
MARGARET M. COUGHLIN

V.

JANET DiFOLCO,
MOUNT HOLLY TOWNSHIP BOARD OF
EDUCATION, BURLINGTON COUNTY

BEFORE THE SCHOOL
ETHICS COMMISSION

Docket No.: C12-16

DECISION ON
PROBABLE CAUSE

PROCEDURAL HISTORY

This matter arises from a Complaint filed on March 7, 2016 by Margaret M. Coughlin, alleging that Janet DiFolco, a member of the Mount Holly Township Board of Education (Board) in Burlington County, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. The Complaint was determined to be deficient, and returned to the Complainant. The Complainant cured all defects, and filed an Amended Complaint on March 21, 2016, which was served on the Respondent. The amended Complaint alleges that Respondent violated N.J.S.A. 18A:12-24(d), (f), and (g) of the Act.

Respondent filed an Answer to Complaint on April 25, 2016, and alleged, among other things, that the Complaint was frivolous. Respondent served her Answer to Complaint on Complainant, who was afforded an opportunity to respond to the allegation of frivolous complaint. On May 20, 2016, Complainant filed a Response to Allegation of Frivolous Filing.

At its meeting on May 24, 2016, the School Ethics Commission (Commission) tabled the matter, and requested additional information. More specifically, and by letter dated June 2, 2016, the Complainant and Respondent were advised that the Commission could not fully review the matter on probable cause without first offering the Respondent an opportunity to file an Amended Answer to the allegations detailed in Complainant's Response to Allegation of Frivolous Filing. Therefore, Respondent was provided until June 14, 2016 to file her Amended Answer, which she did by the date indicated.

By letter dated June 7, 2016 the Complainant and Respondent were notified that the Commission would review this matter at its meeting on June 21, 2016 in order to make a probable cause determination, in accordance with procedures set forth at N.J.A.C. 6A:28-10.9, as well as to make a determination on the allegation of frivolous complaint.

At its meeting on June 21, 2016, the Commission reviewed the matter and found that there was no probable cause to credit the allegations that the Respondent may have violated N.J.S.A. 18A:12-24(d), (f), and/or (g) of the Act. Moreover, the Commission found that even if Complainant had cited to the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1, instead of to Prohibited Acts, N.J.S.A. 18A:12-24, Complainant still failed to state a claim upon which relief could be granted. 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). The Commission further found the Complaint not frivolous in accordance with the standard set forth in N.J.A.C. 6A:28-1.2.

SUMMARY OF PLEADINGS, DOCUMENTS AND INVESTIGATION

A. The Complaint

1. Count 1

Complainant asserts that when the Parent Teacher Association (PTA) discovered that its bank account was “short” approximately Twenty Thousand Dollars (\$20,000.00), and additionally suspected that the PTA Treasurer was not making required deposits, Complainant contacted the Prosecutor’s Office to discuss the issue. Within a “short time” after contacting the Prosecutor’s Office, which was on February 2, 2015, Complainant learned that the Mayor, who is the Respondent’s husband, was upset with the PTA members who reported the issue to the Prosecutor’s Office. Complainant does not allege any violations of the Act in Count 1.

2. Count 2

Complainant asserts that on February 2, 2015, and other “ongoing” dates, she volunteered in two district school buildings and, while there, she was harassed and bullied by the Respondent, who is also the Vice President of the Parent Teacher Organization (PTO) at one of the schools. Complainant additionally argues that, since her term on the PTA expired, fellow PTA members, teachers, and other individuals are hesitant to support her for fear of retribution from Respondent. Complainant alleges Respondent violated N.J.S.A. 18A:12-24(d) and (f) because she clearly showed favorable treatment to her friend and her husband, and because Respondent is abusing her position by harassing Complainant in the district’s schools.

