

<b>RUTH S. McCURDY</b>	:	<b>BEFORE THE SCHOOL</b>
	:	<b>ETHICS COMMISSION</b>
<b>v.</b>	:	
	:	
<b>JAMES HARMON</b>	:	<b>Docket No. C07-06</b>
<i>WASHINGTON TOWNSHIP</i>	:	
<i>BOARD OF EDUCATION</i>	:	<b>DECISION</b>
<i>MORRIS COUNTY</i>	:	
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on April 5, 2006 by Ruth S. McCurdy alleging that James Harmon, a member of the Washington Township Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant first alleges that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members when he sent a letter to the editor, which was published on April 7, 2005, containing inaccurate information regarding the 2005-2006 school budget. Complainant's second allegation is that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f) and (g) of the Code of Ethics for School Board Members when he issued a press release, which was published on April 7, 2005, misrepresenting the budget and using his position as Board member and past finance committee chair to endorse two candidates for the Board election in the press release. Complainant's third and final allegation is that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members, when, as campaign manager for a candidate in the township committee election, he permitted his title and Board position to be used on campaign literature and on the campaign website for the political gain and advantage of the candidate. The complainant filed an amended complaint on May 16, 2006 wherein she also alleged that the respondent's conduct in the first and second allegations also violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members because his private actions compromised the Board by causing the defeat of the budget.

For good cause shown, the respondent was granted an initial extension to file an answer. When the complaint was amended, the respondent was granted more time to answer, and when the respondent hired an attorney, he was granted additional time to file an answer. Respondent's answer was filed on June 26, 2006. Therein he denies that the information in his April 7, 2005 letter to the editor was inaccurate and indicates that the letter was based on the best information made available to him at the time and that he believed that the information was accurate. The respondent also answered that the April 7, 2005 press release was neither written nor authorized by him. The respondent admits that he endorsed a candidate in the township committee election, but argues that, as a citizen, he has the right to endorse political candidates for other offices. The respondent also answers that he has never posted on the website as alleged by the complainant. Finally, the respondent requests that the Commission find the complaint frivolous and fine the complainant pursuant to N.J.S.A. 18A:12-29(b).

The Commission invited, but did not require, the parties to attend its September 26, 2006 meeting. The parties were advised of their right to bring counsel and witnesses. The matter was adjourned to the Commission's October 24, 2006 meeting because of a conflict in scheduling. The complainant attended the hearing and testified before the Commission. The respondent attended the hearing with his attorneys, Gary C. Algeier, Esquire and Tamara Krikorian, Esquire. The respondent and his witness, Kevin Nedd, both testified before the Commission. The Commission tabled the matter at its October 24, 2006 meeting in order to determine what additional documentation submitted by the complainant the Commission would review prior to making a determination. After that determination was made, the parties submitted written closing statements and the matter was reviewed and discussed at the Commission's March 27, 2007 meeting. During the public portion of the March 27, 2007 meeting, the Commission voted to find no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e), (f) and (g) of the Code of Ethics for School Board Members and the matter was dismissed. At its April 24, 2006 meeting, the Commission voted to find that the complaint was not frivolous.

## **FACTS**

The Commission was able to discern the following facts based on the pleadings, testimony and the documents submitted.

At all times relevant to the complaint, the complainant was a member of the Board and chair of the finance committee. She was not re-elected in April 2005. The respondent was elected to the Board in April 2002 for a three-year term and was re-elected to the Board in April 2005 for his second three-year term. Of the past four Board budgets, three have failed and one has passed.

The respondent wrote a letter to the editor which was published on April 7, 2005. Respondent testified that he wrote the letter two weeks before it was published and sent it to his friends saying that this is what is going to come out. In the first sentence of the letter, the respondent identified himself as a member of the Board. The majority of the body of the letter was focused on the Board's budget and the respondent's opinion about the budget. The letter contains specific information regarding the budget followed by the respondent's opinion regarding that specific information. In the last paragraph of the letter, the respondent endorsed two candidates who were running in the Board elections. On April 14, 2005, a letter to the editor from then Board President, Richard Reilly, was published in the same newspaper responding to the respondent's criticisms of the Board's budget in the April 7, 2005 letter to the editor. The respondent testified that there were multiple letters to the editor regarding the Board's budget that were published at that time.

