

	:	BEFORE THE
WILLIAM D. MOTT	:	SCHOOL ETHICS COMMISSION
	:	
v.	:	
	:	
TIMOTHY J. FREDERIKS,	:	
<i>ALLAMUCHY BOARD OF</i>	:	Docket No. C23-09
<i>EDUCATION</i>	:	PROBABLE CAUSE NOTICE
<i>WARREN COUNTY</i>	:	
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 21, 2009 by William D. Mott alleging that Timothy J. Frederiks, Superintendent of the Allamuchy School District, 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(a), (b), (c), (d), (e) and (f). By letter dated May 27, 2009, the School Ethics Commission acknowledged receipt of the complaint, but noted that the complaint appeared to be untimely pursuant to N.J.A.C. 6A:28-6.5. The complainant was accorded an opportunity to submit reasons why the matter should not be dismissed as untimely. The Commission also permitted the respondent to submit arguments in this regard. Counsel for the respondent submitted arguments on the issue of timeliness on July 17, 2009. At its meeting on July 28, 2009, and pursuant to its discretion under N.J.A.C. 6A:28-1.8, the School Ethics Commission determined to relax the filing timeline set forth in N.J.A.C. 6A:28-6.5 and accept the complaint filed in connection with the above-captioned matter.

On August 14, 2009, counsel for the respondent submitted a Motion to Dismiss the complaint on the basis of technical deficiencies. When accorded an opportunity to respond to the Motion, the complainant submitted an Amended Complaint on August 31, 2009. By letter dated September 16, 2009, counsel for the respondent objected to the Amended Complaint. At its meeting on September 22, 2009, the Commission voted to deny the respondent’s Motion to Dismiss the complaint on the basis of technical deficiencies. The Commission accepted the Amended Complaint filed on August 31, 2009 and directed that an answer be filed in accordance with N.J.A.C. 6A:28-7. Respondent’s answer to the amended complaint, along with a summary statement, were filed on October 15, 2009.

The complainant and respondent were notified by letter dated December 30, 2009 that the Commission would review this matter at its meeting on January 26, 2010 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.7. Pursuant to a request from the Commission, additional certifications were submitted on behalf of the respondent on January 15, 2010. At its January 26th meeting, the Commission found no probable cause to credit the allegations and dismissed the complaint.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

The complainant alleges that during the period when the respondent was Superintendent in both the Green Township School District and the Allamuchy School District pursuant to a shared services agreement, he solicited and received a personal donation from a vendor who was, at the time, seeking to do business with the Green Township School District. Specifically, the complainant asserts that the respondent solicited a personal donation from Banc of America in connection with a charity event with which the respondent's wife was associated. After receipt of the donation, Dr. Frederiks recommended that Banc of America replace another vendor. The complainant appended a report issued by the Department of Education's Office of Fiscal Accountability and Compliance (OFAC), Report #1599. The report concluded:

The choice of Banc of America as the insurance broker of record instead of the existing insurance broker for the district may have been the result of a donation made by the Bank of America, the parent company of Banc of America, to the Police Unity Tour to sponsor the superintendent's wife. ***** (OFAC Report #1599 at page 3.)

The complainant also appends to the complaint copies of emails involving Mark Lawrie at Banc of America and Dr. Frederiks. The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e) and (f).

The complainant next alleges that the respondent was doing business and possibly purchasing lighting equipment for the Allamuchy School District through Kenneth Noll, a former member of the Green Township Board of Education. The complainant appended a report issued by the Department of Education's OFAC, Report #1629. That report indicates that the respondent requested that former Board member Noll provide him with lighting equipment price quotes for the Allamuchy School District. The report states:

The board member supplied the pricing and gave instructions for the purchase of the lighting. There was a quotation from another company for the lighting, but that quote was a higher amount. The lighting purchase had two quotations and therefore, it is not an exception to the bid or quotation threshold. (OFAC Report #1629 at page 1.)

