
JOSHUA POLLAK

v.

VICTORIA DEAN
MARLBORO TOWNSHIP BOARD OF
EDUCATION,
MONMOUTH COUNTY

BEFORE THE SCHOOL
ETHICS COMMISSION

Docket No. C20-13

DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on April 29, 2013 by Joshua Pollak, alleging that Victoria Dean, a member of the Marlboro Township Board of Education, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 *et seq.* Specifically, complainant asserted that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members (Code). By letter of May 13, 2013, the respondent was notified that the charges against her were filed with the Commission and was advised that she had 20 days to answer the complaint. Respondent filed a Motion to Dismiss in lieu of an Answer on May 30, 2013, alleging that the complaint was frivolous. Complainant filed a reply to the allegation on July 17, 2013, pursuant to N.J.A.C. 6A:28-8.2.

By letter dated July 8, 2013, the Commission notified the complainant and respondent that this matter was scheduled for discussion by the Commission at its meeting on July 30, 2013, in order to make a determination regarding the respondent's Motion to Dismiss and allegation of frivolousness. At its meeting on July 30, 2013, the Commission voted to deny the respondent's Motion to Dismiss the allegations that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e). The Commission found the complaint not frivolous, in accordance with the standard set forth at N.J.A.C. 6A:28-1.2. Pursuant to N.J.A.C. 6A:28-10.8(a), the Commission also voted to retain the complaint for plenary hearing before the Commission and directed the respondent to file an Answer within 20 days of receipt of this Decision. The respondent filed her Answer on September 25, 2013.

By letter dated October 2, 2013, the parties were notified that this matter would be scheduled for hearing at the Commission's meeting on October 28, 2013. The complainant appeared *pro se*, and the respondent appeared with her attorney, Adam S. Weiss, Esq. After hearing all testimony, as summarized below, the Commission voted during the public portion of its meeting to find no violation of the School Ethics Act and to dismiss the complaint.

SUMMARY OF THE PLEADINGS

The complainant asserts that on February 16, 2013, the respondent/Board VP and her husband attended a charity dinner at which there were raffles with prizes donated by local merchants and private citizens. One such gift, as demonstrated by the signage, was donated by the respondent in her capacity as the VP of the School Board and as a member of the Marlboro

Republican Club. The complainant asserts that the respondent created a link between the School Board and the local political club, implying endorsement of their candidates for the upcoming election and as a way to garner votes. The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(c), and (e).

Comment [C1]: was donated jointly by the respondent in her capacity as the VP of the School Board and by the Marlboro Republican Club.

The respondent contends that she gave a donation of \$500.00 in the form of a check on a family-owned account, to a local chapter of the Knights of Columbus. The respondent also contends that she played no role in the signage and had no prior knowledge that her donation would be used or advertised in this manner. When she saw the sign, she immediately asked for it to be removed, and it was. The individual responsible for the sign sent an email to the Board to clear up any confusion.

SUMMARY OF THE RECORD

Each party was invited to make an opening statement. The complainant, Joshua Pollak, stated that he would rely on the evidence submitted, which included six new photos of political signs publicly displayed for the November 2013 election. In his opening remarks, respondent's attorney alleged that this complaint filed before the Commission is intended to embarrass and attack the complainant in retaliation for the complaint filed against the complainant by the respondent's husband.

Joshua Pollak is the complainant in this matter. The complainant commenced his testimony arguing that the respondent's actions and those of her husband, created an inappropriate link between the Marlboro Township Board of Education and the Marlboro Republican Club when they donated a gift to the Knights of Columbus, Lincroft Charter, for their annual Valentine Day Auction and Dance scheduled for February 16, 2013. The complainant testified that while he had no personal knowledge of the donation, he was made aware of it when someone placed a picture of the placard on which the description of the gift was written in his mailbox. He had come to learn through the Board's investigation of the gift and through the documents filed by the respondent with the Commission that the respondent had written and signed a \$500 check, on her family business account, and gave it to her husband to give to the Knight's Council. As acknowledgement for the gift, a placard was set in front of it on the display table, which said:

iPad
Donated by
Marlboro Republican Club
Victoria Dean, Vice President of
Marlboro School Board

