondent. Instead, the social media pages are those of Mr. Todd’s campaign, and those of Mr. Todd personally. As a result, the Commission finds that Respondent cannot be held responsible, and found to have engaged in unethical behavior, for a posting on a social media page that he does not own, operate, or control. This is especially true when, as here, ameliorative steps were taken to resolve the perception when raised as a concern and brought to Respondent’s attention.

Because, as evidenced by his clear and unambiguous disclaimer in the video/verbal endorsement, Respondent was speaking as a private citizen, and not in his official capacity as a member or officer of the Board, the Commission finds that the alleged violations of *N.J.S.A.* 18A:12-24.1(e) and *N.J.S.A.* 18A:12-24.1(f) should be dismissed.

Accordingly, and granting all inferences in favor of the non-moving party (Complainant), the Commission has determined to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or violated *N.J.S.A.* 18A:12-24.1(f).

IV. Decision

Based on the foregoing, and in reviewing the facts in the light most favorable to the non-moving party (Complainant), the Commission voted to **grant** the Motion to Dismiss in its entirety because Complainant failed to plead sufficient, credible facts to support a finding that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or *N.J.S.A.* 18A:12-24.1(f).

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that, for the reasons set forth above, this matter is dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court-Appellate Division. *See, New Jersey Court Rule 2:2-3(a).*

Robert W. Bender, Chairperson

Mailing Date: February 25, 2022

***Resolution Adopting Decision
in Connection with C61-21***

Whereas, at a special meeting on February 4, 2022, the School Ethics Commission (Commission) considered the Complaint, the Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and the response to the Motion to Dismiss submitted in connection with the above-referenced matter; and

Whereas, at a special meeting on February 4, 2022, the Commission discussed granting the Motion to Dismiss in its entirety for failure to plead sufficient, credible facts to support the allegations that Respondent violated *N.J.S.A.* 18A:12-24.1(e) and/or violated *N.J.S.A.* 18A:12-24.1(f); and

Whereas, at a special meeting on February 25, 2022, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its special meeting on February 4, 2022; and

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 a special meeting on February 25, 2022.

Kathryn A. Whalen, Esq.
Director, School Ethics Commission