The OFAC concluded that the district properly solicited quotations for the purchase of lighting. (OFAC Report #1629 at page 2.) The complainant also appends to the complaint copies of emails between Mr. Nolls and Dr. Frederiks. The complainant alleges that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e) and (f).

In addition to his answer, a summary statement was submitted by respondent's counsel on his behalf. Therein, counsel argues that, with respect to the Banc of America allegation, the Banc of America is a broker for health insurance and was soliciting business of the Green Township School District. It was competing with another company at the time. Counsel states

that Dr. Frederiks requested a donation from the Senior Vice President of Banc of America for a police charity that his wife was involved in. He did so because he had dealt with Banc of America and knew Mr. Lawrie for some time and he knew that Banc of America regularly contributed to charities. Counsel further states that before the appointment of a broker by the Green Township Board, the respondent “knew that a donation in an unstated amount was being sent to sponsor his wife in a Police Unity Ride.” (Summary Statement at pages 1-2)

At the May 23, 2007 meeting of the Green Township Board of Education, Banc of America was appointed as health insurance broker. However, counsel contends that there was no quid pro quo for the donation of \$250 inasmuch as “the Superintendent in Green Township does not participate in the recommendations for vendors.” Rather,

it is the Business Administrator in the Green Township School District who works with the Operations Committee in selecting vendors. The Operations Committee then makes its recommendation to the Board of Education. (Id. at page 2)

Counsel argues that the respondent had no involvement in the selection process leading to the selection of Banc of America and, indeed, it is the respondent’s understanding that the Board’s selection of Banc of America, who submitted the same pricing as its competitor, “had more to do with the fact that it would be easier for the Assistant Business Administrator, who also worked for the Allamuchy School District, which had been using Banc of America as its broker.” (Ibid.) Counsel adds:

Although Banc of America had been the insurance broker for Allamuchy Township School District for a number of years Dr. Frederiks and the Board of Education thought it was time for a change. While Banc of America was reappointed at the reorganization meeting on April 23, 2007, that was simply a stop gap measure. At the August 27, 2007 meeting, a competitor of Banc of America was appointed as the health insurance broker for the Allamuchy Township School District and continues as such. Given the fact that Dr. Frederiks had no role in the selection of Bank of America in Green Township, and was involved in the decision not to reappoint Bank of America in Allamuchy Township, it is overwhelmingly clear that the donation had no strings attached. No quid pro quo was expected and none was given. It was merely a small charitable donation. (Id. at pages 2-3)

As to the related OFAC report, counsel notes that:

OFAC did not find Respondent in violation of any statute, rule or regulation in soliciting a donation for a charity from a Vendor. In fact, the entire conclusion of OFAC was that “the choice of Bank of America as the insurance broker **may have been** the result of a

donation made by the Bank of America, the parent company of Banc of America, to the Police Unity Tour to sponsor the superintendent's wife." Based on the fact that Dr. Frederiks had no role in the selection of the vendor, the choice of Bank of America **was not** the result of the charitable donation. (Id. at page 4; emphasis in text)

With respect to the lighting equipment allegation, counsel asserts that the Allamuchy School District needed lighting equipment; the respondent exchanged emails with Mr. Noll, asking for his advice, and Mr. Noll responded with technical pricing information. After receiving competitive quotes from different vendors, the Allamuchy School District purchased the equipment from Graybar in Hackettstown at a competitive price. Counsel argues that there is no truth to the complainant's allegation that either the respondent or Mr. Noll benefited personally from the technical assistance provided by Mr. Noll to the Allamuchy School District. (Id. at page 3) Counsel further notes that the OFAC report on this issue concluded that the respondent had complied with bidding laws in the purchase of the lighting equipment and, therefore, provides no support for a finding of violation under the School Ethics Act. (Id. at page 4)

Pursuant to its authority under N.J.S.A. 18A:12-28(b), the Commission requested additional documentation from respondent's counsel. Specifically, by letter dated December 9, 2009, the Commission requested an affidavit from the Business Administrator to support the summary statement provided by respondent's counsel. On January 15, 2010, counsel for the respondent informed the Commission that the Business Administrator from Green Township was not willing to provide an affidavit. However, in order to provide support for Dr. Frederick's position, counsel provided the Commission with three certifications, as follows:

