

CAROL A. BENSON	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
v.	:	
	:	Docket No. C21-07
EDWARD G. GEARITY	:	
<i>TOMS RIVER REGIONAL</i>	:	
<i>BOARD OF EDUCATION</i>	:	DECISION
<i>OCEAN COUNTY</i>	:	
_____	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 14, 2007 by Carol Benson alleging that Edward G. Gearity, a member of the Toms River Regional Board of Education (Board), violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The complainant specifically alleges 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 wrote a letter to the newspaper which included references to the complainant. The respondent submitted an answer to the complaint and the Commission invited the parties to attend its May 27, 2008 meeting. The parties attended the Commission’s meeting. The respondent appeared with his counsel, Thomas E. Monahan, Esq. Testimony was heard, as set forth below. During the public portion of the meeting, the Commission voted to dismiss the complaint, finding that the complainant did not meet her burden to prove that the respondent violated the Code of Ethics for School Board Members.

THE PLEADINGS

By way of background, there appears to be no dispute that in January 2007, the Toms River Regional School District finished construction of what is called the John Bennett Sports Complex. It is an air structure which the media have referred to as a “bubble.” Soon after the structure was completed, there was a sporting event which the complainant attended and the respondent did not. After that event, an article appeared in the local paper noting that two violations were issued to the Toms River School District for having emergency exits in the structure blocked. The respondent wrote a letter in response to the article.

The complaint alleges that the respondent wrote a letter to the newspaper based on hearsay accusing her of events that never occurred. The complainant alleges that by identifying himself as a Board member, he compromised the Board and injured her reputation, in violation of N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. (Complaint at page 1) The complainant provides the facts regarding statements in the respondent’s letter:

1. The temporary certificate of occupancy was issued, stamped and approved before she arrived in the town hall on January 19, 2007; the complainant did not station herself outside the office of Fire Prevention.

2. February 10, 2007 was the date scheduled for the inaugural meet involving 52 teams across the state, rather than “a few days after January 19, 2007.”
3. The camera she used was not digital.
4. She was among a group of three women, none of whom had a handicapped child who was photographed.
5. The complainant did not hurl any expletives.
6. The complainant did not file any police reports.
7. There are 13 emergency doors, rather than 22, within the facility.
8. The complainant’s son graduated 27 years ago and should not have been included in the letter. (Id. at page 2)

The complainant provided the Commission with pictures of “the bubble,” together with a copy of the letter written by the respondent.

In his sworn answer, the respondent asserts that the complainant is among the community members who have voiced opposition to the structure. He affirms that these community members have attended public meetings, both of the Board and the governing municipal body to express their lack of support. This subject matter, according to the respondent, is not private or confidential. (Respondent’s Answer at page 2)

The respondent affirms that he prepared his letter in response to an article appearing in the *Ocean County Observer*, a local newspaper, prepared by a reporter, Angela Santoriello. His goal in sending the letter was to object to the newspaper’s approach to reporting information which he believed was inaccurate and unfairly critical of the Toms River Regional School District. It was not the respondent’s intent to discuss Board information, but, rather, to publicly comment on matters known and discussed in the public forum. The respondent asserts that he wrote as a citizen of the Toms River community and also a Board member; he felt it was essential to express his personal views with regard to what was published. He did not reveal confidential information or discuss any action taken by the Board. (Id.)

As to the facts alleged by the complainant as set forth above and to the inaccuracies which the complainant has noted, the respondent generally asserts that the complainant’s claims do not implicate his actions as a Board member and/or have no bearing on his conduct as a Board member. (Id. at page 3)

The respondent concludes:

Ms. Benson has the right to make comments at public meetings and to the press about things that displease her. I, as a citizen in the community, also have the right to comment when I think that the newspaper published in Ocean County is publishing articles that are inaccurate.

I forwarded my letter to the editor as an individual expressing his concern with regards to the comments by the press and Ms. Benson. I believe this is my right.

I did not reveal any information that I obtained as a member of the Board of Education nor did I present any information on behalf of the Board of Education.

I expressed my concerns with what I believed is the obligation of the newspaper and media to be responsible and not to sensationalize items in their newspaper article for the sake of selling papers. (Id. at page 4)

The respondent included with his submission a copy of Ms. Santoriello's article entitled, *Bubble Trouble: Two Violations Issued for Blocked Exits*, together with his letter to the editor.