3. Count 3

Complainant alleges that on September 29, 2015, Mayor DiFolco sent a complaint to the NJPTA regarding the women who served on the local PTA at one of the elementary schools in the district. Despite requests from Complainant to the Mayor, Complainant was unable to obtain a copy of the complaint. While the complaint was pending, Complainant contends that Respondent was making things uncomfortable for her. In addition, Complainant alleges that several local PTA members were upset and intimidated that Respondent attended a Pumpkin Painting event at the elementary school when she had no children in the school, and when she was not a member of the local PTA. Complainant alleges Respondent violated N.J.S.A. 18A:12-24(d) and (f) because she abuses her responsibility as a school board member to intimidate and harass Complainant and other local PTA members.

4. Count 4

Complainant states that on November 18, 2015, her husband went to the Board meeting and inquired about the Respondent’s position on the Board. He also attempted to address her bullying of the volunteers in the community. Although the Respondent did not speak at the Board meeting, the Complainant later learned that the Respondent spoke negatively about her and her husband to others Board members and residents of the community. Complainant alleges

that Respondent's discussion of what occurred at the Board meeting with other Board members and residents was unprofessional and unethical, and violated N.J.S.A. 18A:12-24(d), (f) and (g).

5. Count 5

On December 14, 2015, the Complainant and her husband attended a Township meeting to ask the Mayor why he made a complaint to the NJPTA about the local PTA, to which he responded he received one complaint and had to take action. At the December 16, 2015 Board meeting, Complainant's husband asked Respondent if she knew that her husband, the Mayor, filed a complaint against the local PTA, and also asked if she was the person who filed the "one" complaint. Respondent replied, "No comment." Complainant asserts this to be a violation of N.J.S.A. 18A:12-24(d), (f) and (g) because Respondent surrendered her independent judgment to a political group, and disclosed confidential information to her husband. Complainant additionally argues that Respondent should be asked to resign from the Board and the PTO, or removed.

B. Answer to Complaint

With regard to the factual averments in Count 1, Respondent argues they are false, irrelevant and factually inaccurate. As for the allegations in Counts 2, 3, 4 and 5, Respondent avers they are false, inaccurate, and unsubstantiated without corroborating evidence. Respondent also argues that Complainant cites to conflict of interest statutes, and that same are wholly inapplicable to her allegations. Finally, Respondent argues that Complainant's allegations are frivolous, and filed in bad faith.

C. Response to Allegation of Frivolous Filing

In Complainant's Response to Allegation of Frivolous Filing, Complaint reiterates, with more specific detail, the allegations initially enumerated in her Complaint. She also provided more alleged facts to further support her initial Complaint. In this filing, she also referenced N.J.S.A. 18A:12-24.1(d), (f) and (g) as the provisions violated by Respondent.

D. Amended Answer

In her Amended Answer, Respondent again denies the allegations, and argues that the new information, factual averments, and allegations are baseless and offensive. Respondent also indicates that references to her husband are irrelevant to the proceeding, as he is not a party. Finally, Respondent again asserts that Complainant's accusations are frivolous.

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.

In Count 1, the Complainant does not allege any violation of the Act; in Counts 2 and 3, Complainant alleges that Respondent violated N.J.S.A. 18A:12-24(d) and (g); and in Counts 4 and 5, Complainant alleges that Respondent violated N.J.S.A. 18A:12-24(d), (f) and (g). Thus, the question before the Commission is whether Complainant alleged facts in these Counts, which, if true, could support a finding of probable cause to credit the allegations that Respondent violated the Act.

Allegations that Respondent Engaged in Prohibited Acts

N.J.S.A. 18A:12-24(d), (f) and (g) provide, respectively:

d. 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;

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;

g. No school official or business organization in which he has an interest shall represent any person or party other than the school board or school district in connection with any cause, proceeding, application or other matter pending before the school district in which he serves or in any proceeding involving the school district in which he serves or, for officers or employees of the New Jersey School Boards Association, any school district. This provision shall not be deemed to prohibit representation within the context of official labor union or similar representational responsibilities;

In light of the fact that Count 1 does not allege a specific violation of the Act, the Commission finds no cause to credit any allegation that Respondent violated the Act. Moreover, even if Complainant had referenced a specific provision of the Act, the Commission finds that Complainant fails to state a claim upon which a violation of the Act could be found and/or relief could be granted. Therefore, the Commission hereby dismisses Count 1 of the Complaint.