Kenneth Noll Certification

A certification from former Board member Kenneth Noll states that he is employed by Electric Lighting Agencies, Inc. as a manufacturers' representative. The company is a middleman between lighting equipment manufacturers and distributors; it does not sell to the public. Mr. Noll affirms that in April of 2007, when the respondent was a shared Superintendent in Green Township and Allamuchy, he asked Noll for advice regarding what type of lighting equipment was needed in the Allamuchy School District, in that a purchase needed to be made by graduation and cost was a concern. Mr. Noll states that he provided Frederiks with technical advice on what equipment was needed and it was his understanding that Frederiks purchased lighting for the district from Graybar in Hackettstown. Mr. Noll further states that he asked Graybar to give Allamuchy a low markup on the equipment since it was for the use of the community. According to Noll, the District had the lighting installed in time for graduation at a fair price. Noll affirms that he "gained nothing personally from Allamuchy's purchase of lighting equipment" and that it is his understanding that "as a standard in the industry, Electric Lighting Agencies Inc., made a 5% commission from Graybar." (Noll Certification at paragraphs 1-6)

Mr. Noll also affirms that, while he was a member of the Green Township Board of Education, he was on the Operations Committee, which dealt with finances, among other

matters. Noll states that the Business Administrator for Green Township, Sallyann McCarty, was “more involved in the work of the Operations Committee than Dr. Frederiks, including recommendations of vendors.” (*Id.* at paragraphs 8-9). Noll states that in the Spring of 2007, the Operations Committee was searching for a health and dental broker. In this connection, Noll avers, “While Dr. Frederiks sometimes attended meetings regarding the selection of such a broker, Ms. McCarty was at every meeting and to the best of my recollection recommended Banc of America. I do not recall Fr. Frederiks being involved in the selection of Banc of America.” (*Id.* at paragraphs 9-10). Noll explains that, at the time, the Allamuchy School District was using Banc of America as its health and dental insurance broker. Noll states, “One of the reasons for appointing Banc of America was that [the] Green Township and Allamuchy Township Boards of Education also shared an Assistant Business Administrator and the thinking was that it would be easier for the Assistant Business Administrator to deal with only one company.” The Green Township Board of Education appointed Banc of America as its health and dental insurance broker at the May 23, 2007 meeting. (*Id.* at paragraphs 11-12).

Mark Lawrie Certification

Mark Lawrie is currently the Senior Vice President of the Employee Benefits Division of Willis HRH, but, in April 2007, was employed by the Bank of America Corporate Insurance Agency (BOA), a corporate health insurance agency. At the time, one of his accounts was the Allamuchy School District, which is how Mr. Lawrie knew Dr. Frederiks. In December 2006, the Green Township Business Administrator informed a BOA employee at a conference that Green Township was considering discontinuing participation in the State Health Benefits Program and obtaining a contract with a private health insurer. Mr. Lawrie further affirms, “In April 2007, [Dr. Frederiks] was also Superintendent of Green Township School District, but to my knowledge, SallyAnn McCarty and not Dr. Frederiks was involved in the selection of a health insurance agency for Green Township School District.” (Lawrie Certification at paragraphs 1-4)

Mr. Lawrie avers that “[i]n April 2007, Dr. Frederiks inquired by email whether BOA would donate money to a bicycle race fund raiser that his wife was participating in to the benefit of the Polic[e] Unity charity. Since the charity would be benefiting police, I was interested in having BOA donate because I have family members who were police officers and the company contributed to many local charities.” Mr. Lawrie affirms that BOA donated \$250.00 in April 2007 to the Police Unity Charity. (*Id.* at paragraphs 5-6). The check was made out directly to the Police Unity Charity and not to any individual. Lawrie further affirms:

This donation was within the regulations for the insurance industry. It was a contribution to a charity recommended by a current client, the Allamuchy School District. In accordance with industry and company rules, BOA would not make such a contribution recommended by a potential client. Additionally, the amount donated was well below that allowed in the industry. (*Id.* at paragraph 6).