EVIDENCE

The complainant, Ms. Carol Benson, testified before the Commission. She referenced the *Bubble Trouble* article that was originally published in the newspaper which identified violations in the sports structure. According to Ms. Benson, if the respondent wanted to respond to the statements in the newspaper, he should have kept to the issue of the code violations, rather than launch personal attacks on her. Further, Ms. Benson testified that if the respondent had written as a private citizen, it would not have been as much of a problem. She testified that there were inaccuracies in the respondent's letter, such as the fact that she did not file a police report and she did not use expletives. Ms. Benson asserted that the respondent's article was all about her and she was offended. In response to a question from the Commission, Ms. Benson acknowledged that she is active in the community; she attends meetings and is well informed. She objected to the respondent identifying himself as a Board member in the article. In response to further questioning, the complainant admitted that she has no fire code training; she simply looked for the exits as a spectator.

The complainant explained that when she was leaving the structure, the head of security approached her and asked her for her camera. She refused to give him her camera. A witness, Patricia Golembeski, testified on behalf of the complainant and corroborated that she and the complainant were present at the structure in response to an invitation from the Superintendent. Ms. Golembeski affirmed that the complainant had a camera and that someone asked the complainant for the camera. According to the complainant, it was after this confrontation that she decided to take her pictures to the newspaper.

In response to questioning from the Commission, the complainant stated that the respondent's article was based on hearsay because he was not present at the structure that day and that his article "slams" her. She testified that she approached the Board and

requested an apology, but no one spoke. That is why she filed the complaint. She acknowledged in response to further questions, that this incident has had no effect in her continuing to attend Board meetings.

The respondent testified only in response to questions from the Commission. He affirmed that he got tired of letters criticizing the structure; he had no intention to attack Ms. Benson, although he does not always agree with her. He testified that he was writing “on behalf of himself.” He acknowledged that the Board did not authorize the submission of the letter. The respondent further acknowledged that he was not present on the day that Ms. Benson was present in the structure, as per her testimony. As to the Board’s reaction to the letter, the respondent testified that he does not recall if the Board President said anything to him and that no one indicated to him that it should not have been written.

FINDINGS OF FACT

The Commission found the following facts based on the pleadings, testimony and documents on the record.

1. At all times relevant to this matter, the respondent was a member of the Board.
2. An article entitled, *Bubble Trouble: Two Violations Issued for Blocked Exits* was written in the *Ocean County Observer* by Angela Santoriello about the John Bennett Sports Complex. That article stated that two violations were issued to the District for having two emergency exits blocked at the sports complex during a New Jersey Interscholastic Athletic Association’s Team Group Championship. The article states, in relevant part, that the chief of the Toms River Bureau of Fire Prevention “was notified Saturday by resident Carol Benson, a longtime critic of the school system, that the facility was in possible violation. She took pictures of what she felt were potential trouble spots.”
3. The respondent wrote a letter to the editor which appeared in the Reader’s Viewpoints section of the *Ocean County Observer*, dated February 27, 2007. The letter is attributed to “Edward Gearity, Board Member, Toms River Regional School District.” The respondent therein responds to Santoriello’s statements, and offers additional comments.
4. The letter states that both violations that were noted in the Santoriello article were quickly addressed by simply moving a T-shirt concession stand that was blocking an exit and by moving the ticket booth table, which was too close to the doorway.
5. The letter names Ms. Benson and recounts, according to the respondent, Ms. Benson’s role in the District being cited for the two violations. The letter states that Ms. Benson “came to the bubble with her digital camera taking pictures of the concession stands, track meet participants and spectators.” The

letter continues, “When confronted, Benson hurled a few expletives and a police report was filed.” The letter further refers to Ms. Benson’s “obsessive behavior” and states, “[t]he only explanation is that Benson is intent, for whatever reason, on obstructing the district in whatever positive endeavors it seeks to do for the students and their parents.”

ANALYSIS

The complainant asserts that the respondent’s conduct in writing the letter violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. Pursuant to N.J.A.C. 6A:28-6.9, it was her burden to prove these alleged violations. These provisions specifically state:

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.

g. 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.

