
IN THE MATTER OF

**BEFORE THE SCHOOL
ETHICS COMMISSION**

**RICHARD LONGO
and FRANK SEDAGHI,
*TOMS RIVER
BOARD OF EDUCATION
OCEAN COUNTY***

Docket No.: C05-98 and C07-98

DECISION

PROCEDURAL HISTORY

This matter arises from two separate complaints against the above-named members of the Toms River Board of Education for violating the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Kevin Root filed this complaint on February 20, 1998. Therein, he alleges that respondents violated the School Ethics Act when they voted to reappoint the accounting firm of Cowan & Guteski as Board Auditors in 1997 after having had an employee of that firm serve as their campaign treasurer and use the firm's address as the address of the campaign for reporting purposes.

Respondents Richard Longo and Frank Sedaghi filed separate answers on March 30, 1998 admitting the facts set forth but denying any violation of the School Ethics Act. The Commission investigated the complaint and sent notices advising the parties that the Commission would discuss the matter at its June 23, 1998 meeting. The Commission advised respondents of their right to attend, be represented by counsel and present witnesses. Both appeared before the Commission represented by Craig Wellerson, Esq..

At its public meeting of July 30, 1998, the Commission found no probable cause to credit the allegations that respondents violated N.J.S.A. 18A:12-24(e) as there were no facts to indicate that they accepted the services of the auditor based on the understanding that same were given with an intent to influence them in the discharge of their official duties. However, it found probable cause to credit the allegations that respondents violated N.J.S.A. 18A:12-24(c) by voting for the auditing firm after being elected to the board. The Commission invited the respondents to file written submissions setting forth why they should not be found in violation of the School Ethics Act. The Commission received a timely joint written submission from Mr. Longo and Mr. Sedaghi on September 11, 1998. The respondents filed a notice of motion along with their written submission, seeking to compel the Commission to reconsider its determination that probable cause exists. Richard Stanzione, Esq. of Hering, Dupignac & Stanzione filed the written

submission on behalf of the respondents. Mr. Root also filed an unsolicited written submission with the Commission, which was also considered in rendering this decision. The Commission now consolidates these cases for the purpose of decision.

FACTS

The following facts are undisputed based on the pleadings, testimony and documents submitted. Mr. Longo and Mr. Sedaghi ran as candidates for the school board in the election of April 1997. They were advised that they were required to submit reports to the Election Law Enforcement Commission (ELEC) and that they needed a campaign treasurer. The respondents chose Darlene Ott, an employee of the Board's auditing firm, Cowan & Guteski. Mr. Sedaghi knew Ms. Ott from having served together on the Board of Directors of the Ocean County Chamber of Commerce. She agreed to serve as campaign treasurer for Mr. Longo and Mr. Sedaghi and filed all reporting forms with ELEC. Ms. Ott used the address of Cowan & Guteski as the campaign address on all reporting forms. The last report of the campaign, the 20-day post-election report, was signed by the respondents on May 2, 1997 and filed with ELEC on May 6, 1997.

At the reorganization meeting of the Board on April 22, 1997, Mr. Sedaghi and Mr. Longo voted in favor of reappointing Cowan & Guteski as auditors for the Board. According to the respondents' written submission, the superintendent recommended reappointment of the firm. At the time of the meeting, the Board attorney advised that they did not have a conflict of interest in voting upon the appointment.

ANALYSIS

Based on the foregoing facts, the Commission found probable cause to credit the allegations that Mr. Longo and Mr. Sedaghi violated the Act by voting on a matter in which they had a personal involvement that might reasonably be expected to impair their objectivity or independence of judgment in violation of N.J.S.A. 18A:12-24(c). The respondents now argue in their written submissions that they should not be found in violation of the act since there are no facts to support a conclusion that Ms. Ott's services were provided based on an understanding that they were given or offered for the purpose of influencing them in the discharge of their official duties.

The issue before the Commission is whether the above facts establish that the two Board members violated N.J.S.A. 18A:12-24(c) of the School Ethics Act by voting on the reappointment of the auditing firm. Subsection (c) sets forth:

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 or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

Respondents first argue that they should not be found in violation of N.J.S.A. 18A:12-24(c) because neither of them had a financial or personal involvement in Cowan & Guteski. They argue that there is no allegation that either respondent had a direct or indirect **financial** involvement with Cowan & Guteski. Therefore, they argue that the Commission would have to expand the definition of “personal involvement” to find that an employee of the firm serving as a campaign treasurer created such an involvement. They further argue that since the auditor’s position was held by Cowan & Guteski prior to the vote, there was no conflict in voting for the reappointment unless there was a “contradictory desire tugging the official in the other direction,” citing *Wyzykowski v. Rizas*, 132 N.J. 509 (1993).