Mr. Lawrie affirms that the contribution did not enrich either Dr. Frederiks or the Allamuchy Township School District since the check was made out to the charity. Lastly, Mr. Lawrie states that although the Green Township School District became a client of BOA for the 2007-2008 school year, BOA lost Allamuchy as a client during the same school year. (Id. at paragraphs 7-8).

James Britt Certification

James Britt has been a member of the Allamuchy Township Board of Education for over six years and the Board's Finance Committee chairman for over five years. Mr. Britt states that he has known Dr. Frederiks since he became Superintendent of the Allamuchy Township School District in August 2005. (Britt Certification at paragraphs 1-2)

Mr. Britt affirms that since he has been on the Allamuchy Board, the practice of the Finance Committee is to solicit multiple proposals from professional vendors, which are then examined by the Superintendent, the Business Administrator and the Finance Committee. He avers that while the recommendation of the Superintendent is considered, the Finance Committee may not always agree with that recommendation. Furthermore, a decision at the reorganization meeting about what vendor to appoint is not necessarily a final decision. (Id. at paragraphs 3-6).

Mr. Britt affirms that at the April 23, 2007 reorganization meeting for the Allamuchy Board, Banc of America was reappointed as the health benefits agent. However, the Board was dissatisfied with the greater than 10% increases in medical and dental premiums and sought proposals from other agents. According to Britt, "Dr. Frederiks was in full agreement with the decision to seek new proposals and recommended Charles Black, which the Finance Committee also recommended to the full Board. At the August 27, 2007 regular meeting of the [Allamuchy] Board, Charles Black was appointed as health benefits agent for the Board." (Id. at paragraphs 7-10).

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 allegations in the complaint. A finding of probable cause is not 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(a), (b), (c), (d), (e) and (f). Each provision of the statute is reviewed below with respect to the Banc of America (BOA) claim and the lighting equipment claim.

First, the Commission notes that N.J.S.A. 18A:12-24(a) provides:

No school official or member of his immediate family¹ shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest;

The Commission notes that “interest” is defined by the Act as the ownership or control of more than 10% of the profits, assets or stock of a business. N.J.S.A. 18A:12-23. This record includes no evidence that the respondent, or a member of his immediate family, had an interest in a business organization which is in substantial conflict with the proper discharge of his duties. Rather, it appears that the complainant asserts, with respect to the BOA claim that the respondent engaged in a transaction which was in substantial conflict with the proper discharge of his duties in the public interest. Specifically, the complainant asserts that the respondent violated N.J.S.A. 18A:12-24(a) when he solicited a donation from the BOA to a charity event with which Dr. Frederik’s wife was involved at a time when the BOA was seeking to do business with Green Township, and Dr. Frederiks was also the Superintendent.

Appended to the complaint is an email from the respondent to Mr. Lawrie dated April 17, 2007 which states, in full:

Mark:

Thanks for coming out to green today. I am sure that we can achieve some great economies by leaving the SHBP.

On another note, I was wondering if Banc of America would be interested in sponsoring my wife in the police Unity Tour, which is set to go off in the beginning of May. The tour is a 300+ mile bike ride from Florham park, NJ to Washington DC to raise [sic] money for the Police Memorial in DC. My wife’s goal is to raise \$1700.

Here is the link to the site: <http://www.policeunitytour.com/>.

I am also attaching a sponsor form, in case you think BOA will help with that pledge. If you could indicate my wife’s name as the sponsored rider, that would assure that the \$\$ are credited towards her account.

Thanks for considering this request.

¹ The School Ethics Act at N.J.S.A. 18A:12-23 defines “member of the immediate family” as the spouse or dependent child of a school official residing in the same household. The Commission’s regulations at N.J.A.C. 6A:28-1.2 define “spouse” as “the person to whom the school official is legally married under New Jersey law and also includes a partner in a civil union couple as established in N.J.S.A. 37:1-33.”

