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<b>IN THE MATTER</b>	:	<b>Before the School</b>
	:	<b>Ethics Commission</b>
<b>OF</b>	:	
	:	<b>Docket No.: C09-96</b>
<b>DAVID DICKINSON, Respondent,</b> <b><i>EDISON BOARD OF EDUCATION</i></b>	:	<b>DECISION</b>

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**PROCEDURAL HISTORY**

This matter arises from a claim that David Dickinson served as a member of the Edison Board of Education (EBOE) negotiating committee that negotiated the contract with the Edison Township Education Association (ETEA) in violation of the School Ethics Act, N.J.S.A. 18A:12-21 *et seq.* James Kukor sent a letter to the School Ethics Commission in February 1996 complaining of Mr. Dickinson’s conduct. On May 2, 1996, he filed this complaint alleging that Mr. Dickinson’s conduct violated N.J.S.A. 18A:12-24(b) and (c) of the School Ethics Act because Mr. Dickinson’s father is employed as a physical education teacher in Edison and is a member of the ETEA.

Mr. Dickinson filed his answer to the complaint on October 4, 1996, pursuant to an extension granted by the Commission. Mr. Dickinson answered that his father is not his “immediate family member” under the School Ethics Act such that the statute would mandate that he recuse himself from negotiations. He also states that he did not violate the Act since his father was retiring at the end of the 1995-96 school year and therefore, would not be affected at all by the contract negotiated. The contract negotiated was for the years July 1, 1996, to June 30, 1999. Last, he argues that he solicited the advice of board attorney Joseph Jankowski, Esq. prior to serving on the negotiating committee. Mr. Jankowski advised him that the School Ethics Act did not bar him from serving on the negotiating committee.

Mr. Dickinson also submits that the complaint is frivolous because Mr. Kukor knew that his father had retired and could not benefit from the contract. It appears however, that Mr. Kukor sent his initial letter to the Commission advising of a possible violation before the board’s acceptance of the father’s retirement.

The Commission investigated the matter and on December 6, 1996, advised the parties that the Commission would discuss the matter at its meeting on December 17, 1996. The Commission advised the parties of their right to bring witnesses and counsel on their behalf.

Mr. Dickinson appeared with his attorney, Viola Lordi, Esq., and presented several witnesses. The witnesses included James Dickinson, Ross Capaccio, Principal and Daniel Michaud, Business Administrator. Mr. Kukor testified on his own behalf. The Commission tabled the matter at its public meeting on December 17, 1996. Ms. Lordi submitted post-hearing submissions on her client's behalf, which the Commission considered in rendering the within decision at its meeting on January 28, 1997.

## **FACTS**

The Commission finds that the following facts are undisputed. Mr. David Dickinson was elected to the Edison Board of Education in April 1995. Mr. Kukor is an Edison resident who attends Edison board meetings frequently. Mr. James Dickinson is the father of the respondent. He was a teacher in the Edison school district for 34 years. He is also a resident of Edison Township. The Edison Board accepted his retirement on March 28, 1996, to be effective as of July 1, 1996.

Ross Capaccio has served as a principal at the Thomas Jefferson Middle School for six years. He is also president of the Edison Supervisors' Association. His negotiations for the supervisors take place after the teachers' negotiations. He testified that the supervisors determine what benefits they should seek from the outcome of the teachers' negotiations. He also testified that he never felt that the union had an edge because Mr. Dickinson served on the negotiating committee.

Daniel Michaud is the Business Administrator and Board Secretary for the Edison school district. He testified that the contract settlement for the ETEA consisted of: no increase for the first year; a 2% increase the first half of the second year; a 2 3/4% increase the second half of the second year; and a 3% increase the final year of the contract. He said that he was the lowest increase since 1980. He also testified that no one retiring on July 1, 1996, could benefit from the contract negotiated in 1996. The board ratified the 1996-1999 contract on February 22, 1996.

Respondent testified that he sought legal advice prior to his serving on the negotiating committee. Mr. Jankowski advised him that he could serve on the committee without violating the School Ethics Act since his father was not an immediate family member. He stated that he relied on that advice when he agreed to serve. He testified that he was objective in negotiating on behalf of the board.

Mr. Kukor testified that he wants the Commission to tell Mr. Dickinson that he should not serve on a negotiating committee when his father is a member of the ETEA. Mr. Kukor said that he would have filed the within complaint even if he had known that the elder Mr. Dickinson had retired. He also declined the Commission's invitation to withdraw the complaint at the hearing in light of the testimony presented.

## ANALYSIS

Mr. Kukor first alleges that the respondent violated subsection (b) by negotiating the contract. Subsection (b) 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.

In the present case, the Edison Township Business Administrator testified that the contract respondent helped negotiate contained the lowest percentage increase ever. The Business Administrator also testified that the elder Mr. Dickinson did not receive any benefits under the new contract. Therefore, Mr. Dickinson could not have used his position to secure privileges for his father. Since Mr. Dickinson was aware that he would not be negotiating contract benefits and salary that would benefit his father, he also could not have attempted to use his position to secure unwarranted privileges for his father.