In a previous decision, the Commission set forth that in order to show a personal involvement, there would have to be facts indicating that there was more than just a casual relationship between the official and the person or entity on which he is voting. *In the Matter of Meera Malik and Elizabeth Vasil*, C06/C08-98 (September 22, 1998). However, the Commission also noted that the facts do not have to indicate that the respondents stand to derive some financial benefit from the action that the school official is taking. Rather, the Commission finds that as long as an association or relationship is demonstrated that is more than casual or collegial, then there need not be any showing of a financial benefit to demonstrate a personal involvement. This is consistent with the *Famularo* case, in which a board member was found to have a personal involvement reasonably expected to impair his objectivity when he voted to hire a principal for whom he had served as campaign treasurer for his election to city council. *In the Matter of Famularo*, C23-96 (February 24, 1998), aff’d Commissioner March 19, 1998. The Commission believes that the present case is more similar to that of *Famularo* than it is to that of *Malik and Vasil*. Unlike in the latter case, where persons may contribute money to a campaign without having any established any relationship with the candidates; the candidates must have more than a casual relationship with their campaign treasurer. They have to trust their campaign treasurer enough to be able to certify on their reports that the information that the treasurer has set forth is true and no contribution over the statutory limit has been omitted. When coupled with the use of the firm’s address, the above facts demonstrate a personal involvement without a financial benefit.

In the *Famularo* case, *supra*, the Administrative Law Judge set forth a restriction that where a school official has been a prominent political official and supporter within a political campaign, he should step aside when the person whom he or she so publicly supported seeks a job with a public body on which the supporter serves. (Initial Decision at p.5). The Commission concludes that the converse also applies. Thus, where a

prominent supporter of a school official's political campaign, such as a campaign manager or treasurer, seeks a job with the public body on which the school official serves, the school official should abstain from that decision. Ms. Ott's use of the Cowan & Guteski address on campaign reports, rather than her own, demonstrates that her service as campaign treasurer was in furtherance of her duties as an employee of the firm, not as a friend of Mr. Sedaghi. Thus, even though she was not a partner of the firm, her service was on behalf of the firm and thus, the respondents had a personal involvement with the firm under N.J.S.A. 18A:12-24(c).

Thus, the question becomes whether the personal involvement is the type that might reasonably be expected to impair the respondents' objectivity. The respondents argue that the auditor had already served the board for a number of years. Further, they argue in their submission that the auditor was recommended by the superintendent and approved by other board members. In such a case, they argue that the Commission must look to N.J.S.A. 18A:12-24(e) to see if the services were provided to influence the vote on the auditor appointment. Again, the respondents confuse the statutes. The question under subsection (c) is not whether there was actual influence, but whether the public might reasonably expect that these board members could not be objective in voting to reappoint the firm. None of the cases cited by the respondents address this unique issue. The respondents cite the Commission's decision in *Chester Township Board of Education v. Riley and Beatty*, C12-98, (June 23, 1998) for the proposition that the board members must stand to receive material or monetary gain as a result of their vote in order to find a violation of N.J.S.A. 18A:12-24(c). *Chester* is clearly inapposite as the vote in question involved a bond referendum that the respondents had challenged. In any event, one can certainly argue that Mr. Longo and Mr. Sedaghi received a material benefit from the firm in the form of the services of its employee. In the present case, the firm address was used as the contact address of their campaign and an employee of that firm performed the critical function of serving as their campaign treasurer. Further, the employee of the firm was still serving as the campaign treasurer at the time of the April 22, 1997 vote, as shown by the 20-day post-election report signed on May 2, 1997. In such a case, the Commission believes that a reasonable member of the public would expect that these board members could not be objective in their decision to reappoint the firm. Thus, the Commission concludes that respondents have been shown to have acted in their official capacity in matter in which they have a personal involvement reasonably expected to impair their objectivity in violation of N.J.S.A. 18A:12-24(c).

Last, the respondents argue that the Commission must send this matter to the Office of Administrative Law for a hearing pursuant to N.J.S.A. 18A:12-29b, which states that "If the commission determines that probable cause exists, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted in accordance with the 'Administrative Procedure Act'"... In the decision, *In the Matter of Rodney Bond*, C21/24-96 (July 22, 1997), the Commission set forth in full detail its reasons that the Commission was not obligated to transmit a matter to the Office of Administrative Law when there are no facts in dispute. It declines to do so here, except to say that the purpose of such a hearing is for an administrative law judge to find facts. Where, as here,

the respondents agree with the Commission's finding that the material facts are not in dispute, there is no reason to transmit this matter to the Office of Administrative Law.

DECISION

For the foregoing reasons, the Commission finds that respondents acted in their official capacity in a matter in which they had a personal involvement which might reasonably be expected to impair their objectivity in violation of N.J.S.A. 18A:12-24(c). The Commission considers as mitigating factors the fact that the auditing firm had served the board for several years prior to the vote in question and that the Board attorney advised the respondents that they had no conflict of interest. The Commission therefore recommends to the Commissioner of Education that Mr. Longo and Mr. Sedaghi receive a sanction of reprimand.

This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction only, pursuant to N.J.S.A. 18A:12-29. Within thirteen (13) days from the date on which the Commission's decision was mailed to the parties, any party may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C05-98 and C07-98

Whereas, the School Ethics Commission has considered the pleadings, the documents submitted in support thereof, the testimony of the parties and their written submissions; and

Whereas, the Commission found probable cause to credit the allegations that respondents violated the School Ethics Act, N.J.S.A. 18A:12-24(c) at its meeting of July 30, 1998; and

Whereas, the Commission now concludes that respondents Mr. Longo and Mr. Sedaghi have violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommends that the Commissioner of Education impose a sanction of reprimand against both respondents; and

Whereas, the Commission has reviewed the proposed decision of its staff; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 26, 1998.

Lisa James-Beavers
Executive Director