Pursuant to N.J.A.C. 6A:28-7.1, “private action” is defined as action taken by a member of a district board of education or a member of a charter school board of trustees that is beyond the scope of the duties and responsibilities of a member of a district board of education or a member of a charter school board of trustees. Here, although the letter is attributed to “Edward Gearity, Board Member, Toms River Regional School District,” nowhere in the text of the letter does Mr. Gearity indicate that he is speaking on behalf of the Board. Neither does Mr. Gearity reference any Board action, either of a public or private nature. The letter appears to be exactly what the respondent described it to be: a reaction to a previously published article about the sports complex. Thus, the Commission finds that the letter was written by the respondent in his role as a citizen and as such, constituted private action.

The Commission does not find, however, that the complainant has proven that this action was of such a nature that it may have compromised the Board. Indeed, as noted above, there is not a single reference in the letter to the Board or its actions. Moreover, the respondent’s comments about the complainant, however targeted and unfortunate, cannot reasonably be attributed to the entire Board so as to potentially compromise that Board. In *LaPorte v. Stewart and Davis, Atlantic City Board of Education, C26-05*, a complainant alleged that the respondent’s participation in a press conference endorsing the Mayor violated N.J.S.A. 18A:12-24.1(e) and that remarks made at the press conference were racially charged and reflected poorly on the Board. The Commission therein found that “[s]ince respondents participated in the press conference in their role

was private citizens, their involvement does not reflect the opinion of the entire Board and could not have compromised the Board.” Similarly, the Commission does not find that the complainant has established a sufficient nexus between the respondent’s letter and its potential for compromising the work of the Board. Accordingly, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e). In so doing, however, the Commission cautions the respondent and other Board members that exercising their right to express their *personal* opinions while using the designation of “Board member” is fraught with potential problems and misunderstandings unless the Board member also states that the letter is not authorized by or written on behalf of the board. See, *Advisory Opinion A03-07* (April 2, 2007).¹

As to the complainant’s assertion that the respondent violated N.J.S.A. 18A:12-24.1(g) when he wrote the letter because it contained inaccurate information,² the Commission notes that, having found the respondent wrote the letter as a private citizen rather than as a representative of the Board, and that the letter was not of such a nature that it might compromise the Board, it follows on these facts that any inaccuracies in the letter are attributable to the respondent in his role as a private citizen and do not touch or concern his role as a Board member. Indeed, one might reasonably conclude that the respondent’s letter was nothing more than his opinion, written in response to the prior article, rather than a formal statement or position written on behalf of the Board. “Inaccurate information” under N.J.S.A. 18A:12-24.1(g) must be more than a personal opinion. N.J.A.C. 6A:28-6.9(a)2. Accordingly, the Commission dismisses the allegation that the respondent violated N.J.S.A. 18A:12-24.1(e).

DECISION

Based on the testimonial and documentary evidence, the Commission finds that the complainant has failed to prove factually that the respondent violated N.J.S.A. 18A:12-24.1(e) and (g) of the Code of Ethics for School Board Members. Consequently, the complaint is dismissed. 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

¹ The Commission advised that a Board member would not violate the Act by sending a letter to the editor expressing his/her opinion about the budget as long as, in the letter, that person (1) identified himself/herself as a board member; (2) indicated that the letter is not authorized by or written on behalf of the board; (3) provided accurate information that is not confidential; (4) and ensured that his/her private action does not compromise the board. *Advisory Opinion A03-07*. Inasmuch as the respondent’s letter in the present matter was written and published prior to this advisory, the Commission declines to hold him to the standards set forth therein.

² Because the complaint does not allege that the respondent disclosed confidential information in the letter, the Commission does not address this portion of N.J.S.A. 18A:12-24.1(g) the Code of Ethics for School Board Members.

Resolution Adopting Decision – C21-07

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 the complainant had not established that Edward F. Gearity violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. and therefore dismissed the charges against him; and

Whereas, the Commission directed that its staff prepare a decision consistent with the aforementioned conclusion; and

Whereas; the Commission has reviewed the decision and agrees with the decision;

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.

Paul C. Garbarini, Chairperson

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

Joanne Boyle, Executive Director