Without additional evidence to support a finding that respondent violated subsection (b), there is no probable cause to credit the allegation that Mr. Dickinson's conduct in serving on the negotiating committee violated N.J.S.A. 18A:12-24(b).

Mr. Kukor also alleges that Mr. Dickinson violated N.J.S.A. 18A:12-24(c). Subsection (c) provides:

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.

Respondent is correct that a board member's father is not an immediate family member. The Act sets forth that an "immediate family member" is "the spouse or dependent child of a school official residing in the same household." N.J.S.A. 18A:12-23. However, the Commission has advised in a prior advisory opinion that a school official should not participate in negotiations or vote on a contract even if his emancipated child is in the local union with which the board is negotiating. See *Advisory Opinion A23-94*. The rationale of that advisory opinion was that the school official, as opposed to his immediate family member, has an indirect personal involvement in the outcome of the contract that is reasonably expected to impair his objectivity. There is an appearance of impropriety when a parent negotiates a child's contract, even if that child does not live with him or her. The same reasoning could be applied to a child negotiating a parent's contract.

Mr. Kukor also argues that the Edison Board of Education has its own policies that define “immediate family member” as “grandparent, parent, spouse, child, grandchild or sibling, whether by blood or by marriage.” However, the Commission cannot find that a violation of a board policy is grounds for a violation of the School Ethics Act, if it is not within the Act itself. The policy can only be used to refute a contention by the respondent that he had no notice that his participation in negotiations was improper.

In rendering the advice in Advisory Opinion A23-94, the Commission knew that the emancipated child’s salary would be determined by the contract being negotiated. Thus, the appearance of a conflict was clear. The fact situation presently before the Commission removes that rationale if the contract that Mr. Dickinson negotiated did not affect Mr. Dickinson’s father. Therefore, the question that the Commission must determine is whether the retirement of the respondent’s father, before the beginning of the contract year, removes the respondent’s indirect personal involvement.

The Edison board accepted the retirement of James Dickinson to be effective July 1, 1996, at its meeting of March 28, 1996. The elder Mr. Dickinson advised his son at the beginning of the 1995-96 school year, before his son was appointed to the negotiating committee, that he intended to retire at the end of the school year. He had spoken generally of retirement in the past, but this was the first year he was certain that he would retire. He advised his co-workers and student’s parents of his intention to retire. When David Dickinson accepted the position as a member of the negotiating committee, he did so with the belief that his father would be retiring and thus, would not be affected by the July 1, 1996 to June 30, 1999, contract he would be negotiating.

The Business Administrator confirmed that the ETEA agreement ending June 30, 1996, would govern any benefits that the father would receive upon his retirement from the teaching staff in the Edison school district. Mr. Dickinson was not involved in the negotiations for the contract ending in June 1996. Considering the foregoing facts, the Commission cannot find that Mr. Dickinson had a personal involvement in the outcome of negotiations such that one might reasonably expect that he could not be objective in serving on the negotiating committee. Thus, the Commission finds no probable cause that respondent violated N.J.S.A. 18A:12-24(c).

Mr. Dickinson had also argued that he sought the advice of counsel prior to accepting a position on the nominating committee and counsel advised that he would not be in conflict. The Commission had not yet issued Advisory Opinion A23-94, referenced above. Generally, the Commission considers legal advice that is contrary to its conclusion to mitigate the penalty, but not serve as a defense to a violation of the School Ethics Act. Because the Commission has already concluded that there is no probable cause to credit the allegations in this complaint, it need not address the effect of attorney advice in the present case.

## **DECISION**

For the foregoing reasons, respondent did not have an indirect personal or financial involvement in the outcome of negotiations such that he could not be objective. Respondent's father could not benefit from the contract that he was negotiating. Therefore, the Commission finds no probable cause to credit the allegations in the complaint that respondent violated subsection (b) or (c) and dismisses the charges against Mr. Dickinson.

The Commission has considered Mr. Dickinson's request for sanctions for filing a frivolous complaint and concluded that such sanctions would not be appropriate. Were it not for the retirement of Mr. Dickinson, a fact of which Mr. Kukor was unaware when he first approached the Commission about a potential violation, he had a legitimate reason to suspect that a violation had occurred. There is no evidence, other than the fact that Mr. Kukor was present at the meeting when the board accepted the retirement of the elder Mr. Dickinson, that he intended to harass or maliciously injure Mr. Dickinson. This is insufficient evidence of a malicious intent. Therefore, the Commission finds that the complaint was not frivolous under N.J.S.A. 18A:12-29 of the School Ethics Act.

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

Paul C. Garbarini

**Resolution Adopting Decision -- C09-96**

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

Whereas, the Commission concludes that there is no probable cause to credit the allegations in the complaint; and

Whereas, the Commission has reviewed the proposed decision of its staff finding no probable cause and dismissing the complaint; 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.

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Paul C. Garbarini, Chairman

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 28, 1997

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Lisa James-Beavers  
Executive Director