

most recent submission, or to provide any additional information or documentation to the Commission.

By letter dated August 9, 2016, the Parties were notified that that the Commission would review this matter at its meeting on August 23, 2016, in order to make a probable cause determination, in accordance with the procedures set forth in N.J.A.C. 6A:28-10.9. At its August meeting, the Commission reviewed the matter and voted to find that there was no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(b) of the Act. Accordingly, the Commission voted to dismiss the Complaint in its entirety for failure to provide sufficient facts to support a finding of probable cause, pursuant to N.J.A.C. 6A:28-10.7(d).

SUMMARY OF THE PLEADINGS

A. The Complaint

Complainant alleges that on May 19, 2009, Respondent abstained from the vote approving the appointment of his sister as a substitute teacher without disclosing the reason for his abstention. The Board did not learn of the basis for his action until December 20, 2013 when the obituary for Respondent's father revealed the familial relationship. In an attempt to deal with the conflict, the Board considered whether to request an advisory opinion on the matter. When the Board decided not to pursue the matter, an individual Board member (who no longer serves on the Board) requested the opinion regarding Respondent. In response to the request, the Commission denied the request, and indicated that Martinez v. Albolino et al., Hackensack Board of Education, Bergen County, SEC Dkt. No. C45-11 (June 26, 2012) (Martinez) sufficiently addressed the issue presented.

Based on a previously issued advisory opinion in an unrelated matter (Advisory Opinion A41-14) and Martinez, Complainant asserts that on September 23, 2015, October 14, 2015, October 26, 2015, February 1, 6, and 8, 2016, the Respondent violated N.J.S.A. 18A:12-24(b) when he participated in regular and executive meetings regarding the search for the new Interim Superintendent. Moreover, Complainant alleges that through January 2016, Respondent participated in the search for the permanent Superintendent and selected, with others, the individuals the Board would interview. Complainant further stated that Respondent was involved in the first round of interviews through February 2016. Complainant asserts Respondent's actions to be a violation of N.J.S.A. 18A:12-24(b).

B. Answer to Complaint

In his Answer, Respondent admits that his sister is a non-contract on-call approved substitute teacher with the district. However, Respondent denies he used his official position to secure unwarranted privileges, advantages, or employment for himself or others, including his sister. Respondent also informed the Commission, in the supplemental filing requested by the Commission, that no individual or administrator is charged with the duty of making on-call substitute teacher assignments; instead, an automated system is used.

ANALYSIS

This matter is 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 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.

Complainant alleges that Respondent violated N.J.S.A. 18A:12-24(b) of the Act. Thus, the question before the Commission is whether there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a reasonable person to believe that the Act has been violated. N.J.A.C. 6A:28-10.7(b).

Allegation that Respondent Engage in a Prohibited Act

Complainant asserts that Respondent violated N.J.S.A. 18A:12-24(b) of the Act, which provides:

- b. 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 the allegation of a violation of N.J.S.A. 18A:12-24(b), the Commission must find evidence that Respondent used, or attempted to use, his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others.

As a preliminary matter, Respondent's sister is considered an "other" pursuant to N.J.S.A. 18A:12-24(b) because "Member of the immediate family" is defined as the "spouse or dependent child of a school official residing in the same household." N.J.S.A. 18A:12-23. While "others" is not defined by the Act, the Commission has construed it to be a fact-specific determination based on the relationship between the "other" and the Board member. To add some clarity to this, the Commission has stated, on many occasions, that "others" includes "relatives" as defined in the Act. "Relative" is defined as the "spouse, natural or adopted child, parent, or sibling of a school official." N.J.S.A. 18A:12-23. Therefore, Respondent's sister is a relative and is considered an "other."

Complainant argues that because Respondent was involved in different aspects of the search for and the hiring of the district's Superintendent, including serving as the chair of the committee, Respondent violated N.J.S.A. 18A:12-24(b). In support of her position, Complainant relies upon Advisory Opinion A41-14 (Hamilton Township Board of Education), as well as Martinez.

