

Before the School Ethics Commission
Docket No.: C05-23
Probable Cause Notice

Robert Zywicki,
Complainant

v.

Anthony Giordano,
Mount Olive Township Board of Education, Morris County,
Respondent

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on January 17, 2023, by Robert Zywicki (Complainant), alleging that Anthony Giordano (Respondent), a member of the Mount Olive Township Board of Education (Board), violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint avers that Respondent violated *N.J.S.A.* 18A:12-24(b), as well as *N.J.S.A.* 18A:12-24.1(g) of the Code of Ethics for School Board Members (Code).

On February 8, 2023, Respondent filed a Motion to Dismiss in Lieu of Answer (Motion to Dismiss), and also alleged that the Complaint is frivolous. On March 20, 2023, Complainant filed a response to the Motion to Dismiss and allegation of frivolous filing.

The Commission considered the Motion to Dismiss and allegation of frivolous filing at its meeting on June 27, 2023. Following its discussion on June 27, 2023, the Commission adopted a decision at its meeting on July 25, 2023, granting the Motion to Dismiss as to the alleged violations of *N.J.S.A.* 18A:12-24.1(g) in Counts 1 and 2, and denying the Motion to Dismiss as to the alleged violation *N.J.S.A.* 18A:12-24(b) in Count 3. The Commission also adopted a decision finding the Complaint was not frivolous and denying Respondent's request for sanctions. Based on its decision, the Commission directed Respondent to file an Answer to Complaint (Answer) as to the remaining allegation, which he did on August 14, 2023.

At its meeting on October 17, 2023, the Commission considered the filings, and at its meeting on November 28, 2023, the Commission voted to find that probable cause did not exist for *N.J.S.A.* 18A:12-24(b), the only remaining alleged violation of the Act set forth in the Complaint, and voted to dismiss the above-captioned matter.

II. Summary of the Pleadings

A. *Remaining Allegation in the Complaint*

In Count 3, Complainant asserted that on various dates in September and October 2022, Respondent sent Complainant a spreadsheet, which Respondent allegedly “pressured” Complainant to complete with names of superintendents for Respondent’s personal Swing Education, Inc. (SWING) consulting dinner to be held in Atlantic City at the New Jersey School Boards Association workshop. Complainant asserts this conduct is a violation of *N.J.S.A.* 18A:12-24(b).

B. *Answer to the Remaining Allegation in the Complaint*

In his Answer to the remaining allegation, Respondent denies sending a spreadsheet to Complainant, denies “pressuring” him to provide the names of superintendents for a SWING education consulting dinner, and denies that the dinner was Respondent’s “personal education consulting dinner.” Respondent argues he did not consult for SWING in 2022, and that the worksheet Complainant references relates to a 2022 New Jersey Association of School Administrators (NJASA) Conference and was created by one of the vendors at the conference, not Respondent. Respondent maintains both he and Complainant received a copy of the spreadsheet, which the vendor also used for the NJSBA Conference. Respondent denies that he violated *N.J.S.A.* 18A:12-24(b).

III. Analysis

This matter is before the Commission for a determination of probable cause pursuant to *N.J.A.C.* 6A:28-10.7,¹ processing of Complaints alleging solely prohibited acts. A finding of probable cause is not an adjudication on the merits but, rather, an initial review whereupon the Commission makes a preliminary determination as to whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted.

In order to determine whether probable cause exists, the Commission must determine whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act, and *N.J.S.A.* 18A:12-24(b) specifically, was violated. *N.J.A.C.* 6A:28-10.7.

Alleged Prohibited Act Violations

In this case, Complainant alleges that Respondent violated *N.J.S.A.* 18A:12-24(b) in Count 3. This provision states:

¹ The regulations cited in this matter refer to the regulations that were in effect at the time the Complaint was filed on January 17, 2023.

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.

In order to credit the alleged violation of *N.J.S.A.* 18A:12-24(b) in Count 3, the Commission must find evidence that Respondent used or attempted to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family, or others.

Complainant alleges that Respondent sought to use his position as a Board member to pressure Complainant to fill out a spreadsheet with names of superintendents, resulting in an unwarranted benefit to Respondent through his SWING consulting dinner. Respondent counters that he did not consult for SWING at the relevant times and that a vendor at the NJASA conference created the spreadsheet.

After review, the Commission finds that Complainant has not articulated a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that *N.J.S.A.* 18A:12-24(b) was violated as alleged in Count 3. While Respondent denied ever creating a spreadsheet, even if he had created a spreadsheet and asked Complainant to provide the names of superintendents, there are insufficient facts alleged to establish that this, in and of itself, secured, or was an attempt to secure, an unwarranted privilege, advantage, or employment for Respondent. The Complaint fails to allege with any specificity what Respondent intended to do with the list of superintendents, or how obtaining the names of superintendents (which are publicly available information) resulted in an unwarranted benefit to Respondent, his immediate family, or others. Respondent denies that he consulted with SWING in 2022, but even if he did, the Complaint fails to indicate, or even suggest, how such a list would provide Respondent or SWING with an unwarranted advantage. Accordingly, and pursuant to *N.J.A.C.* 6A:28-10.7(d), the Commission dismisses the alleged violation of *N.J.S.A.* 18A:12-24(b) in Count 3 for failure to provide sufficient facts to support a finding of probable cause.

IV. Notice

Pursuant to *N.J.S.A.* 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that it does not find probable cause to credit the alleged violation of *N.J.S.A.* 18A:12-24(b) and, therefore, dismisses this matter.

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: November 28, 2023

***Resolution Adopting Decision
in Connection with C05-23***

Whereas, at its meeting on October 17, 2023, the School Ethics Commission (Commission) considered the Complaint, and Answer to Complaint (Answer) submitted by the parties in connection with this matter; and

Whereas, at its meeting on October 17, 2023, the Commission discussed finding that probable cause did not exist for the alleged violation of *N.J.S.A.* 18A:12-24(b) in Count 3 and, therefore, dismissing this matter; and

Whereas, at its meeting on November 28, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on October 17, 2023; 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 its public meeting on November 28, 2023.

Brigid C. Martens, Director
School Ethics Commission