The complainant testified that since respondent's husband is the Chair of the political organization and the respondent is the Vice President of the Board of Education, an inappropriate link exists, suggesting that the Board as a whole supported the Republican slate of candidates. By

juxtaposing the title of the two bodies with the respondent's name and position on the Board, the complainant asserts that the respondent violated the Code. (ExhibitC-1/Dean4)¹

The complainant further explained that the respondent deepened the association of the Marlboro Republican and the Marlboro Board of Education when, during the November 2013 election, both entities displayed their campaign signs close to each other in various places on private and public property. (Exhibits C-2—C-7) Again, the complainant argues that the very placement of the signs next to each other violates the Code as they also give the public the impression that the Board supports the Republican candidates.

On cross-examination, Mr. Pollak stated that he had no personal knowledge of the \$500 donation, how the money was converted to a gift of an iPad, how the signage attribution came about or any promises the respondent made to the Knights of Columbus. In response to questioning from the Commission about the signs for the election, the complainant admitted that there were other groups of signs at several places around the Township and that the Democratic Party also placed their signs similarly, but not as close. He further conceded that even in his Exhibit C-6, a party opponent's sign was placed a few feet from the Dean sign. The complainant also took issue that several of the respondent's signs and those of the Marlboro Republican Club's were placed on private property. Mr. Pollak opined that since the property owner agreed to certain signs, every candidate would not be represented. Yet he acknowledged that he did not know of any ordinance violation as to size, placement or purpose of the signs he photographed nor did he report any violations at the time he took the photos.

At the close of the complainant's testimony, cross examination and questioning, when asked why he believed the two signs were placed next to each other, Mr. Pollak stated the respondent and her husband are often seen together, traveling with the same circle of acquaintances. When viewed together, these close relationships and the close placement of the signs occupying the same space serve to reinforce the notion of a link between the Board and the Marlboro Republican Party.

Pursuant to N.J.A.C. 6A:28-8.3(d), upon completion of complainant's case, respondent's counsel moved to dismiss the complaint. After hearing arguments from the parties, the Commission denied the Motion to Dismiss. Upon resumption of the hearing, the respondent's counsel called his witnesses, as summarized below.

William Vulpis, a trustee of the Knights of Columbus testified that he was assigned the responsibility of accepting donations for the auction table at the St. Valentine Day charity dance. As in previous years, Mr. Dean made a donation for the 2013 event. At a basketball game, Mr. Dean handed a check for \$500.00, written on Wells Fargo account in the name of Quality Dental Builders, Inc. Victoria Dean signed the check. Mr. Vulpis stated that he asked Mr. Dean if he could use the money to purchase an iPad for the auction. Receiving consent, Mr. Vulpis asked Mr. Dean how he wanted the gift acknowledged. Mr. Vulpis testified that he authored the signage, after Mr. Dean mentioned the Republican Club and Victoria Dean. He testified that Mr. Dean provided the respondent's position as Vice President of the Marlboro Board of Education. Mr. Vulpis stated that he did not speak to Victoria Dean regarding the wording on the placard.

¹ In the interests of clarity and legibility and with the consent of the complainant, the Commission substituted Exhibit Dean 4 for C-1.

On the evening of the dance, at some point before dinner, Mr. Vulpis noticed that the placard was face down. He believes he heard a conversation that the sign should not have been displayed, and someone wanted it taken down. After the dance, Mr. Dean advised Mr. Vulpis that some representatives from the Board were concerned about the sign and requested a note explaining how the sign came about and who created it. Mr. Vulpis testified that on February 19, 2013, he wrote a note advising the Board that the respondent played no role in the attribution nor did he receive any direction from her. He further authenticated the email as truthful and accurate.