Regards,

Tim. (Complaint Attachment No. 5)

Mr. Lawrie responded to this email communication on April 26, 2007 indicating that “a check is on the way for your wife’s Fund Raiser, made out to the Police Memorial.” Based on the respondent’s answer and supplemental certifications set forth above, and particularly the sworn statement of Mr. Lawrie, the Commission finds sufficient support in this record to conclude that to the extent the respondent engaged in a “transaction” within the intent of the statute, this solicitation for a charitable donation was a personal request made by the respondent because he knew Mr. Lawrie as a current vendor for the Allamuchy School District. While the Commission finds this solicitation to have been in poor judgment, given the circumstances of Dr. Frederik’s dual role at the time, it does not find cause to credit the allegation that it violated N.J.S.A. 18A:12-24(a). For a violation to exist under N.J.S.A. 18A:12-24(a), there would have to be a substantial conflict between the respondent’s “transaction” and his duties as the Superintendent. See, Lacklund v. Graves, Pleasantville Bd. of Ed., C04-05 (April 25, 2006). Given that Noll, Britt and Lawrie all attested to the limited role the Superintendent played in the selection of the insurance vendor, the Commission does not find cause to credit this allegation.

The complainant further asserts that the respondent engaged in a business transaction with Kenneth Noll while he was employed pursuant to a shared services agreement as the Superintendent at Green Township and while Mr. Noll was on the Green Township Board. The Commission finds that while there is support in the record to conclude that the respondent sought technical advice from Mr. Noll with respect to the purchase of lighting equipment, and that Mr. Noll’s employer, Electric Lighting Agencies Inc. made a 5% commission when the Green Township School District purchased its lighting equipment from Graybar, there is nothing on this record to show that either Noll or Frederiks enjoyed any personal gain from this transaction or that these actions were in substantial conflict with the respondent’s duties.

In this connection, the Commission reflects on I/M/O Larry Martin, Roxbury Township Bd. of Ed., C18-97 (April 28, 1998). In that case, Board member Martin used his company to help his school secure the best price for computers they intended to purchase. The Commission noted, “Mr. Martin did not make any profit on the deal and he acted to purchase the computers only when [the distributor] would not sell the computers directly to the school and the PTA.” The Commission found that there was not a substantial conflict with the respondent’s duties as a Board member. In Hanzel v. Achee, Woodstown-Pilesgrove Regional Bd. of Ed., C10-00, a Board member was alleged to have violated N.J.S.A. 18A:12-24(a) by selling T-shirts through his company to the Board and its coaches and staff. The Commission therein concluded that the respondent did not offer services or otherwise solicit business from employees of the district as a Board member. He priced items and his cost; the Commission declined to find probable cause to credit the allegation that the Board member violated N.J.S.A. 18A:12-24(a). Similarly, in this instant matter, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(a).

The complainant next asserts that the respondent violated N.J.S.A. 18A:12-24(b), which 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;

In order to credit this allegation, the Commission must find that the respondent used, or attempted to use, his position to secure some unwarranted privilege, advantage or employment for himself, a member of his immediate family or others.

With respect to the BOA claim, this record does not support a finding that there was an unwarranted privilege, advantage or employment to either the respondent or his spouse as a result of the respondent's solicitation of the charitable contribution from the BOA. The most that could be said in this connection is that the respondent's spouse may have been credited with bringing in the donation as she participated in the bike ride for charity. However, the Commission does not find that any such credit or acknowledgement would rise to the level of a prohibited "privilege or advantage" under the Act. Neither does the Commission find that this record supports the conclusion that the respondent was attempting to secure an unwarranted privilege or advantage to the BOA with his solicitation. This is so because: (1) the record supports the conclusion that the respondent played only a limited role in Green Township's selection of the BOA as vendor; and (2) there is no evidence that the BOA's selection was otherwise unwarranted. (See, I/M/O Doris Graves, Pleasantville Board of Education, C45-07 (May 27, 2008), Commissioner of Education Decision No. 301-08, decided July 10, 2008, rejecting a claim of violation of N.J.S.A. 18A:12-24(b) because the record did not demonstrate that the respondent Board member's relative did not deserve the continued appointment to the position of head custodian; Freeman v. Jackson, Camden City Bd. of Ed., C18-02 (October 29, 2009) where the Commission declined to find probable cause that the respondent violated N.J.S.A. 18A:12-24(b) without information to show that when she voted on the reinstatement of her friend/occasional live-in companion to employment in the district, such reinstatement was unwarranted.)

