

KENNETH NOLL	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	Docket No. C20-08
WILLIAM MOTT	:	
<i>GREEN TOWNSHIP BOARD OF</i>	:	DECISION ON
<i>EDUCATION</i>	:	MOTION TO DISMISS
<i>SUSSEX COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 2, 2008 by Kenneth Noll, a former member of the Green Township Board of Education (Board), alleging that William Mott, a former member of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. when he made a request pursuant to the Open Public Records Act (OPRA) for records maintained by the district.

On July 15, 2008, the respondent filed a Motion to Dismiss in Lieu of an Answer, with supporting documents, pursuant to N.J.A.C. 6A:28-6.5(e). The respondent argued that the matter should be determined frivolous by the Commission and the complainant should be sanctioned accordingly. Although provided an opportunity to do so, the complainant did not file a response to the Motion. At its meeting on August 26, 2008, the Commission considered the complaint and the Motion to Dismiss, at which time the Commission voted to grant the respondent’s Motion to Dismiss the complaint and find that the complaint was not frivolous.

THE PLEADINGS

The complainant alleges that on May 14, 2008, the respondent filed an OPRA request and, in so doing, violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members. (Complaint/attachment at paragraph 1) According to the complainant, by filing the OPRA request, the respondent placed “undo financial hardship” on the District [sic]. The complainant asserts that as result of this OPRA request, the superintendent and the Allamuchy School District have decided to opt out of shared services with Green Hills, thus creating a financial burden to the District. The complainant contends this was a violation of N.J.S.A. 18A:12-24.1(b). (Id. at paragraph 2) The complainant further asserts that in making the OPRA request, the respondent failed to confine his actions to policymaking, planning and appraisal in violation of N.J.S.A. 18A:12-24.1(c) and acted outside of the Board in violation of N.J.S.A. 18A:12-24.1(d). (Id. at paragraphs 3 and 4)

Appended to the complaint is a copy of an anonymous letter which alleges that the Superintendent of the District purchased electrical lighting equipment from the complainant, when he was a member of the Green Township Board of Education. Also

appended to the complaint is the OPRA request submitted by the respondent which seeks, in relevant part “any and all records pertaining to electrical lighting purchases, agreements or referrals between Green Township Superintendent of Schools Timonthy R. Fredericks and former B.O.E. member Kenneth Noll.” (Attachment to Complaint: May 14, 2008 OPRA request)

ANALYSIS

In considering a Motion to Dismiss, the Commission considers the facts in the light most favorable to the non-moving party. The question before the Commission was whether the complainant alleged facts which, if true, could support a finding that the respondent violated N.J.S.A. 18A:12-24.1(b), (c), (d) and (e) of the Code of Ethics for School Board Members, as set forth below. Granting all inferences to the complainant, and even assuming all facts to be true, the Commission finds that the complainant has failed to meet this standard.

The Code of Ethics for School Board Members provides, in relevant part:

b. I will make decisions in terms of the educational welfare of children and will seek to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing.

c. I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

d. I will carry out my responsibility, not to administer the schools, but, together with my fellow board members, to see that they are well run.

e. I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

Initially, the Commission acknowledges the respondent’s argument that, as a citizen of this State, he has a statutory right under the Open Public Records Act to request records from a public agency, subject to certain exceptions. As to the first allegation, the Commission notes that the complainant offers no facts to support the contention that, by filing an OPRA request, the respondent failed to recognize that authority rests with the board of education, or that he made personal promises or took private action that was of such a nature that it might compromise the Board. There are no facts alleging that the filing of an OPRA request was contrary to Board policy or goal; neither are there any

facts to support the allegation that such a filing could have compromised the Board. Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(e).

The Commission further finds that the complainant alleges no facts which might show that the respondent's filing of an OPRA request contravened his duty to make decisions in terms of the educational welfare of children and his duty to develop and maintain public schools that meet the individual needs of all children regardless of their ability, race, creed, sex, or social standing. Although the complainant notes that the Allamuchy School District has "decided to opt out of a shared services agreement with Green Hills," (Complaint/attachment at paragraph 2) he fails to offer any facts which might show that the filing of the OPRA request was related to this decision. Indeed, as the respondent notes:

[T]he OPRA request was presented to the Green Township Board of Education, not Allamuchy. Complainant has not offered any evidence to suggest that Allamuchy had any knowledge of Respondent's OPRA request. Moreover, even assuming that Allamuchy were aware of Respondent's OPRA request, Complainant has not established any first-hand knowledge as to the reasons shared services were terminated. Similarly, he has proffered no documentary evidence that Allamuchy's decision to terminate shared services in any way related to the [OPRA] request. (Motion to Dismiss at p. 11)

Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(b).

Similarly, the Commission finds that the complainant offers no facts to support his allegation that the mere filing of the OPRA request violated the respondent's duty to confine his board action to policy making, planning, and appraisal. Rather, the complainant offers nothing more than a conclusory statement as to this alleged violation without any substance whatsoever. Therefore, even accepting as true all facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(c).

Finally, the Commission finds that the complainant offers no facts that might show that the respondent, in filing the OPRA request, "administered" the schools, contrary to his duty as a board member. The Commission's regulations define such conduct as becoming "directly involved in activities or functions that are the responsibility of school personnel or the day to day administration." (N.J.A.C. 6A:28-7.1) This complaint, however, offers no such facts. Therefore, even accepting as true all

facts alleged by the complainant, the Commission determines that these facts would not constitute a violation under N.J.S.A. 18A:12-24.1(d).

DECISION

Based on the foregoing, the Commission grants the respondent's Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

REQUEST FOR SANCTIONS

At its August 26, 2008 meeting, the Commission considered the respondent's request that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). The Commission found no evidence that would indicate that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The Commission also has no information to suggest that the complainants should have known that the complaint was without any reasonable basis in law or equity or that it could not be supported by a good faith argument for an extension, modification or reversal of existing law. For the foregoing reasons, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

Paul C. Garbarini
Chairperson

Mailing Date: _____

Resolution Adopting Decision – C20-08

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the Motion to Dismiss filed by the respondent; and

Whereas, the Commission granted the respondent's Motion to Dismiss the allegations that respondent violated N.J.S.A. 18A:12-24.1(b), (c), (d) and (e) of the Code of Ethics for School Board Members; and

Whereas, the Commission found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2; 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 granting the respondent's Motion to Dismiss as the final decision of an administrative agency and directs its staff to notify all parties to this action of its decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 23, 2008.

Joanne Boyle
Executive Director