

FRED WALLACE AND	:	BEFORE THE SCHOOL
PEPUKAYI WEST	:	ETHICS COMMISSION
	:	
v.	:	
	:	
FRANCIS ALBOLINO, MARK STEIN,	:	
VERONICA BOLCIK-MCKENNA and	:	
JEANNE DRESSLER	:	
<i>HACKENSACK BOARD OF</i>	:	Docket No. C33-11
<i>EDUCATION</i>	:	DECISION ON
<i>BERGEN COUNTY</i>	:	MOTION TO DISMISS
	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on June 27, 2011 by Fred Wallace and Pepukayi West alleging that Francis Albolino, Mark Stein, Veronica Bolcik-McKenna and Jeanne Dressler, members of the Hackensack Board of Education (“Board”) violated the School Ethics Act (“Act”), N.J.S.A. 18A:12-21 et seq. After having been granted an extension for good cause shown, on September 7, 2011, a Motion to Dismiss in Lieu of Answer was filed on behalf of the respondents. Pursuant to N.J.A.C. 6A:28-8.2(a), the complainants were accorded an opportunity to respond to the motion. Their reply was filed on September 28, 2011.¹ The parties were advised that this matter was scheduled for discussion by the Commission at its meeting on October 25, 2011 in order to make a determination regarding the respondents’ Motion to Dismiss. At its meeting on October 25, 2011, the Commission voted to grant the respondents’ Motion to Dismiss.

SUMMARY OF THE PLEADINGS

The complainants assert that the respondents are duly elected members of the Board. Respondents Albolino and Stein served as President and Vice-President of the Board, respectively, from May 2010 until May 2011. (Complaint at paragraph 2) Respondents Bolcik-McKenna and Dressler were candidates for re-election in 2011 and they campaigned together. (Id. at paragraph 5) Richard Salkin served as the Board Attorney from May 4, 2010 to the present. (Id. at paragraph 6) According to the complainants, Salkin played an active role in the 2011 campaign of Respondents Bolcik-McKenna and Dressler. The complainants attach a series of emails to the complaint showing communication between Salkin and Respondents Bolcik-McKenna and Dressler prior to the election.

On April 27, 2011, Respondents Bolcik-McKenna and Dressler were re-elected to the Board. (Id. at paragraph 14) The complainants contend that on April 30, 2011, Salkin sent an email to Respondents Bolcik-McKenna and Dressler as well as Respondents Albolino and Stein

¹ By submission dated October 17, 2011, the respondents filed an objection to the complainants’ reply, arguing that the complainants therein attempted “to inject new, uncertified facts into the record that are unsupported by reference to any document or other source of credible evidence.” (Respondents’ Submission, October 17, 2011 at pp. 1-2)

regarding a meeting at the Democratic Headquarters to discuss the reorganization meeting. (Id. at paragraph 15) According to the complainants, the respondents attended this meeting on May 2, 2011, although it was not a duly noticed Board meeting. (Id. at paragraphs 16, 17)

According to the complainants, on May 3, 2011, Respondents Bolcik-McKenna and Dressler were sworn in (id. at paragraph 19) and Respondents Albolino, Stein, Bolcik-McKenna and Dressler participated in the vote to re-appoint Salkin as the Board Attorney. (Id. at paragraph 20) The complainants further contend that, since May 3, 2011, the respondents have participated in the vote to approve Salkin's legal bills submitted to the Board for payment, notwithstanding that Salkin played an active role in the campaigns of Respondents Bolcik-McKenna and Dressler. (Id. at paragraphs 21, 22) The complainants assert that by calling and participating in the May 2, 2011 meeting, Salkin provided services beyond those of Board attorney, thus creating a personal involvement between himself and the respondents. (Id. at paragraph 24) The complainants contend that by participating in the vote to re-appoint Salkin as Board attorney on May 3, 2011 and by approving his subsequent legal bills, the respondents have violated N.J.S.A. 18A:12-24(c). (Id. at paragraph 29)

ANALYSIS

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the complainants and determine whether the allegation(s) set forth in the complaint, if true, could establish a violation of the Act. Unless the parties are otherwise notified, Motions to Dismiss and any responses thereto are reviewed by the Commission on a summary basis. N.J.A.C. 6A:28-8.3. Thus, the question before the Commission was whether the complainants alleged facts which, if true, could support a finding that the respondents violated N.J.S.A. 18A:12-24(c), which states:

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 their Motion to Dismiss, the respondents affirm that Salkin volunteered his time in his private capacity and as a citizen of Hackensack to support the re-election of two of the respondents. He did not donate money to their campaigns and no school district resources were used. (Motion at p. 1) The respondents acknowledge that they attended the meeting on May 2, 2011 (id. at p. 5) and further acknowledge that Salkin was re-appointed on May 3, 2011 as the Board's outside counsel and they "collectively participated in votes to approve the Board's payment of Salkin's invoices for legal services." (Id. at p. 6) However, the respondents reason that the complainants have failed to state a claim under N.J.S.A. 18A:12-24(c) because: (1) they obtained no benefit as a result of their votes to approve counsel's legal services invoices after the election; whatever effort counsel had volunteered to the campaigns ended with the election and Salkin was the only

beneficiary of the votes (id.); (2) there is no “personal involvement” that materially affects a close family member, an intimate companion or a cause with which the school official is closely identified (id. at p. 2); and (3) there is nothing to compel a citizen to forfeit his right to participate in a campaign so that he may later render services to a public entity as an outside contractor (Ibid.)

