

FACTS

The following material facts are undisputed. On April 30, 1996, the North Hunterdon Regional School Board held its reorganization meeting. At that time, the board voted table the appointment of a board attorney until a later meeting. On May 7, 1996, during the "Old Business" portion of the board meeting, Barbara Lentine moved to remove from the table a motion to appoint an attorney. Board member Bowns seconded the motion. It passed with eight board members voting in the affirmative and three abstentions. Barbara Lentine then moved to appoint Rand, Algeier, Tosti & Woodruff as attorneys for the term of the board. Mr. Andres seconded the motion and voted in favor along with board members Bowns, Holland, Kulick, Parker and Lentine. The board members voting against the motion were LeBart, Pennucci, Rist, Roosen and Weiss. Due to the weighted system of voting in the regional district, the motion carried 5.8 to 5.3.

According to the official board minutes, some of the board members expressed concern about appointing the firm. Mr. Holland explained that the Board left itself without an attorney when it tabled the motion to appoint one at the reorganization meeting. Several board members then urged the Board President, Edmond Parker, to allow public comment. Mr. Weiss asked for an amendment to the motion, although the minutes do not provide the wording of the amendment. Mrs. Lentine called for a vote on the original motion.

Carol Mikola testified before the Commission as to the reasons she believed that Barbara Lentine had a conflict of interest that should have prevented her from making the motion and voting in favor of the law firm. She recounted the following history. In June 1993, Ms. Lentine and five other Clinton Township board members voted to fire their superintendent, Robert Harrington. In July, he filed a petition with the Commissioner of Education against the board and the six individual board members. David Rand of Rand, Algeier, Tosti & Woodruff represented the six individual board members. According to Ms. Mikola, several issues arose during the course of the litigation regarding the payment of legal bills. According to Ms. Mikola, Mr. Harrington also sued the law firm. Mr. Harrington has been unsuccessful in his cases, but currently has an appeal of his civil rights claim pending before the Third Circuit Court of Appeals. She agrees that the only cases that the Rand firm represented Ms. Lentine in were in relation to the firing of the Clinton Township superintendent.

Barbara Lentine testified that she is a school nurse and health teacher in Readington. She served as board member in Clinton at the time the Harrington matter arose. She served as a Clinton board member for two terms. She had only served in Hunterdon Regional for one year. She notes that at the time she made the motion to hire the Rand firm, only the Third Circuit appeal was still pending. She stated that the firm has never represented her in any personal matter that was not board related. She further stated that the Rand firm only became the attorney for her and the five other board members through the board insurer, Selective Insurance Company. Mr. Rand specifically

told them that the firm could not represent them on Mr. Harrington's claim for punitive damages since that was not under the board's insurance policy.

Robert Tosti, Esq. testified as to the nature of the litigation. He stated that Mr. Harrington initially sought injunctive relief to be returned to his position as superintendent. Robert McLarty, attorney for Selective Insurance, represented the full board and recommended that Mr. Tosti represent the six individual defendants. They decided to have two attorneys for strategic reasons. He also testified that he has not represented Ms. Lentine in any matter other than the Harrington law suit.

Mr. Tosti has represented the board since 1987, officially as special counsel. However, he indicated that he has done most of the board's work. He stated that his firm was initially a defendant in the civil rights law suit, but was removed in September 1993. Mr. Harrington was sanctioned \$5,000 for filing a frivolous complaint.

Last, Robert McLarty, Esquire testified that he was responsible for recommending that the Rand firm represent the six individual defendants. He is a staff attorney for Selective and he had no knowledge of school board issues. Thus, it seemed reasonable to him to have a board attorney be lead counsel on the case. He stated clearly that the individual board members had no input into the decision of who would represent them in defense of the Harrington law suits.

The Commission sees no material factual disputes in the above testimony and therefore, adopts all of the above testimony as undisputed facts in the case.

ANALYSIS

Ms. Mikola sets forth several reasons that the School Ethics Commission should find probable cause to credit the allegation that Ms. Mikola violated the Act. The issues that she raised will be addressed in turn.

Subsection (c) sets forth that:

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.

Ms. Mikola argues that Ms. Lentine's personal representation by the law firm is a direct personal involvement that one would reasonably expect would impair her objectivity or independence of judgment in voting in favor of the law firm. She also quotes language from a prior decision of the School Ethics Commission indicating that one should read all subsections of section 24 in conjunction with the Legislature's findings and declarations. The declarations provide that board members and administrators must avoid conduct

which is in violation of the public trust or “which creates a justifiable impression among the public that such trust is being violated.” N.J.S.A. 18A:12-22(b).

The Commission finds fault with Ms. Mikola’s initial premise that the Rand firm represented Ms. Lentine personally. No attorney in the firm ever served as Ms. Lentine’s personal attorney in a personal matter involving anything other than a board-related matter. The Rand firm was counsel to six board members who happened to be named individually in a law suit for their actions as board members. Furthermore, Ms. Lentine did not choose the firm to represent her in the defense of the Harrington petition. Selective Insurance Company made the decision as to who would represent the six defendants and who would represent the board. She did not choose them and did not pay them for their services. Also significant is the fact that the Rand firm had represented the board in other matters for many years before it represented Ms. Lentine in the Harrington matter. Therefore, the Commission finds that Ms. Lentine did not have a personal involvement with the Rand firm, such that she could not be objective in making the motion and voting to appoint the firm as attorney for the board. Thus, the Commission declines to find probable cause to credit the allegations in the complaint.

CONCLUSION

For all the foregoing reasons, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and hereby dismisses the complaint.

This decision constitutes final agency action and thus may be appealed directly to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C17-96

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

Whereas, the Commission found no probable cause to credit the allegations in the complaint 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 no probable cause to credit the allegation that Barbara Lentine violated N.J.S.A. 18A:12-24(c) of the School Ethics Act, dismisses the charges against her and adopts the proposed decision 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 February 25, 1997

Lisa James-Beavers
Executive Director

[c1796/c:lisa/decisions]