

FACTS

The Commission finds the following facts to be undisputed:

1. Matilda Touw has served as a board member in the West Milford School District since April 1992.

2. She has served as Chair of the Budget and Finance Committee for the past two and one-half years.

3. Mrs. Touw's son, who does not reside with her, has served as a custodian in the district for seven years, being hired on a year to year basis.

4. At the April 30, 1996, meeting of the West Milford school board, Mr. Connolly had a copy of the April 25, 1996, issue of *School Board Notes*, a publication of the New Jersey School Boards Association (NJSBA). He provided it to Mr. Rothschild, the former attorney for the board.

5. Mr. Rothschild brought the publication to the attention of Mrs. Touw by calling her to the back of the room. There he advised her that she should not vote for her son's reappointment as a custodian.

6. On the front page of the issue of *School Board Notes* was an article summarizing a Commission decision. It stated that the Commissioner had adopted a the Commission's recommendation to suspend a board member for one month for casting a vote to reappoint his business partner as transportation director and casting a vote to reappoint teachers, including his emancipated daughter.

7. Mrs. Touw then requested an executive session to discuss the matter. After considerable discussion and in order to facilitate getting on with the meeting, she agreed to abstain on the vote, but said that she wanted to check the board attorney's advice with the NJSBA..

8. Mr. Rothschild was later dismissed as board attorney.

9. Mrs. Touw has voted for her son's re-employment in the past without adverse consequences. This fact was discussed during the executive session.

10. When the board returned to the regular meeting at approximately 11:30 p.m., Mrs. Touw, as Chair of the Budget and Finance Committee, moved to approve the items on the agenda that were brought by her committee: 1-10, 13-16, 18-20, 22-23, and 25-31. Item 10 was the resolution to approve the list of custodians, including her son.

11. The motion to approve the items passed by an 8-0 vote. Neither the board attorney nor any board member requested that the board vote on Item 10 separately or that Mrs. Touw abstain.

12. On May 28, 1996, Mr. Connolly filed this complaint with the School Ethics Commission.

Mrs. Touw would like for the Commission to consider additional facts that she presented to the Commission regarding Mr. Connolly's motive for filing the complaint. The Commission finds that the other facts presented are not material to the present case since they would only impact upon credibility determinations. Where, as here, there are no facts in dispute, facts that go to the credibility of a party are not relevant. The issue before the Commission is whether Mrs. Touw's conduct at the April 30, 1996, meeting violated N.J.S.A. 18A:12-24(c) of the School Ethics Act. Mr. Connolly's reasons for filing are not relevant to this inquiry.

ANALYSIS

In her written statement, Mrs. Touw submits that she should not be found to have violated the Act because she understood that she could vote on his reappointment. She emphasizes that her son has not lived with her for over 17 years and thus, he does not fall within the definition of immediate family member. She adds that she does not benefit in any way from his salary. She states that no one has ever questioned her conduct since she began serving on the board in 1992. While the Commission understands that she may have had some confusion about the law, it also understands that based on the board attorney's advice, she was aware that she should not vote. Thus, she should have moved to have item ten considered separately and then moved the rest of her agenda. The attorney's failure to call it to her attention in the public meeting does not absolve her of her duty to take precautions to avoid all conflicts of interest.

N.J.S.A. 18A:12-24(c) of the School Ethics Act 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.

The Commission agrees that Mrs. Touw's son is not an "immediate family member" as defined in N.J.S.A. 18A:12-23 of the School Ethics Act. However, as set forth in the Commission's prior decision referred to in *School Board Notes, In the Matter of Salvatore Buono*, C16-94, a school official is prohibited not only from voting on matters in which her immediate family member has a financial or personal involvement. The statute is clear that a school official cannot act in her official capacity in any matter in which **she** has a direct or indirect financial or personal involvement. The Commission concludes that Mrs. Touw had a personal involvement with her son's employment such that she should have abstained from voting when the matter came before the board. Again, she had the ultimate responsibility to have the item considered separately from the other agenda items. The executive session prior to the vote, although it did not

immediately precede the vote, should have heightened her sensitivity to the fact that the matter was coming up for a vote. Her failure to exclude the item from her motion and abstain from voting on it violated section 24(c) of the Act.

CONCLUSION

For all the foregoing reasons, the Commission concludes that Mrs. Touw violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and recommends that the Commissioner impose the lowest penalty of reprimand. In making the recommendation, the Commission has considered the fact that the son was employed as a custodian before Mrs. Touw became a board member, the fact that her vote was not a critical vote in his reappointment since the resolution passed unanimously, and the fact the item was considered with 25 other items at the same time. In addition, the Commission notes that Mr. Connolly brought the conflict to the board's attention early in the meeting, yet remained silent when he could have brought it to Mrs. Touw's attention, and chose to file a complaint after the fact. For the reasons set forth above, these facts do not absolve Mrs. Touw, but they do mitigate the penalty.

The board may wish to reconsider its procedure of voting on a large number of items by consent. It is confusing to the public and can easily result in board members voting on matters on which they should abstain, as happened here. Although it may slow the meeting, the board members and the public will have a greater understanding after the meeting about the action taken by the board if items are considered separately. The Commission makes this suggestion in order to aid the board in avoiding similar problems in the future.

Upon adoption of this decision by a formal resolution of the School Ethics Commission, the matter shall be transmitted to the Commissioner of Education for action on the Commission's recommendation for sanction 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, CN 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 -- C16-96

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

Whereas, the Commission found probable cause to credit the allegations in the complaint and invited respondent's written statement in response; and

Whereas, the Commission has reviewed respondent's written statement and now concludes that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth the reasons for its conclusion; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby finds that Matilda Touw has violated the School Ethics Act and recommends that the Commissioner impose a penalty of reprimand and adopts the proposed decision referenced as its decision in this matter.

Paul C. Garbarini, Chairman

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 26, 1996.

Lisa James-Beavers
Executive Director

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