

The respondents filed answers alleging that Mr. Lackland gave similar campaign support to the board members who voted for him to become insurance broker in 1998. They all denied having conflicts of interest and denied violating the School Ethics Act.

The parties appeared before the Commission at its March 23, 1999 meeting. Mr. Lackland's attorney indicated that Mr. Lackland was willing to withdraw the allegations other than those directly dealing with Lena Fulton. At the public meeting, the Commission tabled the matter. After the meeting, Mr. Lackland called and faxed the Commission that he wanted the Commission to consider all of the allegations. At the Commission's meeting of May 26, 1999, the Commission found no probable cause to credit the allegations and dismissed the complaint.

STATEMENT OF FACTS

The Commission was able to discern the following facts from the pleadings, documents submitted, testimony and its investigation.

Curtis Lackland is the owner of Corporate Employee Benefits, an insurance brokerage firm. Mr. Lackland was first appointed as the Board's insurance broker of record in June 1998.

The respondents are all present or former members of the Board. Mr. Green was first elected to the Board April 1995. He ceased to be a board member when he failed to win re-election in April 1998. Eleanor Getzke was also first elected to the Board in 1995. She ran for re-election with Lincoln Green in April 1998 and also lost. Reverend John Bryant and Patricia Smith were first elected to the Board in 1996. They are still members of the Board.

Lena Fulton is the owner of Atlantic Associates. Atlantic Associates preceded Mr. Lackland as the insurance broker of record for the Board. Ms. Fulton's firm was first appointed to the position on June 6, 1995. The appointment was approved unanimously. In 1996, then Board President Mr. Green appointed an interview committee to determine who should become the broker of record. Mr. Green did not participate in the interviews. After the interviews, the Superintendent recommended that the Board appoint Atlantic Associates to be broker of record.

In May 1998, the Board invited sealed proposals from firms to serve as insurance broker of record. The deadline for submissions to be forwarded to Board President Jerome Page was May 19, 1998. Mr. Lackland and Ms. Fulton both submitted bids. On May 26, 1998, the Board interviewed both candidates. It also interviewed one additional candidate who is not involved with the present case. In connection with the interview, Mr. Lackland included within his resume his current accounts including the boards of education of Millville, Ocean City, Willingboro and Stratford. He listed as a reference the Manager of Business Services at the Atlantic City Board of Education. At the second executive session of the Board on May 26, 1998, the Board discussed the experience of the brokers and Rev. Bryant asked Business

Administrator Mr. Dinger to check Mr. Lackland's references and report back to the Board. Mr. Dinger later reported back that Mr. Lackland's references all checked out. The Board voted on the broker of record on June 3, 1998 and appointed Mr. Lackland.

Ms. Fulton contacted or had her employee contact companies that Mr. Lackland had listed as references or had placed on his resume. A June 12, 1998 fax from Terry Bailey of Atlantic Associates asks the Business Administrator of the Stratford Board of Education to "confirm with a quick note to me whether Mr. Lackland or Corporate Benefits Consultants has ever done business with your Bd. of Ed." Attached to the fax was a copy of Mr. Lackland's May 11, 1998 proposal to the Board.

Lena Fulton contributed funds to the campaigns of Lincoln Green and Eleanor Getzke. While they were members of the Board, Mr. Green and Ms. Getzke supported Ms. Fulton as broker of record. Mr. Green and Ms. Getzke were no longer members of the Board when the Board voted to hire Mr. Lackland in June 1998.

Rev. Bryant has been campaign treasurer for Pleasantville Mayor Ralph Peterson for many years. As such, he deposits funds and writes checks at the direction of the Mayor. He voted to appoint Lena Fulton as insurance broker at the meeting in June 1998.

ANALYSIS

The Commission will address the issues in the order in which they were raised, recognizing that not all of the allegations pertain to all respondents.

Did respondents reveal information regarding Mr. Lackland's proposal to Ms. Fulton?

Mr. Lackland alleges that the respondents revealed confidential information set forth in his proposal to be the Board's broker of record. He alleges that once respondents revealed his resume and references to Ms. Fulton, she then used the information to call up his references and attempt to obtain statements from them that Mr. Lackland did not perform services for them. There is no dispute that Ms. Fulton called Mr. Lackland's references to confirm them. However, she states that she received those references from a proposal that Mr. Lackland had previously submitted to the Atlantic City Board of Education. She states that the information that Mr. Lackland submitted in response to the Atlantic City board's request for proposals was public information after the appointment had been made. She indicated to the Commission that she was interested in the information because she knew that she would be competing against Mr. Lackland in the future.