In order to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(d) in Counts 2, 3, 4 and 5, the Commission must find evidence that Respondent undertook employment or service, regardless of whether compensated, which might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties. There is no information or allegation in the Complaint which might suggest that Respondent undertook any employment or service that might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties. Therefore, the Commission finds no cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(d) in Counts 2, 3, 4 and 5, and hereby dismisses this allegation from Counts 2, 3, 4 and 5 of the Complaint.

In order to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(f) in Counts 2, 3, 4 and 5, the Commission must find evidence that Respondent used, or allow to be used, her public office, or any information, not generally available to the members of the public, which she receives or acquires in the course of and by reason of her office for the purpose of securing financial gain for herself, any member of her immediate family, or any business organization with which she is associated. There is no information or allegation in the Complaint which suggests that Respondent violated this provision of the Act. Even if it is true that Respondent discussed information at or following a Board meeting, by Complainant's own statement, this information was discussed during public session and, therefore, was not confidential. Even if the information was confidential, Complainant does not allege how the use of this confidential information resulted in Respondent securing financial gain for herself, a member of her immediate family, or a business organization with which she is associated. Therefore, the Commission finds no cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(f) in Counts 2, 3, 4 and 5, and hereby dismisses this allegation from Counts 2, 3, 4 and 5 of the Complaint.

In order to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(g) in Counts 4 and 5, the Commission must find evidence that Respondent, or a business organization in which she has an interest, represents a person or party other than the school board or district in connection with a cause, proceeding, application, or other matter currently pending before the school district. There is no information or allegation in the Complaint which suggests that Respondent, or a business organization in which she has an interest, represents a party other than the Board in a matter that is currently pending before the Board. Although Complainant has raised issues and concerns with the Board, there is no evidence that any matter is, in fact, pending before or being considered by the Board. Therefore, the Commission finds no cause to credit the allegation that Respondent violated N.J.S.A. 18A:12-24(g) in Counts 4 and 5, and hereby dismisses this allegation from Counts 4 and 5 of the Complaint.


Finally, it should be noted that even if Complainant had cited to the Code of Ethics for School Board Members, N.J.S.A. 18A:12-24.1, instead of to Prohibited Acts, N.J.S.A. 18A:12-24, the Commission finds that Complainant still fails to state a claim upon which a violation of the Act could be found and/or relief could be granted.

REQUEST FOR SANCTIONS

Pursuant to N.J.A.C. 6A:28-7.2(b), Respondent alleges in her Answer to Complaint, and Amended Answer, that the Complaint herein is frivolous. At its meeting, 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 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. For the foregoing reasons, 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 Complainant and Respondent that it finds no probable cause to credit the allegations that Respondent violated N.J.S.A. 18A:12-24(d), (f) and (g) 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).



Robert W. Bender
Chairperson

Mailing Date: July 27, 2016

Resolution Adopting Decision – C12-16

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


Whereas, at its meetings on June 21, 2016, the Commission reviewed the matter and found no probable cause to credit the allegations that the Respondent violated N.J.S.A. 18A:12-24(d), (f) and (g) of the Act; and

Whereas, at its meeting on June 21, 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 June 21, 2016, the Commission found the Complaint not frivolous; and

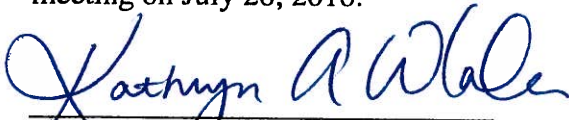
Whereas, at its meeting on July 26, 2016, the Commission agreed that the within probable cause notice accurately memorializes its findings; and

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 July 26, 2016.



Kathryn A. Whalen
Acting Executive Director
School Ethics Commission