

ROBERT MEROLA	:	BEFORE THE SCHOOL
	:	ETHICS COMMISSION
	:	
v.	:	
	:	
ANTHONY SCHAIBLE	:	
MONMOUTH REGIONAL HIGH	:	Docket No. C22-10
SCHOOL BOARD OF EDUCATION	:	PROBABLE CAUSE NOTICE
MONMOUTH COUNTY	:	
	:	

This matter arises from a complaint filed on June 17, 2010 on behalf of Robert Merola, President of the Monmouth Regional Education Association, alleging that Anthony Schaible, a member of the Monmouth Regional High School Board of Education as well as a school administrator at the Monmouth County Vocational-Technical Institute, Monmouth County, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The respondent filed an answer on July 15, 2010 wherein he asserted that the complaint is frivolous. On July 15, 2010, the complainant filed a response to the allegation of frivolousness. N.J.A.C. 6A:28-7.2(b).

By letter dated August 23, 2010, the parties were advised that this matter was scheduled for a probable cause determination by the Commission on September 28, 2010, at which time the Commission would also consider the respondent’s claim of frivolousness, in accordance with procedures set forth at N.J.A.C. 6A:28-10.7. At its meeting on September 28, 2010, the Commission voted to find no probable cause to credit the allegation in the complaint that the respondent violated N.J.S.A. 18A:12-24(d). The Commission also found that the complaint was not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2.

However, pursuant to its investigation, at its meeting on September 28, 2010, the Commission found probable cause to believe that the respondent violated N.J.S.A. 18A:12-24(c), in that the Board’s minutes from its April 13, 2010 meeting showed that the respondent voted in favor of approving the 2010-2011 tuition rates for Monmouth County Vo-tech. Subsequent to the Commission’s vote on September 28, 2010, but prior to the Commission issuing its Probable Cause Notice, the respondent forwarded documentation which provided a sufficient basis for the Commission to reconsider its September 28th vote. Accordingly, at its meeting on October 26, 2010, the Commission reviewed the recently-obtained documents and determined that there was no probable cause to believe that the respondent had violated N.J.S.A. 18A:12-24(c). Therefore, the Commission dismissed the complaint.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainant asserts that the respondent is violating the School Ethics Act (N.J.S.A. 18A:12-24(d)) by serving as a member of the Monmouth Regional High School Board of Education and by holding a position as Assistant Superintendent with the Monmouth County Vocational School District (MCVSD). The complainant contends that the MCVSD competes with all regional high schools for students and the respondent’s program would benefit if

students left the regional school district and enrolled in MCVSD. The complainant asserts that the respondent's position on the Board gives him the ability to make decisions impacting the educational experience at Monmouth Regional, such as reducing staff and cutting programs that could result in students opting to attend the MCVSD. (Complaint at paragraph 1). Conversely, the complainant contends that respondent's position as an Assistant Superintendent at MCSVD might reasonably be expected to prejudice his judgment with respect to his decisions on the Monmouth Regional High School Board of Education. (Id. at paragraph 5).

In his answer, the respondent acknowledges that he is a member of the Monmouth Regional High School Board of Education and also an Assistant Superintendent with the MCVSD. However, the respondent asserts there is no conflict with his maintaining both positions. Although he acknowledges that MCVSD charges tuition to sending districts, he states, "[t]uition derived from Monmouth Regional High School does not impact the [Vocational] District or my position, nor do I derive any personal or financial gain." (Answer at p. 1) He claims that it would serve no purpose for him to attempt to impact the "educational experience" at Monmouth Regional High School "because the Vocational Schools are highly competitive, with four applicants for each student accepted." Respondent points to the rigorous entry requirements and reasons that even if no Monmouth Regional students were to attend, students from other districts would fill those seats. He further argues, "While attempting to impact the educational experience at Monmouth Regional would not guarantee admission to the Vocational School, it would not even guarantee students would apply." (Id. at p. 2)

Additionally, the respondent affirms that he has avoided the appearance of impropriety "by abstaining on any vote that has a connection to the Vocational Schools, no matter how remote the connection." (Id.) Respondent claims that the within complaint is motivated by a recently declared impasse in contract negotiations.

Pursuant to its authority under N.J.S.A. 18A:12-28(b), upon its investigation, the Commission obtained minutes of the Monmouth Regional High School Board of Education's April 13, 2010 meeting. The minutes showed that the respondent attended that meeting and voted in favor of approving the 2010-2011 tuition rates for Monmouth County Vo-tech. (April 13, 2010 Public Meeting Minutes at page 6-7)

However, on October 20, 2010, the Commission obtained a statement from the Board Secretary affirming that an error was made in the recording of the April 13, 2010 Board meeting minutes. The Board Secretary provided the Commission with the voting sheet from the April 13, 2010 meeting showing that the respondent actually abstained from the vote to approve the 2010-2011 tuition rates for Monmouth County Vo-tech. The corrected minutes were posted on the Board's website and reviewed by the Commission at its October 26, 2010 meeting.