The timing of Ms. Fulton's calls to Mr. Lackland's references and the letters submitted from those references to the Board makes Ms. Fulton's explanation suspect. The calls and faxes to Mr. Lackland's references occurred in June 1998, after the proposals were submitted to the

Pleasantville Board, not the Atlantic City Board. Furthermore, the persons who were contacted were those set forth in the proposal that Mr. Lackland sent to the Pleasantville Board on May 11, 1998. It appears that Ms. Fulton received the confidential information of Mr. Lackland submitted in response to the May 1998 request for proposals. Nevertheless, the issue is whether there is probable cause to credit the allegation that the respondents used their position as board members to provide Ms. Fulton with Mr. Lackland's information in order to secure an unwarranted advantage for her in violation of N.J.S.A. 18A:12-24(b). Mr. Green and Ms. Getzke were no longer board members after April 1998 and thus it is difficult to show that either of them had access to the confidential information at the time period during which Ms. Fulton's employee sought to research Mr. Lackland's references. Rev. Bryant and Ms. Smith denied having any knowledge of how Ms. Fulton may have gotten the information. Thus, there is insufficient information from which to conclude that they provided Mr. Lackland's proposal references and materials to Ms. Fulton to help her defeat Mr. Lackland. Unlike Mr. Green and Ms. Getzke, they had the opportunity, but no other evidence demonstrates such misconduct. The Commission believes that a member of the Board or someone from the Board office provided Ms. Fulton with Mr. Lackland's proposal information; however, there is no evidence to demonstrate which Board member or Board employee revealed the information. Therefore, the Commission finds no probable cause to credit the allegations that respondents used their official position to secure unwarranted privileges for Ms. Fulton in violation of N.J.S.A. 18A:12-24(b). The Commission finds no other provision of the act to be applicable.

Did respondents have a conflict of interest in voting for Ms. Fulton to be broker of record?

Mr. Lackland next alleges that respondents had numerous political and financial ties to Ms. Fulton such that they violated the act by voting in her favor prior to 1998. He alleges that Rev. Bryant and Ms. Smith violated the act by voting for her in 1998 as well when Mr. Green and Ms. Getzke were no longer Board members. The alleged conflicts of interest vary for each of the respondents, so they will be dealt with in turn.

Mr. Lincoln Green and Eleanor Getzke

Mr. Lackland alleges that Mr. Green and Ms. Getzke supported Ms. Fulton's appointment as insurance broker of record from 1995 to 1997 because of Ms. Fulton's political and financial support. He alleges that Ms. Fulton was a client of the Lincoln Green consulting firm. He also alleges that Ms. Fulton gave donations to all the political campaigns in Pleasantville in which Mr. Green was involved. Mr. Green campaigned for the Mayor of Pleasantville and Ms. Fulton donated funds to the campaign while he did so. In addition, Ms. Fulton contributed to Mr. Green and Ms. Getzke's campaign for a seat on the Board.

The Commission finds that N.J.S.A. 18A:12-24(c) applies to these allegations. This subsection prohibits a school official from acting in his official capacity in matters in which he or a business in which he has an interest has a personal or financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. The Commission

finds that if Ms. Fulton had been a client of Mr. Green's consulting firm when she sought appointment as broker of record and Mr. Green voted on that appointment, then there would be probable cause to credit the allegation that Mr. Green violated N.J.S.A. 18A:12-24(c). However, although Mr. Lackland has submitted numerous documents in support of his complaint, there is nothing except his own representation to establish that Ms. Fulton or her company, Atlantic Associates, was a client of Lincoln Green when the votes on the broker of record took place.

Regarding Ms. Fulton's donations to campaigns Mr. Green supported, the Commission would have to find that Ms. Fulton's contributions to a council candidate for whom Mr. Green campaigned, created a personal involvement with Ms. Fulton that would prohibit him from voting on Ms. Fulton's appointment as broker of record. The Act sets forth that a political organization is a "business" for purposes of determining whether one has a business interest under subsection c. N.J.S.A. 18A:12-23. The term "political organization" is defined as a "political committee" or "continuing political committee" as those terms are defined in N.J.S.A. 19:44A-3. According to the definitions of these terms, the mayor did not have a political committee or continuing legal committee, but a "candidate committee" established solely to get him elected as mayor. Therefore, the Commission has no basis to conclude that Mr. Green had an interest in a political organization that might reasonably be expected to impair his objectivity toward Ms. Fulton as a donor of money to the mayor. The second question is whether Mr. Green himself had a personal involvement with Ms. Fulton as a result of her contributions to the mayor's campaign. The Commission believes that it would be overly cynical to suggest that a school official could not reasonably be expected to be objective on a matter because a potential vendor donated money to a candidate that the school official supported. Clearly, the act was not intended to reach so far.

In addition to the above, Mr. Lackland alleges that Mr. Green and Ms. Getzke solicited contributions from Ms. Fulton in violation of N.J.S.A. 18A:12-24(e), which provides:

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties.