With respect to the lighting equipment allegation, there is no evidence on this record that the respondent used, or attempted to use, his official position to secure an unwarranted privilege, advantage or employment for himself, a member of his immediate family or for Mr. Noll. In this connection, the Commission specifically refers to Mr. Noll's certification, as set forth above, which affirms that he "gained nothing personally from Allamuchy's purchase of lighting equipment" and that it is his understanding that "as a standard in the industry, Electric Lighting Agencies Inc., made a 5% commission from Graybar." (Noll Certification at paragraph 6) Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(b).

The complainant next asserts 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;

In order to credit this allegation, the Commission would have to find evidence that the respondent had either: 1) taken action in his official capacity in a matter where he, or a member of his immediate family had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment or 2) acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that is or created some benefit to him or the member of his immediate family.

With respect to both the BOA and the lighting equipment claims, the Commission can find no evidence to suggest that the respondent acted in an official capacity in a matter where he, or his spouse, or a business organization in which he has an interest, had a direct or indirect financial involvement that might reasonably be expected to impair his objectivity or independence of judgment. In this regard, the Commission cannot find that the charitable donation made to the Police Unity Ride was sufficient to establish either a direct or indirect financial involvement. Nor can the Commission find anything on this record to suggest he had a direct or indirect financial involvement with the purchase of the lighting equipment for the Allamuchy School District.

Next, the Commission considers whether the respondent acted in his official capacity in a matter where he or a member of his immediate family had a personal involvement that is or created some benefit to him or the member of his immediate family. Even assuming that the BOA's charitable contribution on behalf of respondent's spouse was sufficient to constitute a "personal involvement," there is no evidence that such involvement created a benefit to the respondent or his spouse.² "Benefit" as used in the Act means advantage, profit, privilege or gain. N.J.A.C. 6A:28-1.2. Nor does the Commission find any evidence that the respondent's interactions with Mr. Noll constituted a "personal involvement" which implicated the Act. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(c).

² Similarly, the Commission dismissed an allegation that a respondent violated N.J.S.A. 18A:12-24(c) when she voted to approve the Board attorney's contract with the Board in 2006, notwithstanding that the respondent had retained the Board attorney's firm to handle personal legal matters for her. Although the Commission recognized that the respondent in this matter had a personal involvement with the board attorney and his firm so as to implicate N.J.S.A. 18A:12-24(c), the statute prohibits personal involvement that "is or creates some benefit" to the school official. The Commission therein found that the attorney was already serving as board counsel when the respondent chose to have him represent her on personal matters. The record further showed that the respondent did not receive any discount or reduced rate in the board attorney's fees for services rendered. Thus, the Commission could discern no benefit to the respondent or her family for having voted to approve the attorney's contract. Dressel v. Spitzer, Monroe Township Board of Education, C10-07 (August 26, 2008)

The Commission next considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24(d), 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;

The above provision prohibits any service or employment where it might reasonably be expected to prejudice independence of judgment in the exercise of the respondent's official duties. For instance, in I/M/O David W. Fuller, Irvington Twp. Bd. of Ed., C32-95 (November 25, 1997), Commissioner of Education Decision No. 472-12/97 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 serving as the Township Business Administrator based on the extent to which the duties can overlap in a Type I district. The Commission notes, in this regard, that it can find virtually no plausible application of this provision to the circumstances in this matter. There is nothing on this record to indicate that the respondent was engaged in an "employment or service" which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties. Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(d).