FINDINGS OF PROBABLE CAUSE

This matter was before the Commission for a determination of probable cause pursuant to N.J.A.C. 6A:28-10.7. That is, the Commission must determine, based on the evidence before it, whether probable cause exists to credit the allegation in the complaint. A finding of probable cause is not an adjudication on the merits, but, rather, an initial review whereupon the

Commission makes a preliminary determination whether the matter should proceed to an adjudication on the merits, or whether further review is not warranted.

The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(d) of the School Ethics Act, which provides:

No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

There is no dispute on this record that the respondent is a member of the Monmouth Regional High School Board of Education and also an Assistant Superintendent with the MCVSD. In cases involving the application of N.J.S.A. 18A:12-24(d), the Commission has considered whether a school official's "other" employment or service would conflict with his/her official duties so as to be prohibited under the Act. For instance, in I/M/O David W. Fuller, Irvington Twp. Bd. of Ed., Essex County, C32-95 (November 25, 1997), Commissioner of Education Decision No. 19-98SEC decided January 21, 1998, the Commission found that a board member violated N.J.S.A. 18A:12-24(d) by serving on the Board while also serving as the Township Business Administrator based on the extent to which the duties can overlap in a Type I district; and in Irvington Municipal Council v. Michael Steele and the Irvington Board of Education, Essex Co., 95 N.J.A.R. 2d (EDU) 123, aff'd, State Bd. Dkt. #30-95, the Commission found that the respondent violated N.J.S.A. 18A:12-24(a), (c) and (d) when he was employed by the Board as Business Administrator in a Type I school district while he served as Mayor for the Township. The Commission finds nothing in this record to suggest a "fundamental incompatibility" between the respondent's duties as an Assistant Superintendent of the MCVSD and his duties as a member of the Monmouth Regional High School Board of Education so as to preclude him from serving in both positions. Irvington Municipal Council, State Bd. Decision, September 6, 1995 at p. 3.¹ Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(d). In so finding, however, the Commission recognizes, as does the respondent, that serving in these dual capacities necessitates recusal as a Board member on matters that involve the MCVSD.

REQUEST FOR SANCTIONS

The respondent alleged that the complaint herein is frivolous. At its meeting on September 28, 2010, 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 can find no evidence which might show that the complainant filed the complaint in bad faith solely for the purpose of harassment, delay or malicious injury. The

¹See also, I/M/O Susan Ciallella, Spring Lake Hts. Bd. of Ed., Monmouth County, C01-98 (May 26, 1998); I/M/O James Famularo, Asbury Park Bd. of Ed., Monmouth County, C04-98 (September 22, 1998); I/M/O Abdi Gass, Chesilhurst Bd. of Ed., Camden County, C13-98 (November 24, 1998); Gunther v. Alberti, Howell Twp Bd. of Ed., Monmouth County, C08-99 (July 27, 1999); Reggio et al., v. Randazzo & Stead, Berlin Borough Bd. of Ed., Camden County, C24-99 (May 23, 2000); Graham v. Roman, East Newark Bd. of Ed., Hudson County, C25-02 (November 26, 2002)).

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. N.J.A.C. 6A:28-1.2. Therefore, the Commission finds that the complaint is not frivolous and denies the respondent's request for sanctions against the complainant.

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies the complainant and respondent that it finds no probable cause to credit the allegation in the complaint that the respondent violated N.J.S.A. 18A:12-24(d). Neither does the Commission find probable cause to believe that the respondent violated N.J.S.A. 18A:12-24(c). The complaint is, therefore, dismissed. This decision is a final decision of an administrative agency and, therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: October 27, 2010

Resolution Adopting Decision – C22-10

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

Whereas, at its meeting on September 28, 2010, the Commission found no probable cause to credit the allegation in this complaint that the respondent violated N.J.S.A. 18A:12-24(d); and

Whereas, at its meeting on September 28, 2010, the Commission also 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, although at its meeting on September 28, 2010, the Commission initially found probable cause to believe that the respondent violated N.J.S.A. 18A:12-24(c), in light of documentation received after the September 28, 2010 meeting, at its meeting on October 26, 2010, the Commission reconsidered its prior vote, found no probable cause and dismissed the complaint; and

Whereas, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs it staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on October 26, 2010.

Joanne Boyle
Executive Director