On April 7, 2005, a press release was also published in the same newspaper in which the respondent's letter to the editor was published. There are several paragraphs in the press release that are word-for-word the same as in the letter to the editor. The press

release also indicated that the respondent endorsed two candidates who were running in the Board elections. The press release was drafted by Robert Gregory Jones, who admitted in his certification filed with the Commission that he used the respondent's letter to the editor to draft the press release without the knowledge or approval of the respondent. Mr. Jones also certified that he used the respondent's name to endorse the two Board candidates without the respondent's permission. The respondent testified that he was not involved in the drafting or dissemination of the press release and did not give his permission for Mr. Jones to use his letter to the editor to prepare the press release or to use his name to endorse the two Board candidates.

The respondent admitted that he was a campaign manager for a candidate running for the township committee, but testified that it was in name only. The respondent's name and title, as member of the Board, were included as an endorsement in fliers for the candidate and on the candidate's website. The respondent testified that he did not post any comments regarding the candidate on any website.

## **ANALYSIS**

The Commission will first address the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e), (f) and (g) of the Code of Ethics for School Board Members, which are set forth below, when he issued a press release, which was published on April 7, 2005, misrepresenting the budget and using his position as Board member and past finance committee chair to endorse two candidates for the Board election in the press release. The Commission notes that there was no evidence to show that the respondent was involved in the drafting or dissemination of the April 7, 2005 press release. Rather, the evidence shows that Mr. Jones was solely responsible for the press release. Further, the evidence shows that the respondent did not provide Mr. Jones with his permission to use his name and the language from the letter to the editor in the press release. Rather, Mr. Jones certifies that he used the respondent's name and the language from the letter to the editor in the press release without the respondent's permission. Based on the lack of evidence to show that the respondent was involved in the drafting and dissemination of the press release, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(e), (f) and (g) of the Code of Ethics for School Board Members, in connection to the press release and the Commission dismisses this allegation.

The Commission will next address the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members when he sent a letter to the editor, which was published on April 7, 2005, containing inaccurate information regarding the 2005-2006 school budget. The Commission notes that, pursuant to N.J.S.A. 18A:12-29, the complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members. N.J.S.A. 18A:12-24.1(e) provides:

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.

To prove a violation of N.J.S.A. 18A:12-24.1(e), the complainant alleges that the respondent took private action when he sent a letter to the editor, which was published on April 7, 2005, containing inaccurate, false and misleading information regarding the budget. She further alleges that this private action compromised the Board by creating public distrust of the Board and the Board's budget and by causing the budget to fail. The Commission agrees with the complainant that when the respondent submitted his letter to the editor he took private action. The Commission does not agree with the complainant that the letter to the editor contained inaccurate, false and misleading information regarding the budget and this will be addressed in the Commission's analysis of the complainant's allegation of a violation N.J.S.A. 18A:12-24.1(g). There is no evidence to show that the respondent's letter to the editor compromised the Board by causing the defeat of the Board's budget. The Commission notes that the respondent testified that there were multiple letters to the editor published at that time regarding the Board's budget. The Commission further notes that, of the last four budgets of the Board, three failed and only one was approved by the voters. Because of the prior failed budgets, the Commission cannot attribute the failure of the 2005-2006 budget solely to the respondent's letter to the editor. There is also no evidence to show that the respondent's letter to the editor created public distrust of the Board. There were many letters to the editor at that time and at least one of those was from the President of the Board. While the Commission finds that the respondent took private action, it also finds that the respondent's private action did not compromise the Board. Based on the foregoing, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e) when he sent a letter to the editor regarding the Board's budget and the Commission dismisses this allegation.

