

Ra SHUN STEWART	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	
DOLORES CALLAWAY	:	Docket No. C17-06
<i>ATLANTIC CITY</i>	:	
<i>BOARD OF EDUCATION</i>	:	DECISION
<i>ATLANTIC COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed by Ra Shun Stewart on June 8, 2006 alleging that Dolores Callaway, a member of the Atlantic City Board of Education (Board) violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. Complainant specifically alleges that Ms. Callaway violated N.J.S.A. 18A:12-24(c) of the Act when, at the May 26, 2006 Board meeting, she recommended and voted for her brother’s attorney for Board Solicitor. Ms. Callaway, through her attorney, Christopher G. Meikle, Esq. filed an answer wherein she denied the allegation and requested the Commission to impose sanctions pursuant to N.J.S.A. 18A:12-29(e).

The Commission invited, but did not require, the parties to attend its December 19, 2006 meeting. The parties were advised of their right to bring counsel and witnesses. Both the complainant and the respondent did not attend the meeting. At its public meeting on December 19, 2006, the Commission voted to find no probable cause that Ms. Callaway violated N.J.S.A. 18A:12-24(c). At its meeting of January 23, 2007, the Commission voted to find that the complaint was not frivolous and adopted this decision.

FACTS

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

At all times relevant to this complaint, Ms. Callaway was a member of the Board. The complainant alleged that, at the May 26, 2006 Board meeting, Ms. Callaway recommended and voted for her brother’s attorney to be Board Solicitor.

ANALYSIS

Complainant alleges that respondent violated N.J.S.A. 18A:12-24(c) when she recommended and voted for her brother’s attorney to be Board Solicitor. N.J.S.A. 18A:12-24(c) provides:

No school official shall act in his official capacity in any matter in which he, a member of his immediate family, or a business organization in which he holds an interest, has a direct or indirect financial involvement

that might reasonably be expected to impair his objectivity or independence of judgment. No school official shall act in his official capacity in any matter where he or a member of his immediate family has a personal involvement that is or creates some benefit to the school official or member of his immediate family.

The Commission acknowledges that the respondent denied that she recommended and voted for her brother's attorney for Board Solicitor. However, the Commission made its determination based on the alleged facts.

In determining whether there is a violation of N.J.S.A. 18A:12-24(c), the Commission must first determine whether the public could reasonably perceive that the respondent's objectivity or independence of judgment was impaired because she or her immediate family members have some direct or indirect financial involvement in the hiring of the new Board Solicitor. The Act at N.J.S.A. 18A:12-23 defines "member of immediate family" as the spouse or dependent child of a school official residing in the same household. The respondent's brother, therefore, is not an immediate family member. Thus, the Commission finds that there is no direct or indirect financial involvement on the part of an immediate family member. The Commission also finds that there is no direct or indirect financial involvement on the part of the respondent because the person she recommended and voted for is her brother's attorney and there is no financial connection to her. Therefore, the Commission finds that it would not be reasonable for the public to perceive that the respondent's objectivity or independence of judgment was impaired because neither she nor her immediate family members have some direct or indirect financial involvement in the hiring of the new Board Solicitor.

The Commission must next determine whether the respondent has a personal involvement that is or creates some benefit to her or a member of her immediate family. The Commission again notes that the respondent's brother is not a member of her immediate family. In *Advisory Opinion A16-00*, (December 1, 2000), the Commission advised that the benefit set forth at N.J.S.A. 18A:12-24(c) need not be financial, but can be something of intrinsic value with no monetary worth. The Commission can find no benefit of intrinsic value that would accrue to the respondent for recommending and voting for her brother's attorney. In *A16-00*, the Commission determined that an involvement was personal, "whenever a school official has a relationship that the public may perceive as being predominant to the best interest of the district." *Id.* page 2. Here, it would be unreasonable for the public to perceive that the relationship between the respondent and her brother's attorney was predominant to the best interest of the district. Therefore, the Commission finds that the respondent does not have a personal involvement with her brother's attorney that is or creates some benefit to her or a member of her immediate family. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24(c).

DECISION

For the reasons expressed above, the Commission finds that Ms. Callaway did not violate the School Ethics Act and dismisses the allegations against her.

REQUEST FOR SANCTIONS

At its January 23, 2007 meeting, the Commission considered the respondents' request 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]

The respondent does not provide any specific argument as to why the Commission should find that this complaint is frivolous. The Commission can find no evidence to show 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 complainant 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.

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 – C17-06

Whereas, the School Ethics Commission has considered the pleadings and documents submitted in support thereof; and

Whereas, the Commission finds no probable cause to credit the allegation 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.

Robert W. Bender, Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on January 23, 2007.

Lisa James-Beavers
Executive Director

PCG/MET/decisions/C17-06