In order to move forward with this complaint, the Commission would have to find that the allegations in the complaint, assuming they are true, could support a finding that the respondents had either: 1) taken action in their official capacities in a matter where they had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment or 2) acted in their official capacity in a matter where they had a personal involvement that is or created some benefit to them.²

Initially, the Commission finds that it is undisputed that the respondents participated in the vote to appoint Mr. Salkin as the Board attorney on May 3, 2011 and also “participated in subsequent votes to approve Board Attorney Salkin’s legal bills,” (complaint at paragraph 29) although the complainants provide no dates for these subsequent actions. Thus, the Commission finds that the respondents’ vote on May 3, 2011 constitutes action in their official capacities, so as to implicate N.J.S.A. 18A:12-24(c).³ However, the Commission can find no facts in this complaint which, if true, would support a finding that the respondents, in voting for Salkin as Board counsel, acted in a matter where they had a direct or indirect financial involvement that might reasonably be expected to impair their objectivity or independence of judgment.

Additionally, even assuming that Salkin had a relationship with Respondents Bolcik-McKenna and Dressler by providing them with campaign assistance and advice which constituted a “personal involvement” so as to implicate this statute, the statute requires that the personal involvement be one that is or creates some benefit *to the respondents*. Notably, in Jennifer Dressel v. Amy Speizer, Monroe Township Board of Education, Middlesex County, C10-07 (August 26, 2008), the Commission found no probable cause to credit the allegation that a respondent Board member violated N.J.S.A. 18A:12-24(c) when she voted to approve the Board attorney’s contract with the Board, 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 therein had a personal involvement with the board attorney and his firm so as to implicate N.J.S.A. 18A:12-24(c), it also recognized that the statute prohibits personal involvement that “is or creates some benefit” to the school official. The Commission found that the attorney was already serving as Board counsel when the respondent chose to have him represent her on personal matters. The respondent did not receive any discount or reduced rate in the 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. (See also,

² The complainants herein do not allege that the respondents’ immediate family members were implicated in these facts; therefore, immediate family members are not considered in this analysis.

³ The respondents correctly argue that any allegations pertaining to the meeting on May 2, 2011 are of no moment. To the extent the complainants imply that this meeting constituted a violation of the Open Public Meetings Act, such allegations are not properly before the Commission. Moreover, because it was not a public meeting of the Board, it was not one in which the respondents could take “official action.” (Motion to Dismiss at p. 5, footnote 1)

Similarly, the respondents in this matter argue:

The implication in the complaint is that the respondents received a benefit in the form of Mr. Salkin's volunteering of time – but not money – to support their re-election campaigns as a result of their personal relationship. ...[T]he antecedent personal relationship with Mr. Salkin and respondents' votes to approve his later payments for legal services rendered to the Board were not unethical as a matter of law because no advantage accrued to respondents as a result of the official act. The nebulous set of facts alleged in the complaint is simply too attenuated and speculative to support an ethics charge. (Motion to Dismiss at p. 14)

The Commission concurs with the respondents that any suggestion in this complaint of a potential benefit for the respondents is, at best, speculative as the complainants allege that the personal involvement between Salkin and the respondents provides an expectation of similar support in future campaigns. (Complaint at paragraphs 26, 27) Accordingly, the Commission finds that even assuming that the facts set forth in the complaint are true, these facts would not be sufficient to support a finding that the respondents violated N.J.S.A. 18A:12-24(c).

DECISION

At its meeting on October 25, 2011, the Commission granted the respondents' Motion to Dismiss the complaint. This is a final decision of an administrative agency, appealable to the Superior Court, Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Robert W. Bender
Chairperson

Mailing Date: November 23, 2011

Resolution Adopting Decision – C33-11

Whereas, the School Ethics Commission has considered the complaint, the Motion to Dismiss filed on behalf of respondents and the complainants' reply thereto; and

Whereas, at its meeting on October 25, 2011, the Commission determined to grant the respondents' Motion to Dismiss; and

Whereas, the Commission has reviewed and approved the decision memorializing said action;

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

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on November 22, 2011.

Joanne Boyle
Executive Director