

IN THE MATTER OF RICHARD E. FILIPEK	:	BEFORE THE SCHOOL ETHICS COMMISSION
	:	
	:	Docket No. C18-07
SADDLE BROOK BOARD OF EDUCATION BERGEN COUNTY	:	DECISION
	:	
	:	

This matter arises from a complaint filed on May 1, 2007 by Larry Ratajczak against Richard A. Filipek, a member of the Saddle Brook Board of Education (Board). The complainant did not specify which provisions of the Act he believed were violated by the respondent's conduct. In its acknowledgement letter to the complainant, the complainant was notified that, unless the Commission heard otherwise from him, it would presume that the complaint was based upon *Advisory Opinion A07-06* (July 31, 2006) and *Advisory Opinion A23-06* (November 15, 2006). Both of those advisory opinions were analyzed under N.J.S.A. 18A:12-24(c). The complainant did not respond to the Commission's letter. The respondent filed a timely answer. The parties were invited to appear at the Commission's April 1, 2008 meeting to present testimony. Commission Chairperson, Paul C. Garbarini recused himself from discussing and voting on this matter, but appointed a sub-committee consisting of Commission members Robert Bender, Randy Beverly, Mark Finkelstein and Rosalind Frisch to hear testimony. The complainant did not attend the meeting. The respondent attended the meeting and presented testimony. Commission members Robert Copeland and Margarita Gesualdo Roig, who were absent from the April 1, 2008 meeting, reviewed audio tapes of the testimony together with all documents submitted prior to the April 22, 2008 meeting, at which the Commission found probable cause to credit the complainant's allegation in count two that the respondent violated N.J.S.A. 18A:12-24(c) and found no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(c) in counts one, three and four and dismissed those allegations.

The Commission issued its probable cause determination on April 25, 2008 and accorded the respondent 30 days to submit a written statement setting forth the reasons why he should not be found in violation of the Act. The respondent did not respond to the Commission's probable cause determination. At its May 27, 2008 meeting, the Commission voted to find that the respondent violated N.J.S.A. 18A:12-24(c), and voted to recommend the penalty of censure.

THE PLEADINGS

In the second count, the complainant alleges that the respondent conducted and sat in on closed session meetings of the Board regarding the tenure of the principal when the respondent's spouse works under the principal. (Complaint at paragraph 2)

In the respondents answer to the second count, the respondent admitted that at the special meeting of the Board on April 4, 2007, at the Board's caucus meeting on April

16, 2007 and at the Board's regular meeting on April 18, 2007 he was present as Board president to run the meetings. The respondent avers that he did not enter into any discussions, offer opinions, ask questions or vote on issues concerning the tenure appointment of the principal prior to, during or after those meetings, "knowing that if I did I would violate N.J.S.A. 18A:12-24(c)." (Respondent's Answer at page 2) The respondent includes copies of Board minutes from these Board meetings to demonstrate that he did not vote on the tenure appointment "under advice of counsel." (Id.)

EVIDENCE BEFORE THE COMMISSION

The respondent appeared before the Commission and testified. The respondent admitted that he was present during closed session discussions regarding the tenure appointment of the principal. However, he testified that he did not participate in any discussions or entertain or make comments. The respondent testified that he was only present at the closed sessions as president of the Board to run the meetings. He further testified that he did not vote at the public meeting. He testified that he was aware that he had a conflict under the Act, but upon review of the Act did not find anything to indicate that he would be in violation by staying during the discussion. In response to questions from a Commission member, the respondent admitted that he voted to hold the April 4, 2007 special meeting of the Board during which the tenure of the principal was to be discussed.

FACTS

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

1. At all times relevant to the allegations in this complaint, the respondent was president of the Board.
2. The respondent's spouse is employed in the district and her immediate supervisor is the middle/high school principal.
3. The respondent was aware that he had a conflict under the Act with regards to matters related to the middle/high school principal.
4. The respondent voted to hold the April 4, 2007 special meeting of the Board.
5. As president of the Board, the respondent was present and ran a special meeting of the Board on April 4, 2007 to question the middle/high school principal in order to clarify issues and letters concerning him related to his tenure appointment. The respondent did not enter into discussions, offer opinions, ask questions or vote on issues related to the middle/high school principal at any time prior to, during or after the meeting.

6. As president of the Board, the respondent was present and ran the Board's caucus meeting on April 16, 2007 during which there was a discussion and vote regarding the middle/high school principal. The respondent did not enter into discussions, offer opinions, ask questions or vote on issues related to the middle/high school principal at any time prior to, during or after the meeting.
7. As president of the Board, the respondent was present and ran the Board's regular meeting on April 18, 2007 when the Board voted on the tenure appointment of the middle/high school principal. The respondent did not enter into discussions, offer opinions, ask questions or vote on the tenure appointment of the middle/high school principal at any time prior to, during or after the meeting.