N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

To prove a violation of N.J.S.A. 18A:12-24.1(g), the complainant alleges that the respondent's letter to the editor contained multiple material errors, inaccuracies and false information. The complainant further alleges that the correct information was available to the respondent and that he knew or should have known the correct information. The complainant provided substantial documentation to show that specific information in the letter to the editor was inaccurate. The Commission carefully reviewed the hundreds of pages of budget information provided by the complainant. Based on its review, the Commission can understand how the respondent made his determination regarding the budget figures he quoted in his April 7, 2005 letter to the editor. The Commission also

notes that the respondent's letter to the editor contained his interpretation of and his opinion regarding the hundreds of pages of budget information. The Commission notes that budget information can be interpreted in different ways. The Commission cannot find that the respondent's interpretation and opinion was necessarily inaccurate. Therefore, the Commission finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24.1(g) when he sent a letter to the editor that contained his interpretation of the Board's budget and the Commission dismisses this allegation. Although the information provided by the respondent does not rise to the level of being inaccurate, the Commission cautions the respondent that when a board member provides such specific information in a letter to the editor, he or she may be challenged about the information when it does not comport with the understanding of other board members.

Finally, the Commission will address the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24(b) and N.J.S.A. 18A:12-24.1(f) of the Code of Ethics for School Board Members when, as campaign manager for a candidate in the township committee election, he permitted his title and Board position to be used on campaign literature and on the campaign website for the political gain and advantage of the candidate. N.J.S.A. 18A:12-24(b) provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

Since the allegations do not involve a situation involving employment, the respondent's immediate family or the respondent himself, the Commission must determine whether the respondent used his official Board position to secure unwarranted privileges or advantages for the candidate running in the township committee election. The evidence shows that on the candidate's website and campaign flier, the respondent's name is listed and the respondent is identified as member of the Board. In making such a determination, the Commission takes note that the right to engage in political activity is a right protected by the First Amendment. See Petition of Soto, 236 N.J. Super. 303, 314 (1989). The New Jersey Supreme Court said in In re Gaulkin, 69 N.J. 185, 191 (1976) that "[i]t goes without saying that our system of government is predicated upon the premise that every citizen shall have the right to engage in political activity. It is a basic freedom enshrined in the First Amendment." The Commission also takes note that the Legislature has established standards at N.J.S.A. 18A:12-24 and N.J.S.A. 18A:12-24.1 to provide the Commission with guidance in balancing a board member's rights as a private citizen with the interest of the Legislature in ensuring that a board member preserves public confidence and avoids conduct that would violate the public trust or create a justifiable impression among the public that such trust is being violated. See, N.J.S.A. 18A:12-22(a).

Previously, in I/M/O Alphonse A. DeMeo, C09-04, (September 30, 2004), the Commission applied N.J.S.A. 18A:12-24(b) and found that a board member's endorsement of a candidate was a violation of N.J.S.A. 18A:12-24(b). The Commission

noted that the board member had a right to endorse a candidate, but it also noted that such endorsement must abide by the standards in the Act. In I/M/O DeMeo, the Commission found a violation of N.J.S.A. 18A:12-24(b) when the board member testified that he endorsed the candidate after the candidate asked for the board member's endorsement in response to the endorsement of the candidate's opponent by two other members of the same board. The Commission found that the board member intended to use and did use his official position as president of the board as a favor to the candidate when the board member endorsed the candidate. Id. page 4. The situation in this matter can be distinguished from the situation in I/M/O DeMeo. In this matter, there is no evidence to show that the respondent gave his endorsement at the candidate's request specifically to give the candidate an advantage over the candidate's opponents. The Commission is ever mindful of a board member's right to engage in political activity, and the Commission finds that the listing of a board member's name and status as a board member on a candidate's flier and website does not rise to the level of a violation of N.J.S.A. 18A:12-24(b). Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) when a candidate's website and flier listed his name and his status as a board member as an endorsement of the candidate.

