

#5-16 (OAL Decision: Not yet available online)

JOHN SEWELL, :
PETITIONER, :
v. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF MARGATE, ATLANTIC :
COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a taxpayer within the Margate City School District – filed a complaint contending that the Mayor of Margate inappropriately used his influence to obtain the appointment of his daughter-in-law, Audrey Becker, as principal of the school district’s Tighe Middle School. The respondent Board denied the allegations of misconduct, and filed a motion for summary decision, citing: petitioner’s lack of standing to bring this action; failure to name an indispensable party; failure to timely file the petition; and failure to state a claim upon which relief can be granted by the Commissioner of Education.

The ALJ found, *inter alia*, that: while the appeal cannot be dismissed for any of the procedural arguments brought by the Board, the petitioner fails to advance a cause of action for which the Commissioner can grant relief, as it does not invoke the Commissioner’s primary jurisdiction under the school laws; the within matter does not involve a nepotism policy under *N.J.A.C. 6A:23A-6.2*, as petitioner has not alleged that Audrey Becker is related to any member of the school board; rather, petitioner seemingly alleges that Board members violated the Code of Ethics of School Board Members by appointing the mayor’s daughter-in-law as principal of the middle school – an issue over which the School Ethics Commission, not the Commissioner, has jurisdiction; similarly, the petition appears to raise allegations of misconduct on the part of the Mayor, and the Commissioner has no authority over the actions of an elected municipal official. Accordingly, the ALJ granted the Board’s motion for summary decision, and dismissed the petition for lack of jurisdiction.

Upon review, the Commissioner concurred with the ALJ’s determination that the petition must be dismissed for lack of jurisdiction. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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January 6, 2016

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons thoroughly set forth in the Initial Decision – that the petition must be dismissed because the petitioner does not allege a cause of action under the Commissioner’s jurisdiction.¹ *N.J.S.A.* 18A:6-9. Specifically, the Commissioner is in accord that the petitioner fails to allege that the Board acted in violation of *N.J.S.A.* 18A:27-4.1(a) when it appointed Audrey Becker – the mayor’s daughter-in-law – as principal of Tighe Middle School (Tighe), as there is no allegation that the Board acted without the recommendation of the chief school administrator or without a recorded roll call majority vote of the full membership of the Board. Additionally, the Commissioner agrees with the ALJ that the Board did not violate *N.J.A.C.* 6A:23A-6.2, as Audrey Becker is not related to any member of the Board or the chief school administrator; rather, she is the mayor’s daughter-in-law, which is not a violation of *N.J.A.C.* 6A:23A-6.2.

¹ The Commissioner is also in accord with the ALJ’s denial of summary decision on the arguments of lack of standing, failure to name an indispensable party, and failure to timely file the petition.

Instead, the Commissioner agrees with the ALJ that any allegation that certain members of the Board acted unethically by appointing the mayor's daughter-in-law as principal of Tighe falls under the jurisdiction of the School Ethics Commission and would be more appropriately brought in a complaint before the Commission for a violation of the Code of Ethics for School Board Members. *N.J.S.A.* 18A:12-24.1. Furthermore, the Commissioner is in accord with the ALJ's determination that he has no authority over allegations of conflict of interest or nepotism by the mayor, as the actions of a municipal official are not governed by the school laws of this State. *N.J.S.A.* 18A:6-9.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: January 6, 2016

Date of Mailing: January 6, 2016

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).