
MARGARET CAPONE

v.

ERIC AIKEN
HAMILTON TOWNSHIP BOARD OF EDUCATION,
ATLANTIC COUNTY

**BEFORE THE SCHOOL
ETHICS COMMISSION**

DOCKET NO. C05-15
DECISION ON
MOTION TO DISMISS

PROCEDURAL HISTORY

This matter arises from a filed on January 16, 2015, by Margaret Capone, a former member of the Hamilton Township Board of Education (Board), Atlantic County, alleging that Board member, Eric Aiken, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. On February 4, 2015, the School Ethics Commission (Commission) notified the Complainant that her Complaint was deficient, and on February 23, 2015, she submitted an Amended Complaint, curing all deficiencies, in which she specifically alleged that the Respondent violated N.J.S.A. 18A:12-24(c) and (f)¹ of the School Ethics Act (Act). By letter dated March 4, 2015, the Complaint was sent to the respondent, notifying him that charges against him were filed with the Commission and advising him that he had 20 days to answer the Complaint. Respondent filed a Motion to Dismiss in Lieu of an Answer on March 24, 2015. The Complainant did not file a responsive statement to the Motion, pursuant to N.J.A.C. 6A:28-8.2(a).

By letter of May 7, 2015, the Commission notified the parties that this matter would be placed on the agenda for the Commission's meeting on May 26, 2015, in order to consider the Respondent's Motion to Dismiss.

At its meetings on May 26, 2015, and again upon further consideration on June 30, 2015, the Commission voted to summarily dismiss the alleged violations of N.J.S.A. 18A:12-24(f) for improper pleading, and voted to dismiss the matter in its entirety with respect to the remaining allegations claiming violations of N.J.S.A. 18A:12-24(c) for failure to state a claim upon which relief can be granted.

SUMMARY OF THE PLEADINGS

Complainant/Former Board member states that Respondent/Board member was the subject of Advisory Opinion A41-14, issued November 26, 2014, in which he was advised that since his sister was employed by the District as a substitute, under Martinez v. Albolino et al., Hackensack Board of Education, Bergen County, SEC Dkt. No. C45-11 (June 26, 2012) (Martinez), he, as a conflicted Board member, may not participate in any matter with respect to any matter remotely touching upon his sister's employment as a substitute. The Complainant maintains that the Respondent's sister is a frequently called substitute teacher in the District.

¹ The Complainant improperly pled violations of N.J.S.A. 18A:12-24.1(f) as N.J.S.A. 18A:12-2(f). The Commission dismissed that allegation in each Count in which the Complainant asserted that violation.

Counts 1, 2, and 9

The Complainant asserts that the Respondent, whose sister is a frequently called substitute in the District, violated the Act when, on December 16, 2014, he voted on the hiring of substitutes for the District and for the hiring of substitutes for the Kids Corner program. She also alleges that the Respondent violated the Act when, on January 6, 2015, he again voted on the hiring of substitutes. These acts, she contends, would provide an opportunity for his sister to be called as a substitute each time he voted in violation of N.J.S.A. 18A:12-24(c).

Counts 3, 4, and 5

The Complainant alleges that the Respondent violated the Act when, on December 16, 2014, he voted for the maternity leave of absence for a teacher, the intermittent NJ Family Leave of Absence for a teacher, and the NJ Family Leave of Absence for another teacher. The Complainant asserts that each of these votes would provide an opportunity for the Respondent's sister's employment since, in a pool of 200 substitutes, Respondent's sister is alleged to be one of the top three candidates most called for work. Moreover, the Complainant opines that since the Union President supported the Respondent's campaign for a Board seat, voting affirmatively for the various leaves for these teachers, who are members of the Union, may be construed by the public as consideration for that support. The Complainant alleges these actions violated N.J.S.A. 18A:12-24(c).