In the complainant's closing statement, she alleges that the respondent's identification of himself as a member of the Board in the letter to the editor was a violation of N.J.S.A. 18A:12-24(b) because he used his official position to secure an unwarranted privilege or advantage for the candidates by endorsing them in the letter. However, in the complaint, the complainant did not make such an allegation. She alleged that the letter to the editor violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. This allegation should have been included in the complaint. Nevertheless, the Commission finds that the respondent's endorsement of the two Board candidates in the letter to the editor does not rise to the level of a violation of N.J.S.A. 18A:12-24(b) just as listing the board member's name and status as a board member on a candidate's website and flier also does not rise to the level of a violation of N.J.S.A. 18A:12-24(b). Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b) in relation to the letter to the editor.

N.J.S.A. 18A:12-24.1(f) provides:

I will refuse to surrender my independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

To prove a violation of N.J.S.A. 18A:12-24.1(f), the complainant alleges that the respondent surrendered his independent judgment to a partisan political group when he allowed the use of his name and board status on a candidate's website and flier during the township committee election. The Commission notes that, to prove a violation of N.J.S.A. 18A:12-24.1(f), the complainant must prove that the respondent surrendered his independent judgment regarding board matters. This matter did not involve Board matters. Rather it involved the respondent's endorsement of a candidate in the township

committee election, which was unrelated to board matters. Again, remaining mindful of the respondent's right to participate in political activity, the Commission finds that a board member's endorsement of a candidate in a township committee election does not violate N.J.S.A. 18A:12-24.1(f). Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f) when he allowed the use of his name and board status on a candidate's website and flier during the township committee election.

In her closing statement, the complainant alleges that the respondent also violated N.J.S.A. 18A:12-24.1(f) because he surrendered his independent judgment when he provided inaccurate, false and misleading information in the letter to the editor to help the two board candidates during the April 2005 election. However, in the complaint, the complainant did not make such an allegation. She alleged that the letter to the editor violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. This allegation should have been included in the complaint. Nevertheless, the Commission notes that it has found above that the information in the letter to the editor was not necessarily inaccurate. Further, the Commission notes that board elections are non-partisan. The complainant alleges that there were special interest groups involved in the board elections. However, the Commission can find no evidence of the involvement of a special interest group or any connection to the respondent's endorsement of the two board candidates to a special interest group. Therefore, the Commission finds no probable cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24.1(f) in relation to the letter to the editor.

## **DECISION**

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that the respondent violated the School Ethics Act and dismisses the allegations against her.

## **REQUEST FOR SANCTIONS**

Respondent has asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

- 1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
- 2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

To prove that the complaint was filed in bad faith for the purpose of harassment, the respondent argues that the complainant filed this complaint because she lost her bid for re-election to the Board in the April 2005 election. The Commission acknowledges that the complainant lost her bid for re-election in the April 2005 election. However, the complaint and the extensive documentation filed by the complainant show that the complainant filed her complaint because she believed the respondent had violated the Act, not because of her failed bid for re-election. The respondent also argues that the complainant attempted to make the complaint public when, at a public meeting of the Board, she discussed the payment of legal fees for an ethics complaint. However, there is no evidence to show that the complainant made the complaint public. The Commission finds that the complaint was not filed in bad faith solely for the purpose of harassment, delay or malicious injury. The respondent next argues that the complainant knew or should have known that the complaint was without any reasonable basis in law or equity. However, as noted above it is clear to the Commission that the complainant believed that there was a reasonable basis for the complaint. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's request for sanctions against the complainant.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini  
Chairperson

### **Resolution Adopting Decision – C07-06**

**Whereas**, the School Ethics Commission has considered the pleadings and the response filed by the parties and the documents submitted in support thereof; and

**Whereas**, the Commission finds no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-21 et seq.; and

**Whereas**, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

**Whereas**, the Commission agrees with the proposed decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision to dismiss as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's 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 April 24, 2007.\*

---

Lisa James-Beavers  
Executive Director

\* Commission member Margarita Roig abstained on this decision.

PCG/LJB/MET/ethics/decisions/C07-06