In Advisory Opinion A41-14, which was requested by a Board member other than Respondent, the Commission advised that it “declined to accept [the] request” for an advisory opinion because Martinez “sufficiently addresses the questions raised in [the] request.” Advisory Opinion A41-14 then indicated that, pursuant to Martinez, conflicted Board members “may not participate in any discussion pre- or post-hire, may not be a part of any aspect of the vetting process or any evaluation and contract discussion post-hire of a superintendent candidate.” However, and importantly, Advisory Opinion A41-14 does *not* indicate which provision(s) of the Act a Board member would violate if he/she engaged in such conduct.

In Martinez, the complainant asserted that respondents violated N.J.S.A. 18A:12-24(c) when they participated in the search for and the interviews of candidates for the position of superintendent. At the time of their participation in these activities, one Respondent had a spouse employed in the district as a tenured teaching staff member, and the other had a daughter employed in the same capacity. The Commission ultimately determined:

Accordingly, henceforth, a Board member who has an immediate family member (as defined in N.J.S.A. 18A:12-23) or a relative (as defined in N.J.S.A. 18A:12-23) employed in the district may not participate in the search, selection and/or vote for a new Superintendent, irrespective of whether there is an in-house candidate being considered for the position because the Commission maintains that the Board member’s involvement in the search, discussion and/or vote for a new Superintendent under such circumstances *would constitute a violation of N.J.S.A. 18A:12-24(c)* (emphasis added).

Because the Commission’s determination in Martinez was limited to a finding of a violation of N.J.S.A. 18A:12-24(c), and Complainant here has alleged a violation of N.J.S.A. 18A:12-24(b), Complainant’s reliance on Advisory Opinion A41-14 and Martinez is misplaced.

In order to find a violation of N.J.S.A. 18A:12-24(b) in this matter, Complainant needed to proffer facts or information demonstrating how Respondent used his position as a Board member to secure an “unwarranted” privilege, advantage or employment for himself or his sister, an “other” within the meaning of this section. Based on the information submitted by Respondent, there is no individual or administrator charged with the duty of making on-call substitute teacher assignments. After review, the Commission finds that there is no information or allegation in the Complaint, or in any other documentation submitted by or relied upon by Complainant, that Respondent secured himself or his sister an “unwarranted” privilege, advantage or employment which would have violated N.J.S.A. 18A:12-24(b). Therefore, the Commission finds no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(b) of the Act.

Accordingly, and for the reasons set forth above, the Commission dismisses the Complaint in its entirety for failure to provide sufficient facts to support a finding of probable cause, pursuant to N.J.A.C. 6A:28-10.7(d).

NOTICE

Pursuant to N.J.S.A. 18A:12-29(b), the Commission hereby notifies Complainant and Respondent that it finds no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(b) of the Act, and 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).

A handwritten signature in black ink that reads "Robert W. Bender". The signature is written in a cursive style and is positioned above a horizontal line.

Robert W. Bender
Chairperson

Mailing Date: September 28, 2016

Resolution Adopting Decision – C07-16

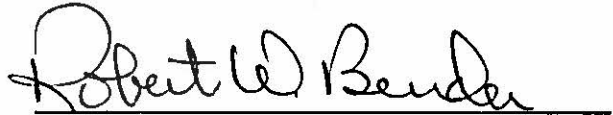
Whereas, the School Ethics Commission (Commission) has considered the Complaint and the documents filed in support thereof, as well as the Answer to Complaint along with its supporting documentation; and

Whereas, at its meetings on August 23, 2016, the Commission reviewed the matter and found no probable cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(b) of the Act; and

Whereas, at its meeting on August 23, 2016, the Commission voted to dismiss the Complaint for failure to provide sufficient facts to support a finding of probable cause, as determined pursuant to N.J.A.C. 6A:28-10.7(d); and

Whereas, at its meeting on September 27, 2016, the Commission agreed that the within probable cause notice accurately memorializes its findings; and

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 the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 27, 2016.



Kathryn A. Whalen
Acting Executive Director
School Ethics Commission