ANALYSIS

It is alleged that the respondent violated N.J.S.A. 18A:12-24(c), which provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has 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 respondent's spouse is employed in the district and her direct supervisor is the middle/high school principal. Since the respondent's spouse falls within the definition of immediate family member in N.J.S.A. 18A:12-23, the Commission finds that the respondent has a direct financial involvement in the tenure appointment of the middle/ high school principal that would reasonably be expected to impair his objectivity or independence of judgment. The respondent has admitted that he was present in his capacity as president of the Board and ran two closed session meetings of the Board when the tenure appointment of the middle/high school principal was discussed. While he also admits that he was aware that he had a conflict under the Act related to matters involving the middle/high school principal, he contends that he did not violate N.J.S.A. 18A:12-24(c), because he did not enter into discussions, offer opinions, ask questions or vote on the tenure appointment of the middle/high school principal at any time prior, during or after the meetings.

Previously in SEC v. Michael Kilmurray, C12-94 (January 27, 1998), the Commission found that a board member violated N.J.S.A. 18A:12-24(c) when he sat in on a private session of the Board when the appointment of his sister-in-law was being discussed. In Kilmurray, the Commission reasoned that "when a school official has a conflict of interest of which the public is aware, and that school official goes behind closed doors when that item is discussed, the situation creates a justifiable impression among the public that their trust is being violated." (Id., at page 3) In Kilmurray, the

Commission noted that the public may believe that a board member who sits in on a private session discussion regarding his sister-in-law is actively participating in the discussion behind closed doors, that the board member will tell his relative what was said, or at least, that the other board members will be inhibited in their discussion of the matter because of his presence. Such an impression can be created merely by the board member's presence in the meeting; this is especially so where, as in this matter, the board member is the president of the Board. By staying in the room and running the meeting as president of the Board while the tenure appointment of the supervisor of his spouse was being discussed, the respondent was acting in his official capacity on a matter where he had a direct financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. It would be reasonable for the public to believe that the other board members would have been inhibited in their discussion of the tenure appointment of the middle/high school principal because of the presence of the respondent as president of the Board running the discussions. Therefore, the Commission finds that the respondent violated N.J.A.C. 18A:12-24(c) when he sat in and ran the April 4, 2007 and April 16, 2007 closed session meetings of the Board.¹ The Commission advises that in the future, when the respondent has to recuse himself from a matter held in a closed session of the Board, he must leave the room.

DECISION

For the reasons expressed above, the Commission finds that Dr. Richard E. Filipek violated N.J.S.A. 18A:12-24(c).

PENALTY

The Commission recommends that the Commissioner of Education impose the penalty of a censure. In so doing, the Commission finds instructive the matter entitled I/M/O Robert Wilgus, C35-95 & C37-95 (June 18, 1996). Therein a board member, whose spouse was employed as secretary to the board and was a member of the local bargaining unit, attended a closed session of the Board during which the parameters for negotiations of the local bargaining unit was discussed in violation of N.J.S.A. 18A:12-24(c). The Commission recommended a reprimand. However, the Commissioner found censure was the appropriate penalty in that the respondent had been given a copy of *Advisory Opinion A33-95*, (March 29, 1995), which specifically addresses the issue of the attendance of conflicted board members in closed sessions to discuss negotiation strategy. (*I/M/O Robert A. Wilgus, Kingsway Regional High School Board of Education, Gloucester County*, Commissioner Decision No. 423-96 decided on September 30, 1996) While the respondent in this matter had not been given a copy of an Advisory Opinion or a Commission decision specific to his sitting in on and running closed session meetings where the tenure of the middle/high school principal was being discussed, the respondent admitted that he knew he had a conflict in relation to employment matters involving the

¹ The Commission notes that the April 18, 2007 meeting was a public meeting of the Board, as such, any actions taken at that time were subject to public scrutiny. Since the respondent did not take part in any discussions and he abstained from voting on the tenure appointment of the middle/high school principal, the Commission finds no cause to address this meeting in its analysis.

middle/high school principal. The Commission also takes note that the respondent did more than sit in on the closed session discussions; he ran the closed session as president of the Board. Given that the respondent knew he had a conflict of the type where the Commission has, in over a decade of caselaw, consistently maintained that recusal is necessary and noting that, rather than recuse himself from the discussions, he ran the closed sessions in his role as president of the board, the Commission believes that a censure is the appropriate penalty. Thus, the Commission recommends the penalty of censure to the Commissioner.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was mailed to the parties, Mr. Filipek may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Rosalind R. Frisch
Acting Chairperson

Resolution Adopting Decision – C18-07

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

Whereas, at its meeting of May 27, 2008, the Commission found that Richard E. Filipek violated N.J.S.A. 18A:12-24(c) and recommended that the Commissioner of Education impose a sanction of censure; and

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.

Rosalind R. Frisch, Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on June 24, 2008.*

Joanne Boyle
Executive Director

PCG/LJB/MET/ethics/decisions/C18-07

* Chairperson, Paul C. Garbarini recused himself from discussing and voting on this matter.