There is no evidence to demonstrate that Mr. Green or Ms. Getzke had reason to believe that the campaign contribution was given with the intent to influence the school official in the discharge of his or her official duties as required by the Act. Therefore, the Commission finds no probable

cause to credit the allegations that they violated subsection e. In addition, the Commission has previously ruled that the solicitation or acceptance of campaign contributions alone will not create a conflict of interest with the contributor such that the school official could not participate in matters involving the contributor. *In the Matter of Meera Malik and Elizabeth Vasil*, SEC Docket No. C06/C08-98, September 22, 1998. For the foregoing reasons, the Commission finds no probable cause to credit the allegation that Mr. Green or Ms. Getzke violated N.J.S.A. 18A:12-24(c) of the School Ethics Act with respect to their participation and vote on matters involving Ms. Fulton. The Commission does not find any other subsection to be applicable.

Mr. Green and Ms. Getzke were not members of the Board when it voted to appoint Mr. Lackland as broker of record in June 1998.

Rev. John Bryant and Patricia Smith

As set forth above, Rev. Bryant was the campaign treasurer for the mayor for several elections. Ms. Fulton contributed to the mayor's campaigns. Rev. Bryant did not solicit campaign contributions as treasurer, but rather, deposited them when they were made. Rev. Bryant was not yet a Board member when Ms. Fulton was first appointed in June 1995, but was present when she was appointed in 1996 and 1997 and when she lost the position to Mr. Lackland in 1998. The Commission has found no other relationship between Rev. Bryant and Ms. Fulton other than the contributions to the aforementioned campaigns. Thus, for the same reasons as set forth in the above analysis of the allegations against Mr. Green, the Commission finds no probable cause to credit the allegations that Rev. Bryant violated N.J.S.A. 18A:12-24(c).

As she has pointed out in her answer to the complaint, Ms. Smith does not appear to have any connection to Ms. Fulton except through her voting in alignment with Rev. Bryant on this issue. Ms. Smith was not a board member when Ms. Fulton was first appointed in June 1995. She did not run on the same ticket with Rev. Bryant in 1996 and there is no information to demonstrate that she accepted any contribution from Ms. Fulton. At most, Mr. Lackland alleges that Mr. Green and Rev. Bryant convinced her to support Ms. Fulton due to their political connections to her. Such an allegation would be insufficient to support a finding of a violation of the School Ethics Act. Therefore, the Commission finds no probable cause to credit this allegation.

Did Mr. Green violate the act by speaking at the Zoning Board of Adjustment meeting in favor of a bus company's application for a location next to a school?

Mr. Lackland alleges that in August 1997, Mr. Green appeared before the Zoning Board on an application by Coach USA to get a use variance that would permit it to construct a regional office and bus maintenance/parking facility on property that is adjacent to a Pleasantville school. He alleges that Mr. Green failed to disclose the pending application with the rest of the Board when notice of it came to him as Board President. Mr. Lackland alleges that Mr. Green did not inform the Board because of his relationship with the mayor who was supportive of the project.

There is no dispute that Mr. Green appeared before the Board and testified in favor of the project. However, he says that he appeared before the Board as a citizen and not as the Board President. The minutes to the meeting identify Mr. Green as Board President, but he says that he has no control over what is placed in the minutes. In the Zoning Board's resolution approving the variance, there is no indication that Mr. Green was speaking on behalf of the Board.

Although Mr. Lackland alleges that the above conduct violated subsections a through g of N.J.S.A. 18A:12-24, clearly only b and f apply. Subsection b prohibits a board member from using his official position to secure unwarranted privileges or advantages for himself or others. There is insufficient evidence that Mr. Green was using his position in such a way to secure an unwarranted advantage for Coach USA. Rather, the meeting was open to the public and therefore, he had a right to speak as a citizen. However, it is appropriate in such a circumstance for a school official to specifically indicate to the Zoning Board that one is appearing as a private citizen and not as the Board President where one is likely to be recognized as such. The law does not mandate that he do so, however. Thus, the Commission finds no probable cause to credit that allegation.

Subsection f prohibits a school official from using his public office or information that is generally not available to members of the public, acquired by reason of his office, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated. Even if the Commission accepts as true Mr. Lackland's allegation that Mr. Green had knowledge of the Zoning Board meeting because the Board was notified as an adjacent property owner and he did not inform the Board before he went to speak before the Zoning Board, the Commission could not find that he did so to secure financial gain for himself or a business organization with which he is associated. Although a business association is less of a stringent requirement than a business "interest", which requires that the school official own or control more than ten percent of the profits or ownership, there is still no information to connect Mr. Green to Coach USA. The alleged connection to the mayor is insufficient to show that Coach USA was a business with which Mr. Green is associated.

DECISION

For all of the foregoing reasons, the Commission finds no probable cause to credit the allegations and dismisses the complaint of Curtis Lackland.

This decision constitutes final agency action and thus is directly appealable to the Appellate Division of the Superior Court.

Paul C. Garbarini, Chairperson
School Ethics Commission

Resolution Adopting Decision – C18-98

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

Whereas, the Commission now finds 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; 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.

Paul C. Garbarini, Chairman

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on May 26, 1999.

Lisa James-Beavers
Executive Director