On cross examination, Mr. Vulpis testified that he was subpoenaed by respondent's attorney to appear at the hearing and further stated again that he was responsible for the sign. He related that he has known Mr. Dean for four years through his involvement in the Knights of Columbus but has never socialized with him. He had never met the respondent, Victoria Dean. He became aware of Mr. Dean's political activity and Mrs. Dean's position on the Board only when he created the sign. When asked why Mr. Dean requested a letter to be sent to the Board, Mr. Vulpis testified that the Board was attempting to discern if the respondent played any role in the language on the placard. Mr. Vulpis testified that he did not know the respondent's position on the Board until Mr. Dean told him at the time the attribution was developed.

The respondent, Victoria Dean testified on direct that all of the statements in her Certification are true and accurate. She went on to state that she and her husband arrived at the dance one hour late at which time she saw the attribution on the placard for the first time. She advised her husband that the language was inappropriate and placed the sign face down on the table. On cross, the respondent testified that she turned to her husband first because she had no other involvement than to give the donation check to her husband. She did not know who was in charge. The respondent testified that she did not remove the placard because it was not her property and took no further action. She acknowledged that the placard had been on display for over one hour before it was placed face down. The respondent also stated that the Board is non-partisan and that, for her, it was inappropriate to connect the Board with a political organization. She affirmed that she takes her ethics seriously and attended an NJSBA presentation during which the Code of Ethics were reviewed and where she read the Code as instructed.

When questioned by the Commission, the respondent stated that she is in her second term and has received ethics training. She testified that she was not aware that her husband had spoken to Mr. Vulpis or that he requested the acknowledgement.

Complainant's Exhibits

C-1/D4	Photo of the placard attributing the donation to the Marlboro Republican Club and Victoria Dean VP of the Marlboro Board of Education
² C-2 thru C-7	Six (6) photos of the respondent's campaign signs placed near the

Respondent's Exhibit

R-1	Mr. Vulpis' February 19, 2013 email to the Board explaining the signage
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² The Commission entered these exhibits into evidence over the respondent's objections on relevancy and authenticity grounds. Mr. Pollak took these pictures with his cell phone during October 2013, consequently these exhibits were not a part of the original complaint.

FINDINGS OF FACT

As the Trier of Fact in this matter, the Commission has had the opportunity to observe the demeanor of the witnesses and to judge their credibility. The Commission determines that respondent's testimony and William Vulpis' testimony were credible and, therefore, makes the following findings:

1. At all times relevant to this complaint, the respondent was a member of the Board. During the period at issue herein, February 2013, she was the Board Vice President.
2. The respondent signed a check for \$500.00 to be donated to the Knights of Columbus, Lincroft Chapter, for use at the annual Valentine Day Auction and Dance in any way it saw fit.
3. After she handed the check to her husband to deliver, the respondent played no other role in the events leading to the complaint.
4. With the approval of respondent's husband, Knights of Columbus trustee, William Vulpis used the donation to purchase an iPad for the auction.
5. Mr. Vulpis created the placard attributing the donation to the Dean's, using the language suggested by Mr. Dean. This attribution linked the Republican Club with the Board of Education naming the respondent as its Vice President.
6. The respondent did not know of Mr. Vulpis, nor had she ever met him or talked to him.
7. When the respondent arrived at the Dance, immediately upon seeing the placard, she placed it face down where it remained until the iPad was auctioned.
8. The Board of Education did an investigation of the incident and received an email from Mr. Vulpis on February 19, 2013 fully exonerating the respondent from any involvement in the potential ethics violation.

ANALYSIS

Preliminarily, the Commission determined that any allegations of the complainant's animus for the respondent or her family were insufficiently developed in the record; therefore, the Commission is unable to fully evaluate such claims. Similarly, since complainant's presentation of the photos of campaign signs were not a part of the original complaint, and he did not seek to amend his complaint, the Commission cannot evaluate these photos properly since the respondent did not have an opportunity to submit a response to them in her answer, pursuant to N.J.A.C. 6A:28-6.7.

The complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). The Commission initially notes the complainant has the burden to prove factually a violation under the Code of Ethics for School Board Members as provided by N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). Thus, it considers the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c), which provides:

I will confine my board action to policy making, planning, and appraisal, and I will help to frame policies and plans only after the board has consulted those who will be affected by them.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(c) shall include evidence that the respondent(s) took board action to effectuate policies and plans without consulting those affected by such policies and plans, or took action that was unrelated to the respondent's duty to:

- i. Develop the general rules and principles that guide the management of the school district or charter school;
- ii. Formulate the programs and methods to effectuate the goals of the school district or charter school; or
- iii. Ascertain the value or liability of a policy. N.J.A.C. 6A:28-6.4(a)3.

Had the respondent actually been involved in the signage on the placard in which she used her Board title in the attribution, then one may be able to argue that it was "board action." Here, however, the Commission finds nothing on this record to factually support a finding that the respondent failed to confine her board action to policy making, planning, and appraisal, or took action to effectuate policies and plans without consulting those affected by such policies and plans. There is no testimony that the respondent was acting in her capacity as a Board member at all. Rather, the respondent made her donation to the Knights of Columbus as a private citizen, something she does not relinquish because she is a Board member. Further, the Commission finds that respondent played no role in drafting the verbiage on the placard, and therefore, cannot be held responsible for its content. Consequently, the Commission finds that the complainant has failed to factually establish a violation of N.J.S.A. 18A:12-24.1(c).

The complainant also asserts that the respondent's actions violated N.J.S.A. 18A:12-24.1(e) of the Code, which provides:

I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

In order to find that the respondent violated N.J.S.A. 18A:12-24.1(e), as set forth above, the complainant would have to provide evidence that the respondent made personal promises or took action beyond the scope of her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5. Here, there is no allegation that the respondent made any personal promises.

Further, there is no evidence that the respondent took action beyond the scope of her duties as the Board Vice President. Here too, the respondent was acting in her capacity as a private citizen. Her actions had nothing to do with Board activity. As such, there is no reason to reach the question of whether the action was of such a nature that it had the potential to compromise the Board. Rather, in accordance with the facts set forth above, the respondent played no role in the creation of the placard or in the attribution.

Accordingly, the complainant failed to establish that the respondent violated N.J.S.A. 18A:12-24.1(e).

To the extent that the complainant wishes to ascribe to the respondent the actions of Mr. Dean, and thereby find the respondent at fault, Mr. Pollak may not. The Code of Ethics for School Board Members circumscribes the conduct of Board members only; the rules do not limit the spouse of a Board member. Mr. Dean is not answerable to the Commission and has no duty or obligation to follow the Code.

DECISION

Based on the testimonial and documentary evidence, the Commission finds that the complainant failed to factually establish that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members. Consequently, the complaint is 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

Mailing Date: December 20, 2013

Resolution Adopting Decision – C20-13

Whereas, at its meeting on July 8, 2013, the Commission denied respondent’s Motion to Dismiss the allegation that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e) as set forth in the complaint; and

Whereas, at its meeting on July 8, 2013, the Commission voted to retain this complaint for hearing on the allegations that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e); and

Whereas, the Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from its hearing on November 26, 2013; and

Whereas, at its meeting on November 26, 2013, the Commission found that the complainant had not established that the respondent violated N.J.S.A. 18A:12-24.1(c) and (e) of the Code of Ethics for School Board Members; and

Whereas, the Commission, therefore, dismissed the complaint; and

Whereas, at its meeting on December 19, 2013, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

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

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its public meeting on December 19, 2013.

Joanne M. Restivo
Interim Executive Director
School Ethics Commission