Counts 6, 7, and 10

The Complainant also asserts that when, on December 16, 2014 and on January 6, 2015, the Respondent voted to hire three full time teachers, he improved the likelihood of his sister's increased employment. Further, the Complainant opines the Respondent's support of the Superintendent's recommendation to hire these teachers may explain why his sister is so frequently called to substitute. The Complainant again reasserts her contention that support for a Union member was in recognition of the Union President's support in the Respondent's campaign for his Board seat. Finally, the Complainant alleges that the Union President's support of the Respondent's candidacy was in consideration for Respondent's success in negotiating the contract with the Union, from which it benefitted as the highest settlement in the region. The Complainant alleges these actions violated N.J.S.A. 18A:12-24(c).

Counts 8, 11, and 12

Complainant alleges that the Respondent violated the Act when, on December 16, 2014 and January 6, 2015, during Executive Session, he participated in a discussion about the contract with the union when the Teachers' Union President had supported the Respondent's candidacy. The Complainant also asserts that the Respondent violated the Act when, on January 6, 2015, he voted to provide mentoring for two teachers who are Union members as the vote can be viewed that the Union is satisfied with the settlement, in which the Respondent acted as lead negotiator for the Board, brokered with the Union and recommended to the Board. The Complainant alleges these actions violated N.J.S.A. 18A:12-24(c).

In his Motion, the Respondent argues that the Complaint does not contain any plain statement showing that the Respondent committed any violation. The Respondent contends that the numerous allegations are conclusory and unsupported by any facts. Finally, he contends that the Complainant cannot meet her burden of proof.

ANALYSIS

Allegation of Prohibited Acts

In determining whether to grant a Motion to Dismiss, the Commission shall review the facts in the light most favorable to the Complainant and determine whether the allegation(s), 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. In order to prevail on a Motion to Dismiss, the Complainant must allege facts, which if true, would be sufficient to support a finding in the Complainant's favor. Thus, the question before the Commission was whether the Complainant alleged facts, which if true, could support a finding that the Respondent violated N.J.S.A. 18A:12-24(c) and (f) of the Act.

These subsections of the Act provide:

c. 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;

f. 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.

In order to find a violation of N.J.S.A. 18A:12-24(c), the school official must have acted in his official capacity for the benefit of his sister. 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. Since the Respondent's sister is not an "immediate family" member as defined, this subsection of the Act does not apply. Consequently, even granting all favorable inferences to the Complaint, the Commission finds that the facts set forth in all Counts of the Complaint, if true, would not establish a violation of N.J.S.A. 18A:12-24(c) and, therefore, dismisses this allegation for failure to state a claim upon which relief may be granted.

With respect to the alleged violations of N.J.S.A. 18A:12-24(f), in its review of this Complaint, the Commission finds the Complainant failed to properly plead the subsection of the Act in all Counts and cited violations of the prohibited acts rather than Code of Ethics for School Board Members. This misstep renders a full review of the allegations difficult and the Respondents' adequate reply to these allegations impossible. Consequently, the Commission determined to dismiss all alleged violations of N.J.S.A. 18A:12-24(f) in the Complaint without prejudice.

DECISION

Based on the foregoing, and pursuant to its discretion, the Commission granted Respondent Aiken's Motion to Dismiss in its entirety with respect to N.J.S.A. 18A:12-24(f) for improper pleading, and voted to dismiss the matter in its entirety with respect to the remaining allegations claiming violations of N.J.S.A. 18A:12-24(c) for failure to state a claim upon which relief can be granted, pursuant to N.J.A.C. 6A:28-10.8(a)5. 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: July 1, 2015

Resolution Adopting Decision – C05-15

Whereas, the School Ethics Commission has considered the Complaint and the Motion to Dismiss, filed on behalf of the Respondent; and

Whereas, at its meetings on May 26, 2015 and again on June 30, 2015, the Commission considered the Respondent's Motion to Dismiss; and

Whereas, at its meetings on May 26, 2015, and again upon further consideration on June 30, 2015, the Commission voted to summarily dismiss the alleged violations of N.J.S.A. 18A:12-24(f) for improper pleading, and voted to dismiss the matter in its entirety with respect to the remaining allegations claiming violations of N.J.S.A. 18A:12-24(c) for failure to state a claim upon which relief can be granted; and

Whereas, at its meeting on June 30, 2015 the Commission has reviewed and approved the decision memorializing said action at its meetings of May 26, 2015 and June 30, 2015;

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 June 30, 2015.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission