
IN THE MATTER

OF

**VINCENT LOWRY,
MEDFORD LAKES
BOARD OF EDUCATION**

**: BEFORE THE
: SCHOOL ETHICS COMMISSION**

: Docket No.: C05-96

: DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on March 8, 1996, by Jane Berezow. She alleges that Vincent Lowry misused his official position to secure unwarranted privileges and advantages for himself in violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq. She alleges that he read a prepared statement about his accomplishments during a board work session. Specifically, she alleges that his conduct violated N.J.S.A. 18A:12-24(b) of the Act and urges the Commission to impose the appropriate discipline. Mr. Lowry filed his answer to the complaint on March 27, 1996, admitting that he made the statement, but denying that by doing so, he violated any provisions of the School Ethics Act.

Commission staff notified the parties on September 12, 1996, that the Commission would address the complaint at its September 24, 1996, meeting. The respondent was notified that he had the right to be present with counsel and witnesses if he desired, but that the Commission did not demand his presence. The Commission rendered this decision on September 24, 1996.

FACTS

On the basis of the pleadings, supporting documents and testimony, the Commission finds the following facts to be undisputed.

1. On February 14, 1996, the Medford Lakes Board of Education held its monthly work session. The session was open to the public although there was no opportunity for public comment.

2. During the "Open Board Discussion" portion of the work session, Mr. Lowry introduced a resolution and then read a prepared statement to the public setting forth his intention to run for re-election to the board. In the statement, he set forth his prior accomplishments and the goals that he would try to achieve if he were re-elected. (See transcript at Appendix).

3. A member of the public in the audience during the Open Board Discussion ran for a seat on the school board in the April 1996 election. Neither she nor anyone else had the opportunity to make comments to Mr. Lowry's remarks.

The board secretary provided information that the member of the audience had not formally announced her candidacy at the time of the February 14, 1996, meeting.

The complainant urges the Commission to find that the above conduct by Mr. Lowry constitutes a violation of the School Ethics Act. Mr. Lowry asks that the complaint be dismissed.

ANALYSIS

Complainant urges the Commission to find that the above conduct by Mr. Lowry violates N.J.S.A. 18A:12-24(b) of the School Ethics Act. This subsection provides:

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.

There is no dispute that Mr. Lowry could not have read his prepared statement if he were not a board member, since there was no opportunity for audience participation in the meeting in question. Thus, he did use his official position. However, the Commission finds that his conduct was not an unlawful misuse of his position that would warrant a finding of a violation of the School Ethics Act. Rather, he used a privilege of board membership. During "Open Board Discussion," he had the right to state his concerns, accomplishments and goals in the context of the issues presently before the board. The Commission must balance the concerns expressed by the Legislature in the School Ethics Act against the board member's right to speak freely during the course of the meeting. Otherwise, the Act would have a chilling effect on the open discourse of board members as they constantly feared crossing the line between permissible speech and that which is a violation.

The Commission believes that the local board is better equipped to ensure that board members conduct themselves properly at board meetings. For instance, the board president could have allowed public comment in response to Mr. Lowry's comments. Nevertheless, Mr. Lowry's speech did not secure any unwarranted privilege or advantage for himself and thus did not rise to the level of School Ethics Act violation.

DECISION

For the foregoing reasons, the School Ethics Commission does not find probable cause that respondent violated the School Ethics Act and therefore, dismisses the complaint against him.

This decision constitutes final administrative agency action. Thus, it may be appealed only to the Superior Court - Appellate Division.

Paul C. Garbarini
Chairman

Resolution Adopting Decision -- C05-96

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

Whereas, the Commission has found no evidence to support a finding of probable cause; and

Whereas, the Commission has reviewed a draft decision by its staff dismissing the complaint; and

Whereas, the Commission agrees with the decision with minor changes;

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

Paul C. Garbarini, Chairman

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 24, 1996.

Lisa James-Beavers
Executive Director