The Commission next considers the complainant's assertion that the respondent violated N.J.S.A. 18A:12-24(e), which provides:

No school official, or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

In order to credit this allegation, the Commission must find evidence that the respondent, or a member of his immediate family, or business organization in which he has an interest, solicited or accepted a gift, favor, loan, political contribution, service, promise of future employment, or other thing of value *based upon an understanding* that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. For instance, the Commission has found a violation of N.J.S.A. 18A:12-24(e) where board members solicited a campaign donation from a

vendor. Members' comments that vendors were expected to donate to campaigns in a way that was commensurate with the amount of money that they made from the district were sufficient to show that they had knowledge that the campaign contribution was given with the intent to influence the school official in the discharge of his official duties. The conduct was also found in violation of N.J.S.A. 18A:12-24(b). Commission recommended censure because the board members were no longer in office; Commissioner approved. I/M/O Hugh Gallagher, Keansburg Bd. of Education, C03-01 (July 23, 2002), Commissioner of Education Decision No. 387-02 decided November 6, 2002; I/M/O Judy Ferraro, Keansburg Bd. of Education, C04-01 (July 23, 2002), Commissioner of Education Decision No. 348-02 decided September 23, 2002); I/M/O Thomas Keelan, Keansburg Bd. of Ed., C06-01 (June 24, 2003), Commissioner of Education Decision No. 549-03 decided September 22, 2003.

The Commission initially finds nothing in the facts surrounding the purchase of the electrical equipment for the Allamuchy School District that would implicate this provision. As to the BOA claim, based upon the papers submitted by the respondent, the Commission cannot find that when the respondent solicited a charitable donation from the BOA, he did so *based upon an understanding* that the contribution was given for the purpose of influencing him, directly or indirectly, in the discharge of his official duties as the Superintendent of Green Township while the Board was considering the BOA as a possible vendor. In this connection, the Commission notes the affidavits from Noll and Lawrie which attest to the limited role the Superintendent played in the selection of the BOA for Green Township, as well as Noll's assertion that "[o]ne of the reasons for appointing Banc of America was that [the] Green Township and Allamuchy Township Boards of Education also shared an Assistant Business Administrator and the thinking was that it would be easier for the Assistant Business Administrator to deal with only one company." (Noll Certification at paragraph 11). Additionally, any suggestion of a quid pro quo appears to be undercut by the respondent's subsequent agreement with the Allamuchy Board's decision to discontinue its contract with the BOA and select a new health benefits agent in August 2007. (Britt Certification at paragraph 9). Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(e).

Finally, the Commission considers the complainant's allegation that the respondent violated N.J.S.A. 18A:12-24(f), which provides:

No school official shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;

As noted in the above analyses, there is no information on this record to suggest a financial gain inured to the respondent or his wife either by virtue of his acceptance of a charitable contribution from BOA or in connection with his dealings with Mr. Noll prior to Allamuchy's purchase of lighting equipment. See, Autenrieth v. Bendokas, Brick Twp. Bd. of Ed., C47-04, (June 28,

2005). Accordingly, the Commission finds no cause to credit the allegation that the respondent violated N.J.S.A. 18A:12-24(f).

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 allegations that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d), (e) and (f) and the complaint is, therefore, 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).

Robert W. Bender
Chairperson

Resolution Adopting Decision – C23-09

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and all papers filed thereafter;

Whereas, at its meeting of January 26, 2010, the Commission found no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24(a), (b), (c), (d) (e) and (f) of the School Ethics Act and dismissed the complaint;

Whereas, the Commission has reviewed, and agrees with, the proposed probable cause notice;

Now Therefore Be It Resolved, that the Commission hereby adopts the proposed probable cause notice in this matter and directs its staff to notify all parties to this action of said notice.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on February 23, 2010.

Joanne Boyle, Executive Director
School Ethics Commission