
MICHAEL GUNTHER,

V.

ROBERT ALBERTI,
HOWELL TWP BOARD OF EDUCATION,
MONMOUTH COUNTY

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**BEFORE THE SCHOOL
ETHICS COMMISSION**

Docket No.: C08-99

DECISION

PROCEDURAL HISTORY

This matter arises from a claim by Howell Township Board member Michael Gunther that respondent, Robert Alberti, violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. Mr. Gunther filed this complaint on May 14, 1999 alleging that respondent violated N.J.S.A. 18A:12-4, which the School Ethics Commission interpreted as N.J.S.A. 18A:12-24, since N.J.S.A. 18A:12-4 does not fall within the School Ethics Act. Specifically, Mr. Gunther alleges that respondent received payment for running or operating a voting station during the February 9, 1999 election on a district bond referendum. The complainant withdrew the remaining allegation in the complaint.

The Howell Township Board attorney, Edward Kasselmann, Esq., filed an answer on behalf of respondent on June 17, 1999. The Commission advised that it would accept his answer as legal argument, but needed a certification as to the facts from Mr. Alberti. Mr. Alberti filed a certification in answer to the complaint on July 9, 1999. In his certification, Mr. Alberti admitted serving as a poll worker, but denied having violated any provision of the School Ethics Act by doing so.

The Commission invited the parties to attend the Commission's meeting on July 27, 1999 and present witnesses and testimony to aid in the Commission's investigation. Mr. Gunther and Mr. Alberti appeared and testified during the Commission's executive session. The Commission voted to find no probable cause and dismiss the case at its public meeting.

FACTS

The Commission was able to discern the following facts on the basis of the pleadings, testimony and documents submitted.

Mr. Alberti was at all times relevant to this complaint a member of the Howell Township Board of Education. Pursuant to a letter of appointment certified by the Monmouth County

Board of Elections, Mr. Alberti served as a poll worker for the Howell Township Special Election on February 9, 1999. He worked from 2:30 p.m. to 9:00 p.m. at the Howell Township Middle School. The election was a special election held on a bond referendum for the allocation of money for school technology. His job was to check registrations and monitor the voting booth. Mr. Alberti certified that while he worked, he did not speak to any voter about the issues or about their vote. He indicated that such conversations would violate State Election Law in any event.

Mr. Alberti had previously served as a poll worker in other elections, which is the reason that the Board of Elections approached him for the February election. In other elections, he has received compensation from the County, as well as from the Freehold Regional School District. Mr. Alberti certified that before he agreed to serve in the February election, he consulted the Board attorney. He advised that he did not perceive a conflict or violation that would arise from Mr. Alberti's service as a poll worker during the special election because the election was under the supervision of the Monmouth County Board of Elections, not the school board.

For Mr. Alberti's six hours of service, he was paid \$53.83. The payment was authorized by the County Board of Elections and paid by the Howell Township Board of Education pursuant to its arrangement with the Board of Elections. The Commission's investigation revealed that some county boards of elections pay the workers directly rather than arrange payments through the local districts. The Board approved payment to all poll workers at its regular meeting on March 3, 1999. No objections to the Board's payment to Mr. Alberti were raised. Mr. Alberti received the same pay per hours worked as the other poll workers.

ANALYSIS

The issue before the Commission is whether the above facts establish that Mr. Alberti violated any provision of N.J.S.A. 18A:12-24 of the School Ethics Act by serving as a poll worker in the February 9, 1999 special election and being paid by the board to do so.

The first applicable provision of the School Ethics Act is N.J.S.A. 18A:12-24(b), which 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.

Mr. Alberti previously served as a poll worker before the February 9, 1999 election so it would be very difficult to conclude that he received an unwarranted privilege by serving in this election. The Commission finds Mr. Alberti's certification that the Board of Elections was short of workers for the February election when Mr. Alberti agreed to serve as a poll worker to be credible. Furthermore, while he may have been known to be a Board member to the members of

the Board of Elections, it is difficult to see how his position as a Board member would somehow provide an advantage in securing a position as a poll worker. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(b).

The next provision that applies is N.J.S.A. 18A:12-24(d). This subsection prohibits a school official from undertaking any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. While the Commission would not encourage a board member to serve as a poll worker during a special election involving the schools, the Commission does not find that his doing so might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. The Board of Elections appointed Mr. Alberti to serve. It is only though because the Board of Elections hired Mr. Alberti to serve that he received a check from the Board. He did not apply for and obtain a position with the Board and then seek payment for it. The Commission understands Mr. Gunther's concern that a voter may be intimidated when he or she comes to vote and sees a board member present to check his or her registration information. However, Mr. Alberti had no way of knowing whether members of the public were at the polls to vote for or against the referendum and could not and did not discuss their vote with them. Furthermore, Mr. Alberti's serving as a poll worker has not been shown to impact upon his official duties as a board member in any way. Therefore, the Commission finds no probable cause under N.J.S.A. 18A:12-24(d) as well.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A:12-24(b) or (d) of the School Ethics Act. Therefore, it dismisses the charges against him.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C08-99

Whereas, the School Ethics Commission has considered the pleadings, documents and testimony before it; and

Whereas, the Commission has found no probable cause to credit the allegations that respondent violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges; and

Whereas the Commission directed its staff to draft the decision; and

Whereas, the Commission's reasons for its decision are set forth herein;

Now Therefore Be It Resolved that the Commission hereby 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 School Ethics Commission directed its staff to draft this decision at its public meeting on July 27, 1999.

Lisa James